

## **The complaint**

Mr and Mrs P complain that Skipton Building Society (Skipton) will not allow them to rent their Buy-to-Let property to members of their extended family. They say that there is no restriction in the terms of their Buy-to-Let mortgage offer with Skipton which stops them doing this.

## **What happened**

In 2019, Mr and Mrs P took out a Buy-to-Let mortgage on a property with Skipton and in 2022 they remortgaged the property with Skipton. On both applications they received a formal offer which contained a number of conditions, including a list of Property Letting Requirements which they had to agree to as part of the Mortgage contract. In March 2022, Mr and Mrs P contacted Skipton and asked if they were able to rent their property out to family members. At this point Mr and Mrs P had no immediate desire to rent to family members but the opportunity might arise, so they wanted to clarify their position. They specifically asked if it would be possible to let the property to their nieces. Skipton declined and said that this was against its internal lending conditions. Mr and Mrs P complained that this wasn't made clear anywhere in the Mortgage Offer and that it was unfair for Skipton to impose such a restriction after the Mortgage had completed. Skipton said it had a duty to protect its security and was able to vary the lending requirements on Buy-to-Let Mortgages. Mr and Mrs P didn't agree and so brought the complaint to us.

Our Investigator didn't uphold the case. She said that Skipton was entitled to rely on its own internal policies and further she didn't think the family restriction was unfair.

Mr and Mrs P didn't agree and so the complaint has been brought to me for a final decision

## **My Provisional Decision**

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

There are two broad aspects to this complaint. Firstly, whether or not Skipton can place restrictions on the letting of a Buy-to-Let property that aren't specifically itemised in the Mortgage Offer it provides to its Buy-to-Let customers. And, secondly, the understanding of the definition of a "family" member for the purpose of a Buy-to-Let Mortgage.

Skipton says it's entitled to place restrictions and rules for those properties secured under its mortgage charge to protect its security. It further says that if it received a new application for

a Buy-to-Let Mortgage involving a let to a family member this would be rejected under its lending criteria. So, it says that in order to treat all customers fairly, it also doesn't allow family lets to existing Buy-to-Let customers.

When Mr and Mrs P completed the original mortgage application they were asked if any member of their family would be living in the property. Mr and Mrs P confirmed that no member of their family would be living there so Skipton proceeded with the application on

that basis.

Mr and Mrs P have stated the possibility they would rent to family members is hypothetical and in this complaint are simply seeking to clarify their ability to do so. So, I'm satisfied that when the Mortgage was applied for, and when the Mortgage Offer was issued, there was no immediate intention or desire to rent the property to a family member. Skipton completed the applications based upon the information given and issued a Buy-to-Let Mortgage Offer.

I've looked at both Mortgage Offers Mr and Mrs P received. Both contain, as a condition of the mortgage, a defined list of "Property Letting Requirements". The list is extensive yet makes no reference to "family members" being excluded. It also clearly states:

*Provided the Society's Property Letting Requirements are met, you are given the consent to the letting of the Property for the purpose of the Mortgage Conditions*

So, given the clarity of the letting restrictions in the Mortgage Offer – and the absence of any restriction to family letting - I don't think there's any contractual basis Skipton can rely upon to refuse Mr and Mrs P permission to let their property to a family member.

But there are also regulatory restrictions here.

A mortgage must be a regulated residential mortgage if the property is used as a residence by the borrower or a related person. In the regulations contained in the FCA Handbook, a definition of "related person" is given. And for the purpose of this decision, I'm considering the term "family" and "related person" to have the same implication.

The relevant regulation is detailed below.

Under the Regulated Activities Order – "related person" means:

- (a) that person's spouse or civil partner.
- (b) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
- (c) that person's parent, brother, sister, child, grandparent or grandchild.

I think it's reasonable that Skipton wouldn't allow Mr and Mrs P to rent the property to anyone who meets that definition as that requires a regulated residential mortgage not a Buy-to-Let mortgage which is the subject of this complaint. But given what I've said about the regulations and about the terms of the mortgage offer (including the Property Letting Requirements), I can't see any basis on which it can fairly restrict letting to a member of Mr and Mrs P's wider family who falls outside the relationships set out above.

If Skipton want to impose a restriction on letting to wider family members, then it seems appropriate that it includes it in the list of Property Letting Requirements provided in its Buy-to-Let Mortgage Offer.

Mr and Mrs P say they should be compensated for the distress and inconvenience they've been put through because of this complaint.

In this case I've been asked to make a judgement on a hypothetical situation rather than an actual event, and I've seen no evidence of any financial loss suffered by Mr and Mrs P resulting from this complaint.

Further, given the hypothetical nature of this complaint and the evidence I've seen, I can't find that it stopped them renting out their property to non-family members or otherwise caused them material inconvenience or distress.

So, I don't think any award for distress and inconvenience, on the evidence I've seen, is warranted.

### **My Provisional Decision**

For the reasons set out above I'm minded to uphold this complaint

Skipton should allow Mr and Mrs P to rent their Buy-to Let property to members of their extended family for the duration of their current mortgage.

