

complaint

This complaint's about an interest only mortgage which, until March 2016, Mr B and Miss M held with the Co-operative Bank Plc (Co-op) previously trading as Britannia.

Mr B and Miss M wished to "port" their lifetime base rate tracker product to a new mortgage, when they moved house.

Co-op agreed to "port" but proposed reducing the term of the mortgage, apparently due to Mr B's age. It initially didn't explain all the costs involved or that solicitors on Co-op's panel should be instructed. Co-op told them it wouldn't accept a valuation from the surveyor they'd instructed to examine the property.

background

I issued a provisional decision on this complaint in March of this year. In it, I set out, with reasons, how I was intending to determine the complaint, subject to the further submissions of the parties. The contents of my provisional decision are attached to, and form part of, this final decision.

Both parties have responded to the provisional decision I issued. I'll summarise the main points of each reply, starting with Co-op's, which were:

- it's agreeable to setting up the new mortgage, assuming Mr B and Miss M still want it, but it will need them to fill out an application form for data-gathering purposes;
- there will be costs associated with setting up the new property as security for the replacement mortgage;
- the outstanding mortgage term was just under nine years when they wanted to port in January 2016; now there'd be closer to seven years left.

Mr B and Miss M's response was little more complex. Initially, they said I'd made an error, because Co-op hadn't changed its mind and agreed to port the mortgage on the same term. They pressed me to be more specific about how much compensation we'd be awarding for the delays we'd caused, and took me to task for not addressing their request that a statement from the adjudicator about the motivation for their actions be withdrawn. They thought it added insult to injury.

These points were discussed in conversation between Mr B and the manager who is dealing with the complaint about our service. She reiterated that Co-op had told *us* about changing its mind in the consumers' favour, but we'd failed to tell *them*. She also reminded Mr B that compensation for the delays we'd caused wasn't a matter for my final decision but for her response to the service complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I said in my provisional decision that I'd confine my findings to the issues that I considered relevant to a fair outcome. I've taken the same pragmatic approach in my final decision, but for completeness reiterate that just because I don't mention something doesn't mean I haven't considered it.

In attaching my provisional decision, I've revisited what I said to distinguish what *we'd* got wrong from what Co-op had got wrong, and how we needed to deal with the two things completely separately from each other. I'm sorry if what I said wasn't clear enough.

As I don't want there to be any further ambiguity, I emphasise that my decision here deals solely with the complaint between Mr B and Miss M and Co-op. It doesn't address the impact on them of our failure to tell them that Co-op had changed its mind about allowing them to port on the same terms. It also doesn't address the comments by the adjudicator to which they took exception. Those matters are for the service complaint against us. My decision on the complaint against Co-op isn't in any way connected to, or contingent on, the eventual outcome of the service complaint.

Co-op's agreed to provide the mortgage if Mr B and Miss P still want it. I've no problem with it asking them to complete an application form for data-collection purposes. They'd have had to do that if the application had gone ahead without any problems in the first place.

I didn't find in my provisional decision that Co-op should meet any valuation and conveyancing fees that duplicated costs Mr B and Miss M had already incurred through instructing parties that didn't meet Co-op's requirements. I also said I wasn't convinced it was deal-breaker. Having considered the issues again, I haven't changed my mind on either.

If Mr B and Miss B still want the mortgage, Co-op's entitled to have their new property valued by a member of its panel. Having bought the property, presumably Mr B and Miss M will already have paid conveyancing fees, so the only further legal cost that might now arise is for registration of Co-op's mortgage on the property title. Both of these would have been payable by Mr B and Miss M if the mortgage had gone ahead last year.

I take Co-op's point about how much of the original mortgage term is now left. The point is simple; the new mortgage, if Mr B and Miss M decide to take it, should have the same end date as the previous mortgage they repaid last year had.

That leaves compensation. I explained in my provisional decision that I'd assessed compensation at £500. I still think that's a fair sum, in all the circumstances.

To be clear, if Mr B and Miss M accept my final decision, it binds both parties, but it doesn't mean they *have* to take the new mortgage. Co-op will have to pay them the £500, but it'll remain up to Mr B and Miss M to go ahead with the new mortgage or not, bearing in mind my findings on the fees, duration, the need for them to complete an application form and the timeframe for them to take the mortgage up.

