DRN-4506415

The complaint

Mr S's complaint arises out of his mortgage held with The Co-operative Bank Plc trading as Britannia. He is unhappy that, when he requested a product switch and term extension, Britannia asked Mr S to provide information about his financial circumstances, which he considered to be unnecessary. Mr S is also dissatisfied about the way Britannia dealt with his complaint.

To settle the complaint Mr S requires Britannia to implement the product switch from October 2022, refund all additional interest he's incurred, together with statutory interest and compensate him for breaching complaint-handling rules and for the distress and inconvenience he has been caused.

What happened

Mr S has an interest-only mortgage with Britannia, originally taken out in 2001 and due to expire in March 2024. In August 2022 Britannia carried out a mortgage review and recommended a new interest rate product, fixed for two years at 3.19%, on an interest-only basis. It would also be necessary for Britannia to extend the mortgage term by seven months so that the mortgage end date would match the end date of the two-year product.

Britannia wrote to Mr S on 24 August 2022 enclosing the mortgage offer, and requesting further information which included the most recent bank statement, a payslip (if Mr S was employed) or (if he was self-employed) his latest tax assessment from HMRC (called a SA302).

During the mortgage review Britannia noted that Mr S appeared to take a minimum income of £9,000 a year from his company (of which he was 100% shareholder), with his remaining income being in the form of dividends of £70,000. The company had a net profit of £20,000. The mortgage was affordable taking into account salary plus dividends, but appeared to be unaffordable on salary alone.

In order to extend the mortgage term, Britannia asked Mr S to provide proof of income. Mr S was unhappy about this. He made a complaint, in late October 2022 which Britannia says it didn't receive, and he had to chase this up in December 2022.

Mr S sent in proof of income in early November 2022 in the form of payslips. This supported the information previously given to Britannia, that Mr S took a minimum income from his company with his remaining income drawn as dividends. As a result, under Britannia's lending criteria Mr S was classed as self-employed, and so Britannia said it needed him to provide the SA302 or an accountant's certificate.

(Britannia had previously requested information about the repayment vehicle, and Mr S provided evidence of this on 5 September 2022. He also made a capital repayment of £12,000 on 26 September 2022, reducing the balance of the mortgage to c.£48,000.)

Mr S didn't provide either the SA302 or an accountant's certificate. Because the mortgage offer was only valid for four months, it expired in February 2023.

In January 2023 Mr S brought his complaint to our service. He said that, under the rules that applied to this application, Britannia didn't need to carry out any kind of affordability assessment. He said he'd never missed a payment and is not self-employed, so it was unreasonable for Britannia to consider him as self-employed.

Britannia explained that it hadn't received the letter of complaint sent on 27 October 2022, and due to volume of work, it hadn't logged the complaint made on 16 December 2022 until early January 2023.

An investigator looked at what had happened, but didn't think the complaint should be upheld. She was satisfied Britannia was entitled to look at Mr S's employment status and carry out an affordability assessment. Because Mr S hadn't provided the information requested, the investigator wasn't persuaded Britannia had acted unreasonably in declining the product switch and term extension.

Mr S disagreed and asked for an ombudsman to review the complaint.

Provisional decision of 27 November 2023

I issued a provisional decision in which I reached the following conclusions:

> There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.
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> The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).
>
> MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability
>
> There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:
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> - the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
> - the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
> - there's been no further borrowing (with some exceptions) since 26 April 2014; and
> - the proposed transaction is in the borrower's best interests.
>
> So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the

lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

In this case, the request for a term extension of seven months is considered to be a material change to the mortgage. On the face of it, therefore, Britannia was entitled to carry out an affordability assessment. But I think in the circumstances of this case, it wasn't reasonable for Britannia to have done so. I say this for the following reasons.

The mortgage balance (after Mr S had made the capital repayment in September 2022) was only c.£48,000. Online property portals show that a similar property sold in the same street was in April 2021, when the property next door to Mr S's was sold for £505,000. Attributing a similar value to Mr S's property, the loan-to-value ratio (LTV) is less than 10%, so very low risk to Britannia (and would have been, even if Mr S hadn't reduced the balance in September 2022).

