

The complaint

Mr and Mrs H complain that they only found out late that Skipton Building Society wouldn't accept their choice of solicitors. They challenged this, and expected Skipton to change its mind, but it didn't, and by then Mr and Mrs H had no choice but to remortgage elsewhere.

What happened

Mr and Mrs H said they were moving house, and had planned to port their existing mortgage with Skipton. They said they'd told Skipton about the solicitors they wanted to use, and this was agreed by Skipton in April.

Mr and Mrs H said their house sale and purchase then progressed. In July, they notified Skipton of a change to the solicitors doing the work, and they said this was also agreed. But they told us that around 11 August, Skipton said it wouldn't accept Mr and Mrs H's choice of solicitors after all. Mr and Mrs H said the problem was Skipton wouldn't allow the use of different solicitors for the purchase and the mortgage.

Mr H said he discussed this with Skipton, saying there was no indication previously that this wasn't acceptable, and there weren't any rules and regulations published by Skipton prohibiting this. Mr H complained, and said he expected Skipton would change its mind. But it didn't, and by the time Skipton told Mr and Mrs H they couldn't go ahead in the way they'd planned, Mr H said their move was then in jeopardy. So they redeemed their mortgage with Skipton instead, and didn't port their previous lending. Mr H said they were charged a large Early Repayment Charge ("ERC") by Skipton, and he thought it should pay this money back.

Skipton set out the history of its discussion around legal representation with Mr H. It said in April, Mr H had said he wanted to use his own, named solicitor for this transaction. Skipton said it wouldn't work with sole practitioners, and Mr H told Skipton his solicitor wasn't a sole practitioner.

Skipton said it took steps to add this solicitor to its legal panel, but it turned out the solicitor was a sole practitioner after all. Mr H then said the mortgage work would be completed by a separate firm. Skipton agreed to that, and it then agreed to a change to this firm, in July.

But in early August, Skipton got correspondence from this firm, saying that they were only acting for Skipton, and the originally named sole practitioner would be acting for Mr and Mrs H. Skipton said it wouldn't agree to that.

Skipton repeated that it wouldn't allow sole practitioners to represent it. And, importantly, it said then that if Mr and Mrs H wanted to have one solicitor working for them, but another, separate solicitor working for Skipton, then Skipton wanted to appoint its own firm. It wouldn't just take the firm Mr and Mrs H wanted it to use. Skipton also said then that if Mr and Mrs H wanted to have this sort of arrangement, Mr and Mrs H had to pay both sets of legal costs.

Skipton said this meant it had explained its policy on legal representation to Mr and Mrs H in April. Skipton also said it had listened to the calls it had with Mr H, and was confident it hadn't been told before this, that Mr and Mrs H did intend to have separate solicitors.

Skipton didn't think it got this wrong. It said it would pay Mr H £25 to apologise because it failed to pay the postage on a letter it sent him, but it wouldn't do any more than that.

Our investigator didn't think this complaint should be upheld. He said Mr H was made aware of Skipton's policy in April, in an email that it sent to Mr H. And he said Skipton didn't know until August that the solicitors Mr H had chosen were only to act for Skipton, not also for Mr and Mrs H. So he said Skipton had implemented the policy it had told Mr H about previously, and he didn't think it did have to pay back the ERC that Mr and Mrs H then chose to pay.

Mr and Mrs H didn't agree. They said they did get an email from Skipton on 22 April 2022, but they said the content of that email wasn't backed up by any of the official documentation that Skipton had shared with them. And Mr and Mrs H said they'd been clear about their intentions, when they replied to Skipton. Skipton accepted this at the time, it just changed its mind later. And when it did change its mind, Mr and Mrs H said they had no alternative to paying the ERC, and not going ahead with porting their mortgage.

Our investigator said the offer documents weren't an exhaustive list of Skipton's policies. He thought it was important that Skipton had made the relevant policy clear on 22 April.