Of course, Mr B and Miss M don't have to accept my final decision at all, and if they don't, no part of it will be binding on them or on Co-op. Subject to any time limits a court might impose, their right to take legal action against Co-op won't have been prejudiced by our consideration of their complaint.

my final decision

For the reasons set out above, and in my provisional decision, my final decision is that I uphold this complaint. In full and final settlement, I order Co-operative Bank Plc to:

- make available to Mr B and Miss M a new interest only mortgage of £50,000 for the remaining term of the original mortgage, at a rate of 0.99% above base rate. The

repayment vehicle should be cash savings. The mortgage should be available to take up for three months from the date we received a signed acceptance of my decision (assuming Mr B and Miss M do accept it), and will be subject to Mr B and Miss M signing and returning a completed mortgage application within the same three-month timeframe; and

- pay Mr B and Miss M £500 compensation for their time, trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss M to accept or reject my decision before 12 July 2017.

Jeff Parrington
ombudsman

Copy of provisional decision

complaint

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background

The events leading to this complaint began in March 2013 when Mr B and Miss M started making general enquiries to Co-op about porting, while they were looking for a new property. After several enquiries, the last being on 3 November 2015, Mr B and Miss M were happy that they understood Co-op's process. It took some time to find a suitable property and solicitors were instructed on 9 November 2015. They also engaged a surveyor to prepare a full structural survey and valuation.

Following a phone call with Co-op on 18 January 2016, an application to port was agreed in principle. A fee of £160 applied and Co-op apparently said there would be no other costs. At this stage, Miss M was told their solicitor was not on the bank's conveyancing "panel". Mr B began the process of instructing a panel firm and was later quoted a fee of £375 plus disbursements.

Following a review by underwriters, on 20 January 2016, Mr B and Miss M were told that if their porting application was successful, the term would be reduced in order to end on Mr B's 75th birthday, in line with a policy change. The original mortgage was due to run until late 2024 so this was a reduction of nearly four years to January 2021. Mr B and Miss M thought this was age discrimination.

A meeting to complete the mortgage application was held on 11 February 2016. Co-op's adviser said that a valuation fee of £406 would apply and Mr B and Miss M's survey, which included a valuation, was probably not acceptable for Co-op's purpose.

At this stage, as they were in danger of losing the property, Mr B and Miss M decided to cash in an investment to buy their new home, rather than continue trying to port their existing mortgage.

The Co-op mortgage was redeemed in March 2016 and the six-month porting window expired in September 2016.

my provisional findings

I'm aware Mr B and Miss M have complained about how we've dealt with the complaint up to now; in particular the amount of time we've taken. One of our managers is looking into that, and will be in contact with Mr B and Miss M in due course. Normally, that would be an entirely separate process from my consideration of the underlying complaint about Co-op. On this occasion, it's a possible there's an area of overlap. I'll return to that later.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to consider it, but because I don't think I need to comment on it in order to reach what I think is the right outcome.

information about porting arrangements

Co-op only keeps telephone recordings for a short time, so I've been unable to compare what Mr B and Miss M say they were told from time to time with Co-op's record of events. However, saying this, I'm persuaded their recollection of events can probably be relied on as a reasonable reflection of what they were told.

Porting an interest rate product is a contract provision, but only up to a point. It is still subject to assessment by the lender based on its lending criteria and whether the new property is acceptable. And notwithstanding any lack of clarity in the conversations Mr B and Miss M had with the bank, I'm satisfied it's set the position out reasonably clearly in writing before now. Here's an extract taken from the product change document Mr B and Miss M signed in 2008.

"If you move house within three years from the date of transfer to this product, and arrange a new Britannia mortgage, you can apply to continue with this product for the remainder of the Initial Period, subject to a satisfactory valuation and meeting our lending criteria applicable at that time.

If the new mortgage is taken out on the same day as the old mortgage is redeemed, and the new mortgage you apply for is:

- *the same or more than the amount you are redeeming under the old mortgage, the early repayment charge will not apply. Any extra amount borrowed will need to be taken out on one of our range of mortgage products available to you at the time.*
- *less than the amount which you are redeeming under the old mortgage, there will be an early repayment charge calculated on the difference between the amount redeemed and the amount of your new mortgage, calculated as above.*

If you are unable to complete your new mortgage on the same date that the old mortgage is redeemed, the early repayment charge will apply, but will be refunded, in whole or in part as applicable, on completion of the new mortgage, provided that the mortgage completes within 6 months of the redemption date of the old mortgage."

