

The complaint

Mr and Mrs G complain that OneSavings Bank Plc trading as Kent Reliance (“Kent”) made a series of mistakes in relation to their buy to let mortgage, didn’t treat them fairly and provided misleading and inconsistent advice. This meant they had to pay a high rate of interest when it was unaffordable. Mr and Mrs G would like to be put into the position they were in before they took out their mortgage product with Kent or for Kent to accept the proposals made to Kent through their solicitors.

What happened

Mr and Mrs G owned and originally lived in the mortgaged property which was a flat. They made a decision to buy another property as their home using the equity from their existing property and then let this flat out with a buy to let mortgage from Kent, arranged through a broker. The mortgage initially had a fixed rate mortgage product which was renewed but this came to an end in 2018. The rental income fell short of the mortgage payments by £2,000 per month, generating losses over three years of £70,000. Mr and Mrs G got the property ready for sale but at this time Brexit affected the property market and they were unable to sell and had no tenant or rental income.

When the mortgage product came to an end, as the mortgage was in arrears, and as they weren’t eligible for a new discounted product, Mr and Mrs G’s interest rate then switched to Kent’s standard variable rate (“SVR”). This meant they were paying about £11,000 per month rather than the £7,000 they had been paying and so they went into deeper arrears. Mr and Mrs G sold the family home in February 2019. Once the arrears were cleared, Mr and Mrs G applied for a new concessionary rate on their buy to let mortgage and got a two-year discounted rate in May 2019.

When they sold the family home, Mr and Mrs G moved into the flat whilst trying to get it rented or sold. In June 2019 Kent told Mr and Mrs G that it wouldn’t consent to them moving back into the property permanently as it wasn’t able to vary the terms of the contract from buy to let to residential but provided them with a grace period to allow Mr and Mrs G to get independent financial advice.

In November 2019, as Mr and Mrs G hadn’t sold or rented the property and remained in it in breach of the terms of the buy to let mortgage, Kent removed the discounted rate and the monthly payment again increased from £7,295 to £12,945 per month. In February 2020, Mr and Mrs G got an offer on the flat but this fell through because of the Coronavirus Pandemic. At the same time Mr G’s income decreased also because of the Pandemic. Mr and Mrs G applied for and got payment holidays and after these didn’t resume making payments towards the mortgage.

Our investigator’s view

Our investigator recommended that this complaint should be upheld. She said that Mr and Mrs G had got mixed messages from Kent as to why the discounted mortgage rate was removed. Our investigator also believed that Kent’s actions weren’t fair and reasonable as

there was no reason that, as Mr and Mrs G had sold their family home, that the mortgage couldn't have been changed to a residential mortgage to assist Mr and Mrs G ; or alternatively Mr and Mrs G could have been kept on the discounted rate as they were intent on selling the property or renting it and the removal of the discounted rate would make it more difficult for them. Our investigator recommended:

1. Kent assess whether this mortgage could have been converted to a residential basis in June 2019 or consent to reside given when Mr and Mrs G approached them in June 2019. If a residential mortgage was possible, Kent should provide Mr and Mrs G with details of the concessionary rates they would have been eligible for and rework the account on the basis of these rates.

Refund to Mr and Mrs G any overpayments which had been made during this time (if there were any).

Pay £750 to Mr and Mrs G for the trouble and upset caused to them during this time.

Or;

2. Allow Mr and Mrs G consent to reside at the property until such time as it is sold or a new tenant can be found. Rework the account so the discounted rate from May 2019 remains in place until May 2021. If the account is not in arrears at this time allow Mr and Mrs G to choose from the buy to let rates available at that time.

Refund to Mr and Mrs G any overpayments which have been made during this time (if there are any).

Pay £750 to Mr and Mrs G for the trouble and upset caused to them during this time.

Kent disagreed saying that Mr and Mrs G hadn't been treated unfairly and made the following points:

1. It noted our investigator's comments about Mr and Mrs G previously residing in the property. If the mortgage was taken today, this would be deemed a "Consumer Buy to Let" and therefore regulated but the loan was taken in August 2014, before these rules came in. It is, therefore, unregulated. Since October 2004, residential Mortgages are regulated by the FCA. To transfer the mortgage to a residential mortgage would require Mr & Mrs G to effectively complete a full mortgage application and go through affordability checks, etc.

2. Our investigator said Kent has acted in accordance with the Terms and Conditions of the mortgage, but then contradicted this by stating that the bank has treated Mr & Mrs G unfairly despite the bank giving them a grace period to either move out of the property or refinance on to a residential mortgage.

3. Even if the interest rate was to be reworked, the account would still be in arrears given that no payment has been made since July 2020.

