DRN-4872386

Financial Ombudsman Service

The complaint

Miss B and Mr M complain that their mortgage offer was withdrawn by Skipton Building Society because the ground rent exceeded the maximum amount Skipton will consider for lending. They said this left them paying significant costs, when their sale fell through.

What happened

Whilst this complaint is brought by both Miss B and Mr M, as the mortgage is in both their names, our dealings have been with Miss B. So I'll mainly refer to her in this decision.

Miss B said that she and Mr M applied for a mortgage to purchase a leasehold property. They said Skipton made an offer and their purchase was going ahead, until Skipton withdrew the offer at a late stage, because the ground rent exceeded £250 per annum. Miss B thought Skipton was told at the start of their application that the ground rent was higher than this.

Miss B said the offer was made on 28 July 2023. Her solicitors confirmed the ground rent to Skipton on 29 September. On 4 October, she and Mr M were told Skipton wouldn't accept a ground rent higher than £250 per year. Miss B said that was only a week before their proposed move. They tried to negotiate with the seller's landlord to vary the ground rent, but they weren't successful in that, and the sale fell through.

Miss B said all this happened so close to their intended move that they had given notice to their landlord, and they weren't able to renew their tenancy agreement because of the short notice. So they were left relying on friends and family for somewhere to live, and were facing both inconvenience and higher commuting costs as a result.

Miss B said Skipton should have properly reviewed their mortgage application, and clarified at the outset that it wasn't going to lend to them. She thought Skipton had used the figure the valuer provided instead of the one on their application, and said she was powerless to do anything about the mistake the valuer made. She said she and Mr M had been left facing considerable costs, and were almost made homeless, because Skipton didn't explain the position at the start.

Skipton didn't think it had done anything wrong. It said Miss B and Mr M's broker had input the ground rent, as part of their application, as £25 per annum. It then received a valuation which put the ground rent at £195 per annum. So it wasn't until 29 September that Skipton heard from Miss B and Mr M's solicitor that the ground rent was actually £312 per annum.

Skipton said it doesn't lend on properties which have ground rent of over £250 per annum, so it could only go ahead with lending on this property if Miss B and Mr M had been able to vary the lease. Skipton had suggested this to their solicitor, but heard nothing back. It was sorry it wasn't able to go ahead with the lending.

Skipton said it had made its offer to Miss B and Mr M on the basis of information supplied by their broker and solicitor. So it didn't think that it was to blame for what had gone wrong here, and it wouldn't pay any of the costs Miss B and Mr M had faced when the sale fell through.

When this case came to our service, our investigator asked Skipton which condition it relied on, in the terms of this mortgage, to withdraw it. Skipton said that it relied on the provision which said Miss B and Mr M had ".. *provided us with untrue, inaccurate or incomplete information as part of your application for the loan and we have used this information in deciding whether to provide the Offer to you."*

Our investigator didn't think this complaint should be upheld. He said the mortgage application did say the ground rent was £25, and the valuation report said it was £195. Those were both within Skipton's lending criteria, and our investigator didn't think Skipton had any reason to doubt what it was told.

Our investigator didn't think Skipton knew about the true ground rent, of £312, until Miss B and Mr M's solicitor told it about this, close to the intended time of purchase. And he thought Skipton had withdrawn this offer in line with the terms of the mortgage. So he didn't think Skipton had to do any more.

Miss B replied to disagree. She said Skipton must surely be responsible for incorrect information in the valuation. And she said Skipton had accepted more should have been done before the offer was made. Miss B said she wasn't able to secure a lease variation, that wasn't in their control. She wanted to know if she should complain about her broker instead.

Because no agreement was reached, this case was passed to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

> Skipton said that the application form completed by Miss B and Mr M's broker put the ground rent at £25 per annum. But it didn't. The form doesn't ask for a figure for any particular period. The property Miss B and Miss M were interested in, has a ground rent of around £25 per month. So I think there was a simple misunderstanding, when the form was completed. Skipton wanted a figure per annum, but it didn't clearly request that, and the broker didn't specify how often the payment of £25 was payable.
>
> Skipton then commissioned a valuation, and the valuer got a figure for ground rent from the seller, which was close to the actual amount, but not exact. Notably, this was several times larger than the amount Skipton had understood to be payable, from the application form. And it was also close to the upper limit of the ground rent that Skipton deems acceptable for lending purposes.
>
> I think at this point, Skipton ought to have asked Miss B and Mr M if they knew what the ground rent was, or ought otherwise have sought to clarify the actual amount, if that was possible. The two amounts Skipton understood it had received for ground rent were very different, and the higher of those two amounts was close to the cut-off point beyond which Skipton will not lend. So I think it was a mistake for Skipton to simply issue an offer in this case, and leave this matter to be clarified later in the process. It must have been clear to Skipton that Miss B and Mr M would incur further costs in the meantime.
>
> When Miss B and Mr M's solicitors confirmed the actual ground rent was over £250, Skipton withdrew its offer. Mortgage offers are usually binding on the lender, so can only be withdrawn in line with the conditions set out in the offer. Skipton has pointed to a condition which it says it relied on, when it withdrew this offer. That says the offer can be

withdrawn if the buyer has *“.. provided us with untrue, inaccurate or incomplete information as part of your application for the loan and we have used this information in deciding whether to provide the Offer to you.”*