(The emphasis is mine.)

the lending decision

Strictly speaking, as Mr B and Miss M's mortgage dated back to 2000, it wasn't affected by the more stringent rules that were introduced in April 2014. Nonetheless, Co-op still needed to treat them fairly and ensure it acted in their best interests at the time of the request to port.

It can often be in a customer's best interests for a lender to set a mortgage term to coincide with their retirement age, as income can reduce substantially at this time. I can understand Co-op's argument that, as the term reduction was affordable, this would save nearly four years' interest. However, this does not take into account the investment earnings Mr B and Miss M would lose over this time.

Their interest rate on the mortgage was very competitive at 0.99% above base rate, and up to the time of redemption, they were earning 1.6% interest on their investment. With base rate at 0.25%, Mr B and Miss M make a modest financial gain from having the mortgage. All other things being equal, a term reduction probably wouldn't have been in their best interests if base rates were to stay low over the remaining term.

Co-op has confirmed that savings are an acceptable repayment vehicle for interest only mortgages. As an application in principle was agreed, I think it unlikely that any problems would have arisen, other than about the term. A lender must handle a porting request fairly – and my conclusion here is that Co-op didn't. Mr B and Miss M's position had not changed from their existing mortgage to their porting application. The mortgage sum was to stay the same and would continue to be covered by their savings. Therefore the term needn't have been a relevant consideration here.

Mr B and Miss M have raised issues about the incomplete information Co-op gave for costs and specifically about the use of panel solicitors and a valuation suitable for Co-op's lending purposes. It's true that if they'd had decided to proceed with the porting, they may have incurred double costs by paying two lots of solicitors' and valuation fees, but I don't believe this was their *main* concern.

No one wants to spend money unnecessarily, especially when they're duplicate costs. But in the wider context of a property purchase of more than half a million pounds, it's unlikely the valuation and conveyancing costs were "deal-breakers". I don't doubt they were a contributing factor, but I'm persuaded the more likely reason Mr B and Miss M decided not to port was Co-op reducing the term by around four years

Mr B and Miss M still went ahead with the purchase, using their investment funds instead. They've lost out on the savings income, but that's been at least partly offset by the mortgage interest they haven't paid. There's also the fact that Co-op told us (after exchange but before completion) of a change of mind regarding the reduced term; that is, it was willing after all to provide the mortgage with the same term as before.

Unfortunately, it looks as though we didn't tell Mr B and Miss M about that. I can't be certain if a mortgage port would still have gone ahead, but I don't think it fair to hold Co-op liable for the net interest cost Mr B and Miss M have incurred from not having the mortgage this past year. I think it's something we need to look at in our consideration of the complaint about our service.

As a remedy to the complaint against Co-op, I'm provisionally minded to order it to offer Mr B and Miss M a new interest-only mortgage of £50,000, to run until the same end date as the original mortgage, at a rate of 0.99% above base rate. The repayment vehicle should be their cash savings, and if they take it up, Mr B and Miss M should be able to go some way towards restoring their net interest position. If Mr B and Miss M accept my decision, this offer should be open for three months after acceptance, to enable them to decide what they want to do.

other matters

I've considered the compensation the adjudicator recommended Co-op pay Mr B and Miss M. This was in recognition of the misleading information given about the porting process and for, at least initially, applying a maximum age policy unfairly.

The adjudicator's assessment was £750, but I'm minded to think that's a little on the high side. In saying that, I've kept in mind that the documentation explained the porting rules accurately, and the bank did realise its error on the age question and withdraw its insistence on a shorter term. Overall, for the bank's omissions and shortcomings, I think £500 is fair in those circumstances.

my provisional decision

For the reasons set out above, but subject to further submissions from the parties, my provisional decision is that I propose to uphold this complaint. In full and final settlement, I intend to order Co-op to:

- offer Mr B and Miss M a new interest only mortgage of £50,000 for the term of the original mortgage, at a rate of 0.99% above base rate. The repayment vehicle should be cash savings. This offer should be open for three months from the date we received a signed acceptance of my decision (assuming Mr B and Miss M do accept it); and
- pay Mr B and Miss M £500 compensation for their time, trouble and upset.

Jeff Parrington
ombudsman