My provisional decision

As my view of this complaint differed from that of our investigator I issued a Provision Decision in the complaint in the terms set out below:

I've indicated above that I disagree with our investigator's view on this complaint. The basis for that is that this buy to let mortgage was fundamentally a business transaction between Mr and Mrs G and Kent to finance their buy to let business of letting a flat at the high end of the market. The cost of the mortgage was high, and I imagine Mr and Mrs G hoped the returns would be high. But it didn't turn out the way Mr and Mrs G hoped. Importantly, as a buy to let

mortgage, it was an unregulated mortgage which means that the MCOB regulations - which I note are referred to in Mr and Mrs G's solicitor's correspondence - don't apply to this transaction. Kent is expected to act fairly but within the context of this business transaction in which Mr and Mrs G agreed to the terms and conditions of the buy to let mortgage contract with Kent. My provisional view set out below is that Kent for the most part did act fairly.

Mr and Mrs G have three main areas of complaint. Firstly, about the sale of the mortgage to them, secondly about the withdrawal of the discounted rate from them and thirdly about the confusing messages they got from Kent.

1. Problems with the sale of the original mortgage

This issue is set out in Mr and Mrs G's solicitors' letter of 11 June 2021. Although in early July 2014, Kent issued a mortgage offer of £2,200,000.00 based on a valuation of £4,300,000.00 and an LTV of 51%, it then told Mr and Mrs G's broker that as the property had been valued at £3,800,000.00, Kent would only be able to lend the total sum of £1,940,000.00 but then issued a mortgage offer in August 2014 for the original sum based on a valuation of £3,800,000.00 and a LTV of 58%. Mr and Mrs G say that they relied on the representations made by Kent to get a second loan from a lender that wouldn't have been required and then accepted the revised offer from Kent which meant that they over borrowed based on the representations made by Kent to Mr and Mrs G's financial broker.

But what was happening here was simply negotiations between Kent and Mr and Mrs G through their broker about the amount that they were able to borrow from Kent on this buy to let mortgage. This was a business transaction, and it seems that Kent revised the amount that it would lend to Mr and Mrs G during the course of this negotiation. Mr and Mrs G's decision to borrow the amount they did was a matter for themselves to decide, applying their own diligence and with the assistance of their broker. This was not an advised sale or recommendation by Kent and lending to an LTV of 58% doesn't strike me as overlending. I don't agree that Kent did anything wrong here.

2. Kent's decision not to grant a discounted rate in 2018 and the withdrawal of the discounted rate in 2019

Mr and Mrs G's chief complaint is that whereas they originally had a discounted mortgage product, they were unable to renew it because of the arrears at renewal time and later Kent offered them a discounted mortgage product but withdrew it. They also complain generally about Kent's treatment of them in financial difficulties.

Mr and Mrs G took out a buy to let mortgage and for four years enjoyed a discounted rate after taking out two consecutive two-year mortgage products with Kent. The difficulties arose with Kent in that as the account was in arrears when the mortgage product lapsed in October 2018 that Kent wouldn't offer another product because of that. Kent says that as the account was in arrears, Mr and Mrs G's mortgage wasn't eligible for a discounted rate, but they could apply again when the arrears were cleared and so for that period the account moved to the SVR until 30 April 2019 when Mr and Mrs G applied and got a further discounted rate. I can't see that during this period that Kent did anything wrong. Its normal for lenders to refuse a discounted rate if a borrower is in breach of the terms of the mortgage such as non-payment which was the basis of the refusal here – when the position was rectified Kent then offered a new mortgage product.

In 2019, Mr and Mrs G moved back into the property in breach of the terms and conditions of their buy to let mortgage. As they had sold their residential property in February 2019, Mr and Mrs G moved back into the buy to let property at that time and in advance of the

application for a new discounted rate mortgage product. As they were living in the property and now in breach of their terms and conditions it's likely that they would have been refused a discounted mortgage product at that time had Kent been aware of that breach.

When Mr and Mrs G told Kent that they had now moved back into the property to get it rented or sold, Kent told them that it wouldn't consent to them moving back into the property permanently. That's not unreasonable given that it was a buy to let mortgage. Kent's further actions have been to allow Mr and Mrs G time to rent or sell the property and to remove the discounted rate meaning that Mr and Mrs G's mortgage reverted to the Kent's SVR. Allowing a reasonable time for Mr and Mrs G to sell or lease is a reasonable response by Kent and that's what Mr and Mrs G wanted. Under the terms of the buy to let mortgage they were of course at risk of a change in the interest rate if they were in breach of the buy to let mortgage terms. Our investigator noted that the terms of their mortgage offer say:

"This is a buy to let mortgage. The property must not be occupied by the borrower or any family member. Failure to adhere to this condition will put you in breach of your mortgage terms and may result in the rate and/or terms of your mortgage being reviewed or enforcement action taken by the Bank. Enforcement action could involve formal demand of repayment of the loan or commencement of possession proceedings."