But the start of this condition provides an important qualification here. The section begins –

> *“The Society reserves the right to withdraw this Offer at any time prior to completion of the loan for any one or more of the following reasons:*
> *..*
> *(2) We discover you have intentionally:*
> *(a) provided us with untrue, inaccurate or incomplete information as part of your application for the loan and we have used this information in deciding whether to provide the Offer to you.”*

I don’t think there’s any suggestion that the misunderstanding over the application form was intentional. So this provision doesn’t apply.

There’s a further condition, which I think is relevant here. That is included in the offer, it is directed at the conveyancing solicitors, but it is drawn to the attention of the borrower, and the conditions of the offer explain that this provides another reason why the offer may legitimately be withdrawn.

The provision says the conveyancer *“..must confirm … the amount of ground rent payable*.” It goes on to explain that if the amount isn’t the same as the amount set out in the Certificate of Title (which I understand that Skipton sent to the conveyancer) then *“We may decide to withdraw the mortgage offer if it materially affects our decision to lend.”*

I think that condition did allow Skipton to withdraw the offer, in this case. But I also think the existence of this condition, where a mistake over the amount of the ground rent means the offer itself may be withdrawn, is another reason why, in this case, Skipton ought to have made further efforts, earlier on, to ascertain the right figure for the ground rent.

I think it’s also important to note that Miss B says she has always known the ground rent for this property was a little over £300. So she and Mr M would not have committed themselves to the costs they have incurred, and would not have taken irrevocable steps towards moving home, if Skipton had asked them to clarify why their application said ground rent was £25, but the valuation report said it was £195.

I don’t think that means Skipton simply has to pay all the costs Miss B and Mr M have incurred. I cannot rule out completely the possibility that this sale would have fallen anyway. Such things do sometimes happen quite unexpectedly, even at a very late stage. And I also have to bear in mind that Miss B and Mr M appear to be staying with family. So, whilst they have certainly faced some very unpleasant upheaval, their living expenses may be reduced for the moment.

But I do think Skipton should pay some of these costs. I think that, assuming Miss B and Mr M can show they have made the payments set out in their complaint form, then Skipton should cover the following costs –

Removals	£734.20
Building survey	£990
Property searches	£300

Cladding verification	£190
6 months of storage costs	£1,116
TOTAL	£3,330.20

I should make clear here that Miss B and Mr M will need to show that the above amounts have been both invoiced and paid, in response to my provisional decision.

Additionally, this matter has clearly caused considerable upset to both Miss B and Mr M. So I think Skipton should make an additional payment of £500 in compensation.

I think that would provide a fair and reasonable outcome in this case. So that's what I currently propose to award.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

Skipton said it would be happy to pay the amounts I'd suggested, including £500 in compensation. It noted that payment of the costs set out would be subject to Miss B and Mr M showing evidence of the costs they'd paid.

Miss B and Mr M replied. They have sent our service evidence of the following costs (including both invoices, and details of payments made).

Removals	£734.20
Building survey	£990
Property searches	£300
Cladding verification	£180
3 months of storage costs	£461
TOTAL	£2,665.20

Their costs are slightly lower than I suggested. These are the payments Miss B and Mr M have evidenced, and they have explained that the difference is mainly because they were able to remove their belongings from storage earlier than they had anticipated when the original complaint was made.

Aside from this amendment to reflect the eventual costs to Miss B and Mr M, I haven't changed my mind. As the costs Miss B and Mr M have evidenced are slightly lower than those Skipton had agreed (subject to evidence) to pay, and as I am satisfied with the evidence provided, I think it's appropriate to use this figure as part of my final award.

I'll now make my final decision.

My final decision

My final decision is that Skipton Building Society must pay Miss B and Mr M a total of £2,665.20 in costs, as set out above, as Miss B and Mr M have demonstrated that these costs have been invoiced and paid.

Skipton Building Society must also pay Miss B and Mr M £500 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr M to accept or reject my decision before 24 July 2024.
Esther Absalom-Gough
Ombudsman