DRN-4562833

The complaint

Mr M complains that Hanley Economic Building Society wouldn't offer him a fair rate of interest on his buy to let mortgage.

What happened

Mr M has a buy to let mortgage with Hanley. In January 2023, as his existing preferential interest rate was coming to an end, he asked Hanley about a new rate. Hanley offered Mr M a discount rate of 5.19%. Mr M wasn't happy with that, noting that it offered new customers a discount rate of 3.99%.

Mr M complained. He said that Hanley should either switch his mortgage to the lower rate, or compensate him for the additional interest he would have to pay. He said that he was trapped with Hanley and unable to shop around for a better rate, because his property was affected by combustible cladding and so he couldn't re-mortgage until remediation works have been completed. He said that Hanley hadn't taken into account the need to treat him fairly – or the mortgage rules which said that a lender shouldn't take advantage of a borrower unable to move elsewhere.

Hanley didn't uphold his complaint, and our investigator didn't think it had acted unfairly. So Mr M asked for his complaint to be reviewed by an ombudsman.

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.

In particular, I've carefully considered everything Mr M has said. Mr M has placed much reliance on MCOB 11.8.1 E – MCOB is the regulator's rule book for the conduct of regulated mortgage and home finance business. The suffix E means that 11.8.1 is an evidential provision not a rule – meaning that it doesn't require a firm to do or not do a particular thing, but does say that acting in the way set out in the provision might be evidence of unfairness.

MCOB 11.8.1 E says

> Where a customer is unable to:
>
> (1) enter into a new regulated mortgage contract or home purchase plan or vary the terms of an existing regulated mortgage contract or home purchase plan with the existing mortgage lender or home purchase plan provider; or
>
> (2) enter into a new regulated mortgage contract or home purchase plan with a new mortgage lender or home purchase plan provider;
>
> the existing mortgage lender or home purchase plan provider should not (for example, by offering less favourable interest rates or other terms) take advantage of the customer's situation or treat the customer less favourably than it would treat other customers with similar characteristics. To do so may be relied on as tending to show

contravention of Principle 6 (customers' interests).

Principle 6 says:

> A firm must pay due regard to the interests of its customers and treat them fairly.

Mr M says that this is relevant to his situation. Although his is an unregulated buy to let mortgage, Principle 6 applies to all a firm's actions. He is unable to move his mortgage elsewhere, and is being offered less favourable rates than other customers with whom he shares similar characteristics because he is not a new customer.

I've taken into account what Mr M says about this. But I don't think MCOB 11.8.1 E is relevant to his situation, for reasons I'll explain.

I agree that Principle 6 applies to all a firm's actions – including unregulated lending. But MCOB 11.8.1 E doesn't.

MCOB only applies to regulated mortgage contracts, not unregulated buy to let mortgage contracts. Even so, Mr M says, it shows that certain behaviour is a breach of Principle 6 – which does apply. If that behaviour is a breach of Principle 6 when applied to a regulated mortgage contract, it is no less a breach when applied to an unregulated one.

But I don't think MCOB 11.8.1 E does say that. It says that behaviour of the type envisaged in the rule may tend to show contravention of Principle 6; not that it always will be a contravention. There may be situations where it is a breach; equally, there may not. Much depends on the individual circumstances.

And in any case, Mr M's situation is not caught by the provision. The provision makes clear it's solely about customers with an existing *regulated mortgage contract* unable to vary it or replace it; taking advantage of such customers *might* be unfair, or it might not. But Mr M is not a customer with an existing regulated mortgage contract. He's a customer with an unregulated buy to let mortgage contract.

MCOB 11.8.1 E says that the regulator considers that taking advantage of regulated mortgage customers unable to vary or replace a regulated mortgage contract might sometimes be unfair. In my view, it doesn't follow that same considerations apply to a customer of an unregulated buy to let contract. The regulator's view of potential unfair treatment of customers of regulated mortgage contracts is not a guide to what might potentially be unfair treatment of customers of a different, unregulated, product. I don't think that MCOB 11.8.1 E is of particular relevance to this complaint as a guide to whether there may or may not be a breach of Principle 6 in the operation of a different product to which those regulatory protections don't apply.

However, I do agree that Hanley has an obligation to treat its customers fairly – including Mr M – taking into account Principle 6 (but not MCOB).

But I'm not persuaded that Hanley acted unfairly in this situation. When Mr M took out his mortgage, he was offered a preferential rate until January 2023, followed by the SVR. Nothing in his mortgage offer or the terms and conditions said he would be entitled to a new preferential rate, or that Hanley would be obliged to offer him one, from January 2023. Mr M agreed to his mortgage on those terms.

Nevertheless, Hanley did offer Mr M a new rate. That rate was discounted from, and therefore better than, the standard variable rate which would apply if a new rate was not implemented. In offering Mr M a new rate, better than the standard variable rate he was contractually entitled to, Hanley treated him fairly.

I don't think it makes a difference that Hanley offered different rates to other customers. I don't agree that Mr M necessarily has similar characteristics to new customers. They are new customers, and he is not. Given that Mr M has said he's unable to mortgage elsewhere because of issues with his property, I think it's unlikely that Hanley would accept an application from him if he were a new customer. Mr M has issues with his property which seem likely to make it unacceptable security for new lending; that is a characteristic which means he and his mortgage are dissimilar to new customers.

In any case – and bearing in mind that this is an unregulated mortgage – there's no obligation on Hanley to offer the same rates to all customers. It can legitimately offer different rates to different groups of customers according to its lending criteria and commercial appetite. That includes choosing to focus on attracting new customers – and using the offer of preferential rates to do so. I don't think there's anything inherently unfair in Hanley offering different preferential rates to new buy to let customers compared to the preferential rates that it offers to existing buy to let customers.

Under Mr M's terms and conditions, his mortgage ought to have reverted to the standard variable rate from January 2023. But instead Hanley offered him a new, lower, preferential rate – thereby improving his situation. I think that was fair, and I don't think the fact that it offers different customers different rates makes it unfair.

When Mr M first complained, Hanley offered to allow him to take the discount rate until the end of its term in 2025. It says it will still make that available to him. Or, if he'd rather, he can take out one of the rates it has available now instead. I think that's reasonable, and I don't require it to do anything further.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 April 2024.

Simon Pugh
Ombudsman