As a result of Mr and Mrs G's breach, Kent removed the discounted rate and put Mr and Mrs G back on the SVR that they had been on before May 2019. Given that, had Kent been aware that Mr and Mrs G had moved back into the property that they were unlikely to have got that rate, I don't consider that Kent acted unreasonably in removing that rate. I also don't consider that this was some form of penalty clause as suggested by Mr and Mrs G's solicitor but the rate that Mr and Mrs G would be on if for any reason they were refused a discounted rate. In addition, as I note above the possibility that an increase in the mortgage rate for a breach of contract was stated in the mortgage offer.

The discounted rate was removed and as a result the interest rate increased at the end of 2019 in advance of the Coronavirus Pandemic. In their letter at point 6, Mr and Mrs G's solicitors refer to their clients experiencing financial difficulties as a result of the Pandemic at which time, Kent applied a default interest rate. But the decision to remove the discounted rate pre-dated the Pandemic and was a few months after Mr and Mrs G released over £800,000 in equity from their home. I have no evidence that Mr and Mrs G were suffering financial difficulties at that time. During the course of the Pandemic, Kent seems to have provided the payment holidays that Mr and Mrs G requested and I've no evidence that Kent increased interest rates further during this period. I do note that Mr and Mrs G have made no payments after the payment holiday towards this mortgage.

It does seem that Mr and Mrs G's decision to use their former home as a buy to let property hasn't worked out as they had hoped but not all businesses do work out and sometimes business owners have to look to their own resources to carry them through difficult times. I note Mr and Mrs G have had to reach into their savings as their buy to let property isn't producing the income they hoped for. But they have a contract with Kent, and I see no reason to vary the terms of the contract. I note our investigator suggested that Kent should offer a residential mortgage. But Mr and Mrs G say they want to sell the property and it has been up for sale for some time now, so I can't see any advantage to Mr and Mrs G being offered a residential mortgage by Kent if their intention is to sell the property. Mr and Mrs G wanted sometime to sell their property and to live in the property during that period. It seems that they have had that time and been able to live in the property and my view is that Kent has acted fairly towards them.

3. Confusing messages from Kent.

I note that our investigator took the view that Mr and Mrs G got mixed messages from Kent as to why the mortgage was removed. I've reviewed the correspondence from Kent to Mr and Mrs G dated 3 June 2019, 24 July 2019, 21 August 2019, 29 November 2019 and 19 December 2019. Those explicitly state the reasons that Kent was taking the action it was taking and I don't believe that it would leave any doubt with Mr and Mrs G that it was due to their breach of the terms of the buy to let mortgage. In the initial correspondence Mr and Mrs G brought to our attention correspondence from Kent dated 30 June 2020 which refers to the mortgage rate increasing because of their existing product term expiring. That's clearly incorrect and distressing for Mr and Mrs G in the midst of their negotiations with Kent. I accept that this part of the complaint should be upheld and believe that an award of £250 would be fair compensation for that.

My Provisional Decision was to uphold this complaint in part. I invited submissions from Kent or from Mr and Mrs G. Mr and Mrs G made further submissions referred to below. Kent responded to those submissions and some queries I had relevant to the complaint.

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.

Further submissions from Mr and Mrs G

In response to my Provisional Decision, Mr and Mrs G made the following points:

1. The mortgaged property had been their family home. Their intention was to return when their daughter's educational circumstances had changed. The decision to rent out wasn't for investment purposes and the initial mortgage should have been treated as a consumer buy to let in 2014.
2. Mr and Mrs G say that *"we were of the clear understanding that we took out a new mortgage in April 2019"* with Kent. They say that the language of the offer letter, description of the product and the fees made it clear that this was a new loan in 2019 and not simply a new mortgage product. As it was a new mortgage in 2019 it should have been set up on the basis of a consumer buy to let mortgage.
3. Kent Reliance hasn't provided a full response to their Data Subject Access Request ("DSAR") which has prevented them providing the full facts to us.
4. Mr and Mrs G would like to remain in the property and only considered the sale of the property as a last resort as they couldn't afford the payments.

Mr and Mrs G say that it was always the intention to return to the mortgaged property as the family home and the transaction should have been treated as a consumer buy to let when, as they now say, they took out a new mortgage in 2019. That raises two questions. Was that in fact their intention and did they take out a new mortgage in 2019.

