

The complaint

Mr and Mrs S say that Yorkshire Building Society trading as Chelsea Building Society (and referred to here as CBS) unfairly declined their request to transfer their offset mortgage product onto a new mortgage.

To settle the complaint, Mr and Mrs S would like CBS to compensate them for their financial losses. Although Mr and Mrs S initially only wanted compensation for solicitors' fees, when the complaint was brought to our service, Mr and Mrs S thought they should be compensated for other losses too – erosion of equity in their property, having to move into temporary accommodation, having a worse range of properties to choose from, travel costs for the school run and the distress of the repercussions of CBS's actions on their vendors, as well as the personal distress they suffered.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, and in the investigator's letter dated 21 June 2022. All parties have a copy of that letter, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs S being identified. Finally, CBS has accepted it made an error, and so I don't need to analyse the events in detail to ascertain whether or not CBS is at fault. So for these reasons, I will keep my summary of what happened quite brief.

Briefly, Mr and Mrs S had an interest-only mortgage with CBS taken out in 2012, when they borrowed £140,000. The terms and conditions allowed them to offset savings against the mortgage; rather than earning interest on savings, the interest would instead be used against the mortgage repayments. The mortgage had been fully offset for some time. As a result, Mr and Mrs S had not needed to make a mortgage payment since December 2018, which was in line with the terms and conditions of the mortgage.

In September 2020 Mr and Mrs S wanted to move house. On 24 September they asked CBS about porting their mortgage onto another property, and in addition reducing their borrowing to just over £94,000. They were given an agreement in principle by CBS, but on 15 October 2020 the application was declined on the basis of affordability.

Mr and Mrs S decided to withdraw from their purchase, which they say caused significant upset to the vendors, who had particular health issues and who had already arranged their own move. Mr and Mrs S went ahead with the sale of their property, which completed on 4 November 2020 when the mortgage to CBS was redeemed. They moved into rented accommodation while they looked for a new property, which they bought on 15 June 2021.

Mr and Mrs S complained. In its final response letter CBS said that a like-for-like request to port a mortgage, with no extra money being borrowed and no substantial changes in personal circumstances is permitted. However, Mr and Mrs S were intending to use some of

their savings towards their new purchase. As a result, and because they'd not made a payment since December 2018, CBS said that Mr and Mrs S weren't able to show that the mortgage would be affordable.

Mr and Mrs S took out a mortgage with another lender for their purchase and repaid their mortgage to CBS on 4 November 2020. They complained to the Financial Ombudsman Service.

An investigator looked at what had happened. He thought CBS should have allowed the mortgage to be ported to the new property without an affordability assessment, because regulations permitted this. He asked CBS to pay Mr and Mrs S's abortive legal fees of £350 and £500 for trouble and upset. CBS agreed to do this.

However, Mr and Mrs S don't think the compensation was enough to compensate them for their losses. They've reiterated previous points they made about their financial losses, which I summarise below:

- From the date CBS rejected their application to the date the offer on their new house was accepted (which was on 10 February 2021) prices rose by 9%, which resulted in a loss to them of just under £100,000, given they had sold their property for £927,000. Although they bought a less expensive property, the rise in prices forced them further down the ladder.
- They had additional expenses for the school run (£402 per month), multiple journeys to search for a property and a longer commute to work (an addition 20 miles, 3 times a week).
- They had to arrange a mortgage with another lender, which took time.
- There was also the upheaval of living in rented accommodation, the effect on their daughter of living away from school and the upset at having to live in a less desirable area where prices don't increase as they do where they used to live.

Because the matter is unresolved, it falls to me to issue a 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'll begin at the outset by explaining that an agreement in principle isn't a mortgage offer. So although I've noted what Mr and Mrs S have said about CBS withdrawing its mortgage offer, there was, in fact, no mortgage offer on the property Mr and Mrs S had originally decided to buy.

Where a mortgage product is being ported – in this case the offset product attached to Mr and Mrs S's mortgage – this will always require an application to be made, and is subject to lending criteria.

There are regulations in place that have flowed from the Financial Conduct Authority's Mortgage Market Review (MMR) 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 to protect consumers and encourage mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they passed tests under the old rules but not 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:

- 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.

I agree with our investigator that the regulations meant that CBS should not have declined the application on the basis of affordability. The very nature of Mr and Mrs S's mortgage meant that, if they were fully offsetting their mortgage interest with savings interest, they wouldn't need to make a monthly repayment. Therefore, for CBS to decline the application by saying Mr and Mrs S hadn't been able to show they could afford the monthly repayment was unfair.

Putting things right

I note that CBS has accepted it made an error and agreed to reimburse Mr and Mrs S's legal fees of £350, and pay compensation of £500, as recommended by the investigator.

I've looked at what Mr and Mrs S have said about why they don't think is sufficient. However, I'm not persuaded there's any basis on which it would be fair or reasonable to increase the compensation.

I say this because it was Mr and Mrs S's decision to go ahead with the sale of their property before they'd found another property to buy. So although I acknowledge they had additional expense for travel, and the upheaval of living in rented accommodation, I'm afraid I can't hold CBS responsible for this. Mr and Mrs S weren't under any obligation to sell their property before they'd found another – although I appreciate they might not have wanted to lose their buyer. But I can't see any basis on which I could fairly hold CBS responsible for the decision Mr and Mrs S made to continue with the sale of their property after the mortgage application was declined.

Given this, the consequential expenses Mr and Mrs S have claimed for the rise in property prices, upheaval and travel costs are not financial losses that I can attribute to CBS. I also can't order CBS to pay compensation for any distress suffered by Mr and Mrs S's original vendors when Mr and Mrs S withdrew from the purchase; those vendors are not customers of CBS and a claim on their behalf can't be made by Mr and Mrs S.

Overall, I'm satisfied the compensation agreed to by CBS of £500 is fair, reasonable and proportionate in all the circumstances, in relation to distress and inconvenience, time wasted and trouble and upset.

My final decision

My decision is that I uphold this complaint. In full and final settlement, I direct Yorkshire Building Society trading as Chelsea Building Society to pay Mr and Mrs S £350 for their legal fees and £500 compensation for distress and inconvenience. 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 correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 8 September 2022.

Jan O'Leary
Ombudsman