

complaint

Mr and Mrs J complain that Coventry Building Society told them their buy-to-let mortgage was mis-sold and treated them unfairly when it merged with another building society. They want a refund of some of the interest they've paid and their fees, and to be treated the same as other members of Coventry.

background

Mr and Mrs J took out a buy-to-let mortgage with a building society which later merged with Coventry. They said the member of staff who helped them with the application said it was a good deal and the interest rate would change with the lender's standard variable rate and the Bank of England rate after the fixed rate period ended. After the merger, Mr and Mrs J stayed on their old variable rate while existing Coventry buy-to-let customers stayed on their old variable rate. Mr and Mrs J said this wasn't fair as their rate was higher than the Coventry customers. Mr and Mrs J applied to re-mortgage with Coventry to get its lower rate, but the application was unsuccessful. They asked again years later about transferring to a Coventry mortgage, but didn't complete the application.

Mr and Mrs J complained to Coventry saying it was unfair and unlawful to keep them on the higher rate. Coventry said that the sale was on a non-advised basis, which meant Mr and Mrs J made their own choice about what mortgage they wanted. It pointed out the mortgage offer was clear about how the interest rate worked and it never said there was a link to the Bank of England rate. Coventry also said that there wasn't an early repayment charge so Mr and Mrs J could move lenders if they wanted to or apply in the future again to move to it.

Coventry explained that the previous building society had different rules about lending than it, so Coventry agreed to let the original customers keep their interest rate to ensure they weren't treated worse due to the merger. This was explained to the members when they voted to merge. The vote was binding on all members, whether or not they voted in favour. It said it could offer a mortgage with a lower interest rate to Mr and Mrs J, but they didn't apply.

Mr and Mrs J complained to us and said they never received the pack about the terms of the merger. The adjudicator explained that buy-to-let mortgages aren't regulated in the same way as residential mortgages, but lenders still have to treat such customers fairly and reasonably. She also explained advice on buying a property isn't regulated. The adjudicator's view was that the mortgage wasn't mis-sold as it was sold without advice and this was confirmed in the mortgage offer, as was the interest rate. She also thought that Coventry hadn't done anything wrong in keeping Mr and Mrs J on the previous lender's rate as it wasn't required to give such customers the same rate as Coventry customers. The documents sent to the members made this clear.

Mr and Mrs J disagreed. They said they didn't receive the documents about the merger and the documents promised they'd get the better Coventry rate. Mr and Mrs J also thought we should have investigated the member of staff who told them the mortgage was a good deal. They pointed out the interest rate hadn't changed in years so could hardly be described as variable.

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 think it would be helpful if I explain in detail Mr and Mrs J's position and about the merger.

Buy-to-let mortgages are regulated, but differently to residential mortgages. As buy-to-let mortgages are seen as investments or businesses, at the time Mr and Mrs J took out their mortgage, advice didn't have to be given about what mortgage to take out. The comments Mr and Mrs J said were made by the staff member wasn't advice about which mortgage to get. And advice about buying a property, such as comments that it would be a good investment for your child's future, isn't regulated.

Mr and Mrs J took out their mortgage without getting advice – it was their choice to take out the mortgage. The absence of advice is clearly set out in the mortgage offer. The interest rate was also set out clearly – there's no reference at all to the Bank of England rate. If Mr and Mrs J were concerned about the fact it wasn't mentioned at all in the mortgage offer, they shouldn't have gone ahead. The mortgage wasn't mis-sold.

I accept Mr and Mrs J didn't receive the documents sent to members of the previous building society when there was a vote about merging with Coventry. But I think the documents were sent to them, so Coventry isn't at fault if they weren't received. The documents set out very clearly the position – interest rates of mortgages based on the previous lender's standard variable rate would not be increased above that rate after the merger. And Coventry's own interest rates to its customer had no connection at all to the rates to be charged to the customers of the previous lender. I can't agree with Mr and Mrs J's interpretation of these documents. Mr and Mrs J are covered by this agreement with the members, whether or not they voted in favour of the merger.

Coventry has explained the reason for this agreement was to protect the members as mortgages given by the previous building society were on a different basis than mortgages given by Coventry. In other words, the mortgages may have been "riskier" than ones Coventry normally give. To avoid those members suffering from an increase of their interest rate to reflect the risk, Coventry agreed not to increase their rate above the previous building society's standard variable rate. Mr and Mrs J have been protected by this agreement, but it doesn't mean they are entitled to the same rate as Coventry customers.

I see Mr and Mrs J can move their mortgage elsewhere without paying an early repayment charge. And I can see that Coventry has told Mr and Mrs J they can apply for a new mortgage with it with lower interest rates, but it will have to apply its lending rules to the application. I appreciate Mr and Mrs J haven't applied, but I think this is a fair and reasonable position for Coventry to take.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 30 October 2015.

Claire Sharp
ombudsman