But the evidence on the file is that it wasn't their intention to permanently return to the property:

1. In the letter of complaint to Kent from their solicitor dated 10 June 2021, the solicitor writes *"You were made aware as part of our clients mortgage application that the purpose of the mortgage was to enable our clients to fund the purchase of an alternative property for their family to reside in. At this stage, our clients family were living at the Property but were planning to move out and rent the Property to tenants for the duration of the Mortgage, hence the application for a Buy to Let Mortgage"*

rather than a standard Residential Mortgage.” As the duration of the mortgage was 22 years, their solicitor presumably acting on Mr and Mrs G’s instructions gave no indication that it was ever their intention to return to the property.

2. On 9 June 2020 Mr G emailed Kent to say: *“As we could neither sell or rent out the property, we moved back as a temporarily (sic) measure while continuing to do so – because it made no sense to keep the property empty and spend money on rent on another property “.*
3. In Mr G’s letter to Kent of 18 August 2019, under a heading *“Our intentions for the Property”* he wrote:

“14. We are therefore currently looking for new accommodation in north London as it is not convenient or practical for us to live in the Property for the long term. However, whilst we look for new rental tenants in the Property living there on a temporary basis enables us to maintain our current mortgage repayments with you.

15. We are actively marketing the Property for rent and looking for alternative accommodation for our family home. Both are taking longer than hoped, but we have been advised that the London property market will recover in the long-term, and that now is the wrong time to sell.

16. We own the Property as a rental investment and it has been and always will be our intention to let it to tenants and collect the rental income “

From what Mr and Mrs G told Kent, I consider that it was fair for Kent to have assumed and proceeded on the basis that that Mr and Mrs G required the property as a rental investment, were looking to sell it, and that they only intended to stay there on a temporary basis and not permanently as they were intending on moving to another property in North London.

The other main issue that Mr and Mrs G raised in their further submission is that they say that they were under the clear understanding that In April 2019, they took out a new mortgage rather than a new mortgage product and so, given Mr and Mrs G’s circumstances, Kent should have provided a consumer buy to let mortgage rather than an ordinary buy to let mortgage.

But there was no new mortgage in April 2019. If there had been I would expect that the existing loan would be redeemed. But nothing happens to the existing loan except that there is additional borrowing on it to finance a booking fee for the mortgage product. The loan is not redeemed: the mortgage is not vacated; no new mortgage is put in its place. I would also expect, if there was a new mortgage, some negotiations around a new mortgage or some prior discussion, but there is none. The context is them looking for and getting a new mortgage product. Mr and Mrs G simply didn’t get a new mortgage. They got a new mortgage product in April 2019 as part of the existing mortgage. As I set out in my Provisional Decision, Mr and Mrs G had previously been unable to get a new mortgage product because of the arrears. They cleared these and got access to a discounted rate product.

Mr and Mrs G point to terminology in the mortgage product offer suggesting it’s a new mortgage rather than a mortgage product. But equally the terminology points to a new mortgage product. If I look at the covering letter dated 12 April 2019 from Kent, its headed *“Re: Rate Switch Mortgage offer”* and in May 2019 Kent write to Mr and Mrs G to thank them for returning their acceptance form and to confirm that the account was switched to a 2-year Discounted Rate. But I’m satisfied in any case that they didn’t take out a new mortgage in April 2019, it was a new mortgage product based on the existing buy to let mortgage and so Kent wouldn’t be required to provide a consumer buy to let mortgage.

There was a further issue raised in Mr and Mrs G's post view submission where they say that they were prevented from presenting the full facts to us because Kent failed to provide a complete response to their DSAR. My role is to investigate and come to a fair outcome on this complaint in light of the relevant facts. I consider that in view of the substantial documentation already on the file and the submissions from the parties, that I am able to come to a decision based on the relevant facts. Mr and Mrs G may have a separate complaint as to what was contained in Kent's response to the DSAR but that's a separate matter that they may wish to pursue with Kent or the Information Commissioner's Office but doesn't prevent me coming to a decision on this complaint.

I've given careful consideration to the further submissions from Mr and Mrs G, but after reviewing these and my Provisional Decision and the evidence on the file, I consider that for the reasons set out in it, my Provisional Decision represents a fair outcome to this complaint. So, I will be upholding this complaint in part and awarding Mr and Mrs G £250.

Putting things right

OneSavings Bank Plc trading as Kent Reliance should pay Mr and Mrs G £250.

My final decision

I uphold this complaint and require OneSavings Bank Plc trading as Kent Reliance to pay Mr and Mrs G £250.

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

Gerard McManus
Ombudsman