

complaint

This complaint's about an interest-only buy-to-let mortgage Mr W has with West Bromwich Building Society ("WBBS"). The mortgage is in two parts due to end in November 2015 and January 2016. Mr W says he won't be able to repay it and WBBS is unreasonably refusing to extend the term. Mr W's mortgage was originally with a different lender but WBBS has since bought it.

background

In 2005 Mr W met with a mortgage advisor for some advice as he wanted to buy an investment property to rent out. He says as a result of the advice he took an interest-only buy-to-let mortgage over ten years. When it finished the plan was to sell the property in order to repay the loan and keep any additional equity that had built up.

But house prices didn't rise as Mr W expected. He says he found himself owing WBBS more than the property was worth. So in 2014 Mr W wrote to it asking for some advice about what to do. He told it he thought his options were to sell the property; extend the mortgage term; or re-mortgage with WBBS or another lender. WBBS said it couldn't help as it no longer provided new buy-to-let mortgages. It still expected the money to be repaid when the mortgage ended.

Mr W complained. He began to exchange a number of letters about the way forward with WBBS. Mr W told it he thought the advice he received about the mortgage wasn't suitable as he had no way to repay it. He asked WBBS to grant him a two or three year extension to the mortgage term. This, he said, would allow house prices time to recover. He could then sell the property to the tenants he had, as they were interested in buying it in the future. If house prices rise as he expects, he said he wouldn't then be left with a shortfall on his mortgage. Mr W said the subject of interest-only mortgages feature in the press. He's read that lenders should help those that are having difficulty repaying them.

WBBS told Mr W the advice he received from the mortgage broker isn't its responsibility. It said he'd missed ample opportunity to manage his loan through to the agreed repayment date. As Mr W had benefitted from low interest rates, he could have used some of his rental income to pay down the loan. It offered to put him in touch with a broker to discuss other mortgages but said other loans may be expensive due to his lack of equity in the property. It also said the press stories he mentioned referred to owner occupier or residential mortgages and not property investors like him. It continued to ask that he repay the mortgage when it falls due.

So Mr W brought his complaint to this service. In summary he says;

- The mortgage was mis-sold as the advised method of repayment has fallen short.
- WBBS has flouted the rules set by the Council of Mortgage Lenders regarding the treatment of those in Mr W's situation. He should be allowed an extension of the mortgage term he's reasonably requested.
- WBBS hasn't complied with a Subject Access Request that he made to it.

Our adjudicator looked at the complaint and felt that WBBS hadn't done anything wrong. He says the term was clearly set out at the beginning of the mortgage and WBBS isn't obliged to change it now, particularly as the mortgage hasn't ended yet. He says although lenders have an obligation to be fair to borrowers in financial difficulty, there's a distinction between those

with buy-to-let mortgages and those with residential mortgages. Our adjudicator did ask the WBBS if it would consider a 6 month extension but it says that it wouldn't as the term hasn't yet finished.

Mr W didn't agree with our adjudicator and asked that his complaint be referred to an ombudsman for a final decision.

my findings

I'd like to begin by expressing my sympathy for Mr W. I understand he's suffering poor health. I appreciate this matter must be causing him additional anxiety.

Mr W has submitted some detailed observations he's obviously spent considerable time researching. Whilst I'll summarise much of what Mr W says here, I can reassure him I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I'm sorry but I must disappoint him again. I'm afraid I agree with our adjudicator and for broadly the same reasons. I'll explain why.

The Council of Mortgage Lenders Mr W refers to is actually a trade association. It was responsible for issuing rules called The Mortgage Code that its members had to adhere to. But these were superseded in 2004.

The rules now governing the relationship between a lender and a borrower are laid down by the industry regulator, the Financial Conduct Authority ("FCA").

These rules treat buy-to-let and residential mortgages differently. This includes the advice given by advisors about them. All lenders are expected to treat customers fairly, but the "bar" is set much higher when it comes to residential mortgages. The spirit of the regulator's rules is to prevent people being forced out of the homes they live in unless it's a last resort. This doesn't apply to property investors with buy-to-let mortgages. So the expectation on their lenders is lower.

I've looked at the press and consumer group's articles that Mr W refers to. I agree with WBBS. They're more relevant to holders of residential mortgages than investors like Mr W.

Turning to the advice that Mr W received before he took the mortgage. WBBS certainly isn't responsible for this. Of course he's free to complain directly to the advisor concerned. But the FCA also sets rules that we must follow when looking at complaints. It tells us which types we can and can't deal with. I'm sorry to say we can't investigate complaints about brokers' advice where it relates to buy-to-let mortgages. So I haven't considered whether it was suitable or not.

In summary then, having thought about the rules as they apply to buy-to-let mortgages, I can't say WBBS did anything wrong when it refused to extend the term of Mr W's mortgage.

It's my understanding though, that Mr W has recently accepted an offer on the mortgaged property. Whilst it's not my intention to "future proof" my decision, I'd expect WBBS to act with reasonable forbearance to allow him to complete the sale. Should Mr W come to believe that it hasn't done so then this should be the subject of a new complaint.

Finally, I turn to the matter of the subject access request. This is something that should be dealt with by the Information Commissioner's Office and not this service.

my final decision

For the reasons I've explained I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 November 2015.

James Hargett
ombudsman