



Financial Services Ombudsman Scheme

Summary of the determination issued 6th October 2014 and review issued 14th May 2015 in respect of a claim for financial loss due to underfunding of a mortgage.

Complaint made to the Scheme

The Complainant was an Isle of Man resident who had taken out a three year tracker mortgage with the Provider in August 2006. When this came to an end in 2009, the Provider advised the Complainant of the options available to him for the remainder of the fifteen year mortgage term. Due to an error, the Provider supplied the Complainant with options based on an interest-only mortgage and not the capital repayment, as the original terms required.

In June 2012 the error was discovered by the Provider, but only after the Complainant had underpaid his mortgage for three years. The Complainant and Supplier entered discussions, but were unable to agree to what both parties considered to be a fair solution to this problem.

Summary of complaint

Following the end of a tracker mortgage, the ongoing repayments were calculated by the Provider on an interest only basis. These payments would therefore not repay any of the capital. This resulted in the monthly repayment reducing from £457.60 under the terms of the tracker to £103.00. In fact, the monthly repayment should have been £391.00.

The Complainant suspected that an error had been made when faced with a 76% reduction in his mortgage payments. He queried this with the Provider and maintains he was assured on at least two occasions that the repayments quoted would still repay the debt over the original term. There is no written or recorded evidence to substantiate this claim. The member of staff at the Provider could not recall whether she had a conversation as alleged with the Complainant or not.

In June 2012 the error was discovered by the Provider, but only after the Complainant had underpaid his mortgage for nearly three years. To ensure the mortgage was repaid within the original term would have resulted in the Complainant having to pay significantly more each month than if the mortgage had been correctly set up as a capital repayment. The Provider admitted that the error was its own entirely and offered a proposal which refunded the additional interest charged because the outstanding capital balance on the mortgage had not reduced as intended. In addition, the Provider offered an interest free loan for the amount of the shortfall and £250 for distress and inconvenience. The Provider also agreed to pay the Complainant's accountancy bill for the time spent in direct relation to this issue, up to a maximum of £750.

The Complainant rejected this offer and despite being aware that the monthly repayments only covered interest, did not increase them to either the amount he should have been paying since 2009 or the higher amount required to repay the debt over the original term. The Complainant's argument was that this would simply cause too much confusion. Consequently, the Complainant made no attempt to mitigate his losses by increasing the amount of the repayments and as a result, the shortfall continued to grow each month.

The Complainant wanted the mortgage shortfall to be written off and cited a case reported in the UK media concerning action taken there by the regulator against a provider in that jurisdiction. After the shortfall had been written off, the Complainant also wanted the remaining mortgage balance to be recalculated to ensure the monthly repayments were sufficient to repay it in full within the original term.

Findings

The Provider admitted the error and made proposals to compensate the Complainant for the additional mortgage interest charged because of the underpayment, pay the Complainant's accountancy bill, transfer the amount of the mortgage shortfall to an interest free loan for the same term as the original mortgage and reschedule the remaining mortgage account to ensure the balance was cleared in full within the original term. In addition, the Provider offered to pay the Complainant £250 in acknowledgement of the distress and inconvenience its error caused.

The Adjudicator concluded the offer made by the Provider was very fair and reasonable and there were no grounds for any of the debt to be written off. The Adjudicator determined the Complainant was aware of the issue in June 2009 and could have increased the repayments when the error was originally discovered. Had the Complainant done so, the amount of capital outstanding would have been considerably less. The Adjudicator concluded that the Complainant had not made any attempt to mitigate his loss.

Award

It was considered that the offer put forward by the Provider was correct as it rectified the direct costs and the provision of an interest free loan had a substantial intrinsic value to the Complainant.

The award directed the Provider to repay to the Complainant the overcharged interest and provide an interest free loan for the underfunded element of the debt as previously offered. In addition, a payment of £250 to the Complainant should be made for distress and inconvenience and his accountant's bill should be paid by the Provider up to a maximum of £750.

Review by Senior Adjudicator

This complaint was reviewed by the Senior Adjudicator at the request of the Complainant. The result of this review was that the original Determination was confirmed, but the award adjusted to allow for further underpayments made during the time taken for the review to be completed.