All other terms and conditions of the mortgage offer should be complied with.

### **The Responses to my Provisional Decision**

Skipton responded to my Provisional Decision by saying that it states on its website that properties cannot be let to family members. And it also said that its internal policies stated that family members as tenants were not allowed. It asked me to reconsider the decision based upon this information.

Mr and Mrs P responded by acknowledging the Provisional Decision to allow them to rent their property to extended family beyond the regulatory definition of a "relative". But they asked to be compensated for what they say are financial and non-financial losses incurred by not being allowed to rent to their nieces when they originally wanted to.

Mr and Mrs P say that while the original query on their ability to rent to their nieces was initially hypothetical, it became a reality in May 2022 when their property became vacant. They say they delayed renting their property until August 2022 as they were hoping and expecting the refusal to rent to their nieces to be overturned. They decided to rent the property to another tenant in August 2022 as they could no longer afford to forego the rental income. The three-month delay in renting their property incurred costs in terms of lost rental income and council tax payments. Furthermore, they say that the cost of employing an estate agent to source and manage a new, unknown, tenant was additional to what would have been the case if they'd immediately been allowed to rent to their nieces. The total financial costs incurred are around £3,900. They also say they should be compensated for the distress and inconvenience they and their nieces have been put through by Skipton.

### **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 looked at the website information Skipton sent relating to Buy-to-Let mortgages and it doesn't go into specific detail about tenancy restrictions – instead it invites customers to speak to its specialist team to discuss the customers' needs.

Skipton also sent links to its "Consent to Let" criteria. This section defines "Consent to Let" as "*obtaining permission for you to let your own residential property on a temporary basis, usually for twelve months or less*". It does go on to state that family lets are prohibited but as Mr and Mrs P's mortgage isn't residential, I don't agree that the restriction necessarily follows to their non-residential Buy-to-Let mortgage.

Skipton also point to their internal lending policy. This does state that family lets aren't allowed but apart from not defining the definition of a "family member", this restriction isn't contained within the mortgage offer itself and so I can't agree that Skipton can rely on a restriction which isn't clearly visible or defined to a customer.

In summary, I haven't seen anything in Skipton's response which persuades me to change the conclusions detailed in my Provisional Decision.

I've also thought carefully about Mr and Mrs P's request for compensation for the financial loss they feel they've suffered.

The losses were incurred because of Mr and Mrs P's decision to delay renting their property for around three months. But at no time were they prohibited from renting the property to other tenants and, if they had, they would not have forgone the monthly rental income or had to cover the council tax payments. By Mr and Mrs P's own calculations this would have saved them incurring £2,994.58 of costs.

Mr and Mrs P also say they incurred additional costs of estate agency fees to source, and then manage, the new tenancy. These costs were a single payment of £577 and £63.60 per month on an ongoing basis. But it's not essential that Mr and Mrs P involve an estate agent when renting their Buy-to-Let property. Indeed, they state they would have managed their nieces' tenancy themselves. So, I don't think I can fairly say that these are costs incurred by Mr and Mrs P that they couldn't have avoided.

I can understand why Mr and Mrs P wanted to rent their property to their nieces. The rental process appears to have been simpler and financially beneficial. And they would also have been helping their nieces.

But in considering their submissions I'm minded that a Buy-to-Let mortgage is essentially an investment vehicle. Its purpose is for a lender to provide funding for a property from which a customer derives financial returns from the rental income and, potentially, the increase in property value over time. The lender should allow the customer to rent the property within the terms of the mortgage offer but I don't think I can reasonably say the lender is responsible for the customer's choice of the relative financial (and non-financial) benefits of differing tenancy options.

In summary, the losses Mr and Mrs P say they incurred could have been avoided by them taking alternative decisions about how to manage their Buy-to-Let mortgage. And so, I don't think it's reasonable for me to ask Skipton to pay them.

Mr and Mrs P have also asked for compensation for the stress and inconvenience this has caused them and their nieces. For the same reason of being able to take alternative decisions which would have avoided the financial strain, I don't think it's fair for me to ask Skipton to make any payment for that aspect of the stress Mr and Mrs P say they suffered.

I do appreciate that it will have been stressful not being able to be clear with their nieces whether they'd be able to rent the property, but I think this stress was directly related to their particular choice of tenant (a relation) and their desire to help them. And as detailed above, I don't think this is something Skipton should be held responsible for.

Finally, as Mr and Mrs P's nieces aren't party to the mortgage, I'm not able to consider any distress and inconvenience payment for them as part of this complaint.

## **My final decision**

For the reasons set out above I uphold this complaint

Skipton should allow Mr and Mrs P to rent their Buy-to Let property to members of their extended family (who fall outside the regulatory definition of related person I've quoted above) for the duration of their current mortgage.

All other terms and conditions of the mortgage offer should be complied with.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 10 April 2023.

Ben Castell  
**Ombudsman**