

The complaint

Mr O complains that Leeds Building Society would not allow him to switch part of his mortgage to a new interest rate product.

What happened

In 2008, Mr O took out a buy-to-let interest only mortgage of £80,000 with Leeds (part 1). The interest rate tracked the Bank of England base rate for the life of the mortgage. The mortgage had an offset facility.

In 2019, Mr O took out additional borrowing of £52,295, also interest only (part 2). The interest rate was fixed until 31 July 2021, followed by a discounted rate for a further two years and then the buy-to-let variable rate for the remaining term. It also had an offset facility.

On 20 July 2022, Mr O applied online to switch part 2 to a fixed rate of 2.84% until 30 September 2024 and was told the switch had been approved.

Mr O contacted Leeds when he'd not received any written confirmation of the switch. He said Leeds initially told him that it would only allow a switch if both parts 1 and 2 were switched to a new rate. Mr O said this contradicted the information online and he was not told about this restriction when he took out part 2. And interest rates have since gone up.

In its final response, Leeds said that there was a system error and Mr O was presented with products he wasn't eligible for. It said that it no longer offered offset mortgage products, so the options available to Mr O were to remain on his existing products or remortgage to a new rate. Leeds offered Mr O £75 compensation.

Mr O complains that when he took out part 2, Leeds did not tell him that he would be prevented from switching to another product unless he also took out a new product for part 1. As he does not want to lose the offset facility on part 1, he is effectively trapped on the variable rate on part 2.

I issued a provisional decision upholding the complaint. My provisional findings, which form part of this decision, were:

There has been a lot of unnecessary confusion in this case. Ultimately, Leeds is a regulated business and it has a duty to communicate in a way that is clear, fair and not misleading. I don't consider that it has always done so here. I'll explain my reasons why.

Mr O knew that part 1 of the mortgage had an offset facility. I think the 2019 mortgage offer is sufficiently clear that part 2 had an offset facility. It said that:

"You must retain an Offset Saver Account with the Society. No interest will be paid on Offset Saver Account. The Society will work out the difference at the end of each day between the debit balance on your Offset Mortgage Account and the balance in your Offset Saver Account. If the debit balance on your Offset Mortgage Account exceeds the value in your

Offset Mortgage Account, interest will be charged on the difference.”

So I don't think that Leeds is responsible for any misunderstanding (at least initially) on whether part 2 had an offset facility. The mortgage offer was reasonably clear that it did. So I don't consider that Leeds was responsible for any decisions Mr O made about whether to use the offset facility on part 2 or not.

The mortgage offer for part 2 set out the interest rates that were payable over the life of the mortgage. I can't see that Leeds agreed that it would offer new interest rate products that included the offset facility. So I don't consider there was an obligation for it to offer Mr O a new product on part 2 that included an offset facility.

Leeds clearly made a mistake when it led Mr O to believe his application for a new interest rate product had been successful. I'm satisfied that this was an error by Leeds.

Where a business has given incorrect or misleading information, to put things right we would usually look for the business to put the affected party back in the position they would have been in had they been given the correct information in the first place.

I think I should set out my understanding of the correct position based on the response from Leeds to us on 21 December 2022. Both sides have the opportunity to explain if I have got this wrong – but they will need to provide evidence to support what they say:

- Part 1 of the mortgage has an offset facility*
- Part 2 of the mortgage has an offset facility*
- Leeds no longer offers new interest rate products with offset facilities*
- If Leeds had explained things correctly, then Mr O would have had the choice to retain part 2 on an offset facility or lose the offset facility and take a new interest rate product on part 2 of the mortgage. He can keep the interest rate and offset facility on part 1.*

There appears to have been further avoidable confusion when Leeds told Mr O he could only switch products if he remortgaged both parts 1 and 2. And then on 4 October 2022, he was told that part 2 did not have an offset facility.

I note Leeds has questioned whether we can look at events after the date the complaint was referred to us. I think we can. The act or omission here is the attempted product transfer in July 2022. That issue was not resolved and Mr O quite reasonably continued to seek clarification from Leeds after he had referred this matter to us. I don't see how I could reach a fair outcome without taking into account the subsequent actions of Leeds that were directly in relation to this matter and that prevented its resolution I could not reach a fair outcome without doing so and that would leave this matter unresolved. That is not the right thing for either party. So I'm going to consider things that happened after the complaint was referred to us where that relates to the original underlying

issue.

So Mr O would have had two options:

1) Switch part 2 of the mortgage to a new product and lose the offset facility on that part. He would retain the offset facility on part 1.

2) Keep the existing rate on part 2, but retain the offset facility.

