

The complaint

Mr S and Mrs B have complained that Skipton Building Society (SBS) discriminated against Mr S on the grounds of age by refusing him term extension on a buy-to-let (BTL) mortgage that ran beyond his 86th birthday.

To settle the complaint, Mr S and Mrs B want SBS to offer redress based on the most favourable two-year BLT product available in October 2021.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr S and Mrs B being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

In October 2021 Mr S and Mrs B wanted to arrange a new interest rate product on one of their BTL mortgages (between them they have four BTL properties, either wholly, jointly or partly owned). The mortgage had less than two years left to run on it, and because a term extension would take the end date past Mr S's 86th birthday, SBS declined to lend, saying its upper age limit was 85 years.

SBS was able to offer Mr S and Mrs B a tracker rate for the remainder of the mortgage term, for which they paid a fee of £995. However, Mr S and Mrs B say that if SBS had not discriminated against Mr S on the basis of age, they could have had a better interest rate product.

SBS didn't uphold the complaint, so it was brought to our service. An investigator looked at what had happened. She was satisfied that, although SBS had carried out a risk assessment, it wasn't based on relevant information from a source that was reasonable to rely on. She was therefore satisfied that the decision not to extend the term and thus offer a better interest rate product was unfair.

The investigator asked SBS to pay Mr S and Mrs B £500 compensation, and that SBS should reconsider its decision not to offer a longer-term extension.

SBS agreed to pay the compensation, but the situation concerning the term extension remained unresolved. As a result, on 15 November 2023 I issued a provisional decision in which I reached the following conclusions.

SBS has accepted that Mr S and Mrs B meet the income criteria and their mortgage is not in arrears. SBS also says, however:

...these are not the only factors we consider. This is their only buy to let property and should the property be vacant for any period they will need to

meet the mortgage payments from their income. In the case of many older borrowers this could place an undue burden on their income at a time they are particularly vulnerable, due to ill health or other changes in their circumstances. It is more difficult for such borrowers to replace lost income in later life and we must take into account all aspects of their situation.

A borrower with a portfolio of BTL properties is likely to be better placed to manage a period of vacancy without the additional burden on their income. That is not the situation here.

Within the complaint [Mr S] also wanted a term extension and product from October 2021. If you believe, taking into account their circumstances, the term extension is still required we could offer this though cannot offer a product from the date requested. Should they wish to select a new product, at the end of the 2 years offered under their current product, this would have to be from our current range of BTL products, which are presently at a higher rate than currently applicable to the mortgage. “

I am satisfied that the reasons given by SBS for declining the term extension don't take into account the fact that Mr S and Mrs B are not, as SBS says, single BTL owners (which they say increases the risk of rental voids and arrears). Mr S and Mrs B have four BTLs between them, three of which are free of mortgage.

Given this, I'm not persuaded that SBS's decision to decline to extend the term to enable Mr S and Mrs B to have a two-year interest rate product is fair or reasonable. It was based on a flawed assessment of Mr S and Mrs B's circumstances. I think if SBS had taken all factors into consideration it would have extended the term.

To put things right I thought SBS should do the following:

Mr S and Mrs B took out a tracker rate product in October 2021 which ran to the end of the mortgage term (which has now expired). Because they were on a tracker rate, they have made higher repayments than they would have made if they'd been on a fixed rate, so have effectively been overcharged.

I think that SBS should look at the rates that would have been available to Mr S and Mrs B in October 2021 if SBS had not declined the request for a term extension. SBS should then do the following:

- calculate the difference between the repayments made at the best two-year rate available and the actual payments made on the mortgage from October 2021 to date (A);
- either (whichever Mr S and Mrs B prefers):
 - reimburse A to Mr S and Mrs B; or
 - reduce the capital balance of the mortgage by A;
- pay interest on the overpayments used to calculate A at 8% per annum simple from the date each monthly payment was made to the date of reimbursement (B);
- pay compensation of £500 for distress and inconvenience (C).

SBS has also said it will consider a final term extension, based on current available rates, now that the mortgage term has expired. I think this is fair in all the circumstances.

Responses to the provisional decision

Mr S and Mrs B and SBS have all accepted my provisional 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've reviewed the file again and revisited my provisional decision. I've noted the agreement of all parties to the outcome of the complaint. Given this, for the reasons set out above, I see no reason to depart from my provisional decision, and I am upholding the complaint.

Putting things right

Mr S and Mrs B took out a tracker rate product in October 2021 which ran to the end of the mortgage term (which has now expired). Because they were on a tracker rate, they have made higher repayments than they would have made if they'd been on a fixed rate, so have effectively been overcharged.

I think that SBS should look at the rates that would have been available to Mr S and Mrs B in October 2021 if SBS had not declined the request for a term extension. SBS should then do the following:

- calculate the difference between the repayments made at the best two-year rate available and the actual payments made on the mortgage from October 2021 to date (A);
- either (whichever Mr S and Mrs B prefers):
 - reimburse A to Mr S and Mrs B; or
 - reduce the capital balance of the mortgage by A;
- pay interest on the overpayments used to calculate A at 8% per annum simple* from the date each monthly payment was made to the date of reimbursement (B);
- pay compensation of £500 for distress and inconvenience (C).

SBS has also said it will consider a final term extension, based on current available rates, now that the mortgage term has expired. I think this is fair in all the circumstances.

When accepting this final decision, Mr S and Mrs B will need to decide whether they want the overpayments reimbursed to them or applied to reducing the capital balance of the mortgage.

* If Skipton considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr S and Mrs B how much it has taken off. Skipton should also give Mr S and Mrs B a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and direct Skipton Building Society to settle it as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr S to

accept or reject my decision before 25 December 2023.

Jan O'Leary
Ombudsman