



Determination

30 November 2017

- Investment
 - Mortgage provider
- Application declined
 - Misrepresentation
- Misleading conduct

DETERMINATION

Consumer: Mr X
Financial Services Provider (FSP): A lender
Date: 30 November 2017

Summary

1. I find that I am unable to deal with the consumer's complaint that the FSP has refused his request to change his home loan from one which required payments of both principal and interest to one which is interest only because such refusal involves the FSP's right to exercise its commercial judgement.
2. I also find that the FSP did not represent to the consumer that it would change his home loan in the manner he requested.
3. This Determination affirms the position set out in our Review dated 5 August 2016 (**the Review**). I do not propose to restate that analysis but instead adopt it for the purposes of this Determination. A copy of the Review is attached.
4. The complaint is not upheld.

Background to the complaint

5. The consumer has an owner-occupied home loan with a variable interest rate with the FSP, secured over his home. The loan provides for payments of principal and interest.
6. In an email on or about February 2016, the consumer informed the FSP that he was now renting out the secured property and wanted to change his loan to an investment loan with interest only payments.
7. On 23 February 2016, the FSP emailed the consumer asking for a copy of the relevant rental agreement and saying that it would change the loan to "investment property (sic) with respective rate". The email exchange says that the consumer's request would be "actioned" and that "interest only" repayments was an available option. No offer was made.
8. The consumer supplied the FSP with a copy of the rental agreement.
9. The FSP requires a full credit assessment before changing the loan repayment terms.
10. The consumer has not submitted the documents requested by the FSP to consider his request.

Key issues

11. The key issues to be decided in this Determination are:
 - (a) Did the FSP represent that it would vary the terms of the consumer's loan to allow for interest only repayments?

- (b) Can the Credit and Investments Ombudsman (**CIO**) consider the consumer's complaint that the FSP would not agree to his request to vary his loan?

Relevant considerations

12. In making a Determination, I am required to have regard to:¹
- (a) relevant legal requirements or rights provided by law to the consumer in relation to the subject matter of the complaint;
 - (b) applicable codes of practice;
 - (c) good practice in the financial services industry; and
 - (d) fairness in all the circumstances.
13. Both the consumer and the FSP have been given the opportunity to provide information in support of their respective positions. I am satisfied that all information provided by the parties has been exchanged between the parties, and that each party is aware of the issues raised in this complaint.

Findings and reasons for decision

14. The emails from the FSP to the consumer do not contain any promise or representation that it would vary the repayments required on the consumer's loan from principal and interest to interest only.
15. I find, therefore, that the FSP did not represent to the consumer that it would change his home loan in the matter he requested.
16. CIO Rule 10.1(f) provides that:

The scheme will not deal with a complaint if, at the time of receiving the complaint or at any time during the CIO process, the scheme is satisfied that:

...(except in the case of complaints relating to financial hardship or responsible lending obligations under the National Consumer Credit Protection Act 2009), the financial services provider has done no more than exercise its commercial judgement, including but not limited to its commercial judgement about interest rates (but subject to Rule 10.1(d)), product design or (in relation to credit-related matters) lending or the security for a credit facility;

17. I am satisfied that this decision not to convert the consumer's loan from principal and interest repayments to interest only is a commercial judgment for the FSP.
18. I find that I am unable to deal with the complaint any further.

Determination

19. The complaint is not upheld.



Raj Venga
Ombudsman

¹ CIO Rule 12.1 – 9th Edition. All references to CIO Rules in this Determination are references to the 9th Edition Rules.



Review

5 August 2016

- Investment
 - Mortgage provider
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5 August 2016

Consumer: Mr X

Financial services provider (FSP): A lender

Dear Mr X

Complaint by Mr X about a lender

This Review provides you with our assessment of your complaint about a lender (**FSP**).

Complaint summary

You say that:

1. you requested that the FSP vary the terms of your loan, by changing your loan repayments from principal and interest to interest only, as you had begun to rent out your security property,
2. the FSP informed you in two separate emails that it would change the terms of the loan if you provided it with a copy of the rental agreement, and
3. you provided the FSP with the requested documents, however the FSP has not changed your loan.

In resolution of the complaint, you want the FSP to:

1. change your loan repayments from principal and interest to interest only, and
2. refund to you the additional payments you have paid under your loan while waiting for the loan to be changed.

Our Review

Under our Rules, we are unable to deal with a complaint where the financial services provider has done no more than exercise its commercial judgement, including in relation to lending (CIO Rule 10.1(f) – 9th Edition).

From the emails you have provided to us, it appears that the FSP requested that you provide it with a copy of the rental agreement for the property, in order for the FSP to consider your request to change the loan repayments. Those emails do not include any guarantee from the FSP that your loan would be changed in accordance with your request, rather that “your request will be actioned” and that interest only was an available option.

We attach a copy of an email from the FSP to us dated 6 July 2016 for your information, which contains an explanation from the FSP as to why it is unable to change the terms of your loan. In particular, the FSP has informed us that its lending policy requires you to undergo a full credit assessment in order to have your loan type changed from lo doc to full doc and for the loan repayments to be changed from interest and principal to interest only.

It is a matter for the FSP's commercial judgement as to whether it will agree to your request to vary your loan.

Consequently, we find that this complaint is outside of our jurisdiction and we are unable to deal with it further (CIO Rule 36.1(a) – 9th Edition).

Responding to our Review

For the reasons set out above, we are unable to deal with this complaint further.

If you disagree with our Review and have further information to indicate that the complaint should remain open, we ask that this be provided to us by no later than **19 August 2016**.

If you provide us with new information, we will assess whether this changes the findings set out in this Review. If so, we will notify the parties and continue to deal with the complaint.

You can also ask for a Determination. A Determination is made by the Ombudsman and is a final decision about the complaint.

If we do not receive a response from you, this Review will become our final decision and the complaint will be closed. We will notify the parties of this.

You must respond by **19 August 2016**. If more time is needed, a request for an extension should be made as soon as possible and, at the very latest, before **19 August 2016**.

Case Manager