

complaint

Mr D complains that The Co-operative Bank Plc discriminated against him because of his age.

background

Mr D has an interest only mortgage with The Co-op. He wanted to extend the term for five years so that he could use capital earmarked for its repayment to contribute to the cost of his daughter's wedding instead. The Co-op refused an extension because it said doing so would take the loan beyond its maximum age limit.

Mr D was able to get a replacement loan from another lender. He complained that The Co-op's refusal was discriminatory. He said that he wasn't intending to retire for more than five years, and even if he was he had good pension arrangements. So affordability wasn't an issue. In response to his complaint, The Co-op said it would only consider lending into retirement in "extreme circumstances" where a customer can't repay their existing loan. As Mr D could repay his mortgage – but preferred not to yet – it couldn't do this for him. His application was reviewed by a "senior member of the retail credit risk team" but still refused.

my provisional decision

I issued a provisional decision setting out my thoughts on the case and inviting the parties to respond. In summary, I said:

- I have to take into account the relevant law, in this case the Equality Act 2010;
- I had asked The Co-op to explain to me the decision it made and to share with me its lending criteria and the reasoning behind the setting of its maximum age policy;
- It provided the lending criteria, but not the reasoning that lay behind it. It simply said that it wasn't in a position to assess the affordability of mortgages going into retirement and didn't have the risk appetite to lend beyond age 68;
- In this case, it wasn't that Mr D couldn't pay back the mortgage – the policy allows for exceptions in cases of hardship – but that he'd chosen not to so he could use the money for other purposes.

Taking all that into account, I found that The Co-op's decision not to consider an extension to Mr D's mortgage term was because of his age – it was age that led to the setting of the policy, and Mr D's age that led to its application of the policy to him.

The Equality Act 2010 allows providers of financial services to use age as a factor in their decision making – this is the financial services exemption. But, where in using age a provider carries out a risk assessment, it can only rely on the exemption if the risk assessment was done using relevant information from a reliable source. Even if the provider can't rely on the exemption, it may be able to argue that any discrimination was justified as a proportionate means of achieving a legitimate aim.

So I concluded:

Despite my requests, The Co-op has provided me with very little information about the setting of its age policy. In its final response, The Co-op said "we're enabled but not obliged to lend and this is a commercial decision we're entitled to make". That may be so, but this wasn't a decision whether or not to lend to a new customer. This

was a decision about how it treated an existing customer – and in doing so, it should have acted fairly.

The Co-op hasn't shown me that it did act fairly or within the terms of the Equality Act. It seems to me that decisions about whether to lend or not are generally assessments of risk. On an individual basis, that risk is about whether or not the borrower can repay the loan. On a wider policy basis, they are about whether there is more, or less, risk in particular sections of the market and what safeguards a bank should put in place before it lends in that section – the ultimate safeguard being, of course, not lending at all.

The Co-op itself has told me that its age limit is due to its lack of a “*risk appetite*” and inability to assess affordability – which means of course the risk that a loan won't be paid back.

Therefore I think that The Co-op's decision not to lend past retirement age was based on an assessment of the risks of lending to that part of the population. And it hasn't shown me what that assessment was based on. So I can't be sure that it was made using information relevant to the risk from a source on which it was reasonable to rely. In turn, I can't be sure that it is entitled to rely on that part of the financial services exemption, permitting it to discriminate on grounds of age. I'm also satisfied that it was Mr D's age that led the Co-op to apply the policy to him.

In refusing Mr D's application to extend his mortgage term because of his age, therefore, I'm not persuaded that The Co-op has treated Mr D fairly. I think that, had it not refused the application on grounds of age, there was a real possibility that The Co-op would have granted it. I can't say that for sure; but Mr D has now lost the chance to find out.

To put matters right, I think that The Co-op should compensate Mr D for the expense he was put to in going elsewhere when his application was refused. He had to pay £1,389 in fees to his new lender. The Co-op should refund that, less any fee it would have charged for extending Mr D's term had it done so, plus simple annual interest of 8%. It should also compensate him for his trouble and upset, and I think £500 a reasonable figure for that.

the responses to my provisional decision

Both parties accepted my provisional decision. Mr D wanted an additional £35 fee added to the refund, while The Co-op wanted to see evidence of the fees he'd incurred before paying them.

my findings

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I see no reason to depart from my overall conclusion that The Co-op didn't treat Mr D fairly. But I accept what both parties said in response to my provisional decision; it's reasonable that The Co-op should pay the additional £35 fee that Mr D incurred, but it's also reasonable that he should have to provide evidence of the fees he incurred to it.

my final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct The Co-operative Bank Plc to:

- subject to Mr D providing it with evidence of the fees he incurred, pay to Mr D £1,424 less any fee it would have charged for extending his mortgage term. To that figure it should add simple annual interest of 8% running from the date Mr D paid the relevant fee to date of settlement of this complaint;
- pay Mr D £500 for his trouble and upset.

If The Co-operative Bank Plc considers that it should deduct income tax from the 8% interest element of my award it may do so but should give Mr D the necessary certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 February 2016.

Simon Pugh
ombudsman