When I asked Mr O said ideally he'd like to retain the offset on part 2 (which he was not aware of) and switch to a new product. But I'm afraid the product he chose was never available to him – so I can't fairly say that Leeds should offer that to him.

In response to this provisional decision Leeds must tell me what interest rates were available to Mr O on 22 July 2022 to switch part 2 of the mortgage to.

Mr O will then have the choice:

a) Choose one of the interest rate products that was actually available to him on 22 July 2022 for part two – losing the offset facility for that part of the mortgage. Part 2 of the mortgage should be switched to the new rate and backdated to that 22 July 2002. Mr O should be paid the difference between the interest he has paid on part 2 of the mortgage and what he would have paid had the new rate been in place since 22 July 2022 – less any offset benefit he received. If he has overpaid, he should get interest at 8% simple per year from the date of any overpayment until date of settlement; or

b) Retain the offset facility on part 2. I note I have found that the decision not to utilise the facility in full was not a result of any error by Leeds. While it gave incorrect information about the facility in October 2022, I understand Mr O was offsetting the full amount of both parts of the mortgage soon after that. So, I'm not persuaded that any loss caused by not using the offset facility in full was a result of any error by Leeds.

As I understand it, Mr O can't retain the offset facility and take a new interest rate for part 2 – he must choose one or the other.

Mr O has been caused avoidable distress and inconvenience by Leeds. He had the wasted time of applying for a new interest rate product and the disappointment in finding out he did not actually qualify for the new rate. He's had the inconvenience of following this up on a number of occasions and in having to pursue the matter to this extent. He also had the distress of being given incorrect information about how the mortgage operated.

This was a significant commitment for Mr O and he had a reasonable expectation to receive correct information. I can see how it has caused him unnecessary worry that the information he received from Leeds is accurate. But overall, I think the existing offer of £150 is fair to reflect all of that.

Leeds responded to set out the interest rate products available to Mr O at the time in question. It also offered a "bespoke" solution that allowed Mr O to retain the offset facility on part 2 of the mortgage until the end of the new interest rate product and made an increased offer of £500 (less £75 already paid) for and distress and inconvenience caused to Mr O.

Mr O responded to say, in summary, that he was happy to accept:

- A new product for part 2 at 3.35% (no fee) fixed for two years from 22 July 2022. Before the new product is in place, he would like to see an illustration for this product so he can see all the relevant terms and conditions.
- The offset facility on part 2 will remain in place for a 2 year period from 22 July 2022, as what the Leeds refer to as a 'bespoke solution'.
- There will be no change to the offset facility on part 1 which will remain in place until the end of the mortgage term (May 2028).
- A payment of £500 compensation (of which £75 has already been credited to the mortgage). But the remaining amount should be paid directly by cheque or bank transfer.
- An adjustment for any interest overpaid on part 2 since 22 July 2022. And the offset facility on Part 2 was not in full use until 16 November 2022. Mr O would like a breakdown of any adjustments.

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 consider the offer from Leeds is fair and reasonable.

Putting things right

Leeds should honour its offer:

- Part 1 of the mortgage will retain the offset feature for the life of the mortgage.
- Give Mr O an illustration for the 2 year fixed rate of 3.35% with no fee.
- If Mr O is satisfied with the illustration and accepts the offer within a reasonable amount of time, switch part 2 of the mortgage to the 3.35% interest rate fixed for two years – and allow Mr O to retain the offset facility on part 2 until the end of the new fixed rate in 2024.
- Calculate how much Mr O would have paid to part 2 of the mortgage had he switched to the above interest rate product on part 2 in July 2022. Pay him the difference between that amount and what he has actually paid. Leeds should provide a breakdown of its calculations to Mr O.
- Pay Mr O £425 for any distress and inconvenience directly – not credit his mortgage account. That is £500 less the £75 already paid.

I am not making any award for Mr O not using the offset facility on part 2 in full until November 2022. I do not consider that was as a result of any error by Leeds. I say that because the mortgage offer for part 2 set out clearly and fairly that part 2 had an offset facility. So I don't think that Leeds was responsible for Mr O not using it.

While Leeds did give Mr O incorrect information about the offset facility on part 2 in October 2022 – Mr O started utilising the full offset for part 2 soon after that. And I've already found that his decision not to use the offset on part 2 was not fully as a result of any error by Leeds. I think the offer of compensation fairly reflects any distress and inconvenience

caused by the incorrect information.

My final decision

My final decision is that I uphold this complaint. Leeds Building Society should compensate Mr O in line with the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 6 October 2023.

Ken Rose
Ombudsman