Mr H replied again, to say that if it was a requirement by Skipton to have what he now understood to be called "dual representation", then this is something that should be in the mortgage offer, or associated documentation. And it wasn't. He also said he wasn't clear on what Skipton meant, in its email of 22 April. So he said he'd understood that what he was doing met Skipton's requirements, and he'd also understood that Skipton agreed to this.

Because no agreement was reached, this case then came to me for a final decision.

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 reached the same overall conclusion on this complaint as our investigator.

The most common approach for people who are buying a new home and purchasing with a mortgage (whether buying for the first time or not) is for both the borrower and the lender to use the same solicitor. This is usually referred to as dual representation, because one solicitor represents both the consumer and the building society. Because this is the most common approach, I think it's reasonable for Skipton to work on the assumption that most buyers will work in this way, unless it's been told otherwise.

Mr and Mrs H apparently didn't want to use this approach. But I have read the emails between them and Skipton, and I don't think there's anything there to make clear to Skipton that Mr and Mrs H didn't want the same solicitor to work for both Skipton and for them.

On 22 April, Skipton contacted Mr and Mrs H to say the solicitor they'd chosen had turned out to be a sole practitioner, so they would need to choose someone else if they wanted to share a solicitor with Skipton. Alternatively, Skipton said they could use the solicitor they had chosen, and Skipton would choose a solicitor to act on its behalf.

Skipton also said if Mr and Mrs H wanted have two separate solicitors, then they would have to pay all the legal costs, for both Skipton and themselves. Although it looks like Skipton used the term “dual representation” incorrectly here, I do think the overall message was reasonably clear. And if Mr and Mrs H were confused or concerned about this, they could have asked Skipton to clarify.

I don't think there was anything in the reply Mr and Mrs H sent, or indeed in their previous communications with Skipton, to alert Skipton that Mr and Mrs H didn't want the same solicitor to work for them and for Skipton. So I don't think Skipton should have understood this, before the solicitor Mr and Mrs H had engaged to work solely for Skipton, contacted Skipton and clarified this.

Mr H says if Skipton wanted to insist on dual representation, then that should have been set out in its documentation. But I don't think Skipton ever has insisted on dual representation. It just said if Mr and Mrs H didn't want that, so if they wanted a different solicitor working for them who wasn't also working for Skipton, then Skipton would not agree to just use the solicitors that Mr and Mrs H chose for it. And it also said if Mr and Mrs H chose to incur two lots of legal fees, by choosing separate representation, then they would have to pay for that.

I think Skipton had been clear on its policy here, and I don't think that this policy was the sort of thing that needed to be set out as part of the formal legal agreement between Skipton and Mr and Mrs H. I think what Skipton was doing was reasonable, when considered against the background that the usual approach is for the borrower's solicitor also to complete the legal work for the lender.

Although I understand that Mr and Mrs H would be paying all the legal fees involved, I still don't think it was reasonable for Mr and Mrs H to expect Skipton to say it would accept their choice of solicitor, if that solicitor wasn't also working for Mr and Mrs H. Whilst Skipton hasn't explained the reason for this policy, I think Skipton might reasonably be concerned that, if its borrowers are choosing a solicitor who isn't working for the borrower too, then the motivation might be to keep costs down. And Skipton relies on the solicitor representing it to secure its rights over the property. So I don't think Skipton had to accept Mr and Mrs H's choice here.

I also note that in August, when Mr and Mrs H realised Skipton wouldn't let them both have separate representation to it and also choose the firm that would represent Skipton, they did then have other options. They could have chosen to use the same solicitors as Skipton. Or they could have gone ahead, with Skipton choosing its own solicitors. Instead, Mr and Mrs H complained about this policy.

I appreciate that this then caused difficulties for Mr and Mrs H when Skipton wouldn't change its mind. But because I think what Skipton was doing was reasonable, and that it had been clear about this from the start, I don't think Skipton had to change its mind. I do understand why Mr and Mrs H then chose to pay the ERC and redeem their borrowing with Skipton, but I don't think it has to pay that money back.

I know Mr and Mrs H will be disappointed, but I don't think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 24 October 2023.

Esther Absalom-Gough
Ombudsman