I think the issue of whether Mr S is self-employed or an employee isn't really relevant to affordability in the circumstances of this case. Mr S has never missed a mortgage payment since the mortgage was taken out in 2001. The remaining term on the mortgage, even with the term extension, is very short, and Mr S has provided Britannia with evidence of his repayment vehicles.

Britannia *was* allowed under MCOB to carry out an affordability assessment. However, the rules also allow Britannia to dispense with this by applying the 'best interests' argument (MCOB 11.7.1). I am not persuaded there were any genuine concerns that Mr S wouldn't have been able to afford the mortgage repayments.

In the circumstances, I think it was unreasonable for Britannia to have refused to proceed purely because Mr S didn't produce the tax information Britannia wanted. I think Britannia could, and should, have dispensed with the affordability assessment, given that the transaction was clearly in Mr S's best interests. I am satisfied Britannia should have proceeded with the product switch at 3.19% in October 2022, taking into account the very low LTV, the payment history and the impending end of the mortgage term when Mr S was intending to repay the mortgage in full, by applying the 'best interests' provision of MCOB.

I therefore intend to uphold this part of the complaint.

Mr S also complained about the way Britannia dealt with his complaint. I must explain, however, that complaint-handling is not a regulated activity, and so doesn't fall within the scope of our rules. So although I've noted what Mr S complaint about Britannia breaching the FCA's complaint-handling rules (known as DISP), I have no jurisdiction to consider a complaint about a perceived breach of DISP, as it is not a regulated activity, nor ancillary to a regulated activity.

As I've said above, applying the 'best interests' provisions contained in MCOB 11.7.1, I think Britannia should have put the product switch in place from 1 October 2022. I therefore intend to direct Britannia to do the following:

- switch Mr S's mortgage onto the two-year fixed rate of 3.19% from 1 October 2022 and extend the mortgage term to match the end of the interest rate product;
- refund to Mr S the difference between the repayments he's been making at Standard Variable Rate and those he would have been making if the mortgage had been switched to the 3.19% product in October 2022;
- pay interest at 8% per annum simple* on the overpayments from the date each overpayment was made to the date of reimbursement;
- pay Mr S £250 compensation for distress and inconvenience.

Mr S can either have the overpayments refunded directly to him, or Britannia can use them to reduce the mortgage balance (without any early repayment charge) – and Mr S should say in response to this provisional decision which of those options he would prefer;

Responses to the provisional decision

Britannia accepted my provisional findings. Mr S provided a detailed critique of my provisional decision and has inserted his own amendments into a copy of the decision, but generally he has accepted my findings. He pointed out that the term extension was seven, not nine months. Mr S also thought £400 was more appropriate compensation for distress and inconvenience. Mr S confirmed that he would like any overpayments refunded to him.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've reviewed the file again from the outset, and revisited my provisional decision. Whilst I've read the points Mr S has made, I also note his general agreement to the provisional decision, so there is no need to comment further on the points in my provisional decision that he would like to change. The term extension was, as Mr S says, seven, not nine months, but as it is more than six months, nothing turns on this in relation to the outcome.

I remain of the opinion that £250 compensation is fair, reasonable and proportionate to the distress and inconvenience caused. I've noted what Mr S has said, but I am not persuaded that a higher award is justified in this case. There was some inconvenience caused to Mr S, and I think £250 compensation is fair in all the circumstances of this case.

I reiterate the point made in my provisional decision – which is that a complaint about complaint-handling doesn't fall within the remit of our service.

Putting things right

I direct Britannia to do the following:

- switch Mr S's mortgage onto the two-year fixed rate of 3.19% from 1 October 2022 and extend the mortgage term to match the end of the interest rate product;
- refund to Mr S the difference between the repayments he's been making at Standard

Variable Rate and those he would have been making if the mortgage had been switched to the 3.19% product in October 2022;
- pay interest at 8% per annum simple* on the overpayments from the date each overpayment was made to the date of reimbursement;
- pay Mr S £250 compensation for distress and inconvenience.

* If Britannia considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr S how much it has taken off. Britannia should also give Mr S a tax deduction certificate if requested, so the tax can be reclaimed if appropriate.

My final decision

My final decision is that I partly uphold this compliant. In full and final settlement I direct The Co-operative Bank Plc trading as Britannia to settle the complaint as detailed above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 January 2024.

Jan O'Leary
Ombudsman