



Lender prevented from increasing interest rates on tracker mortgages



Peter Alderdice

peter.alderdice@shepwedd.co.uk

Neil Campbell

neil.campbell@shepwedd.co.uk

A recent case involving tracker mortgages has highlighted the importance for lenders of ensuring consistency of terms across suites of lending documentation.

West Bromwich Mortgage Company Limited, a subsidiary of West Bromwich Building Society, now owes up to £27.5m to borrowers following a Court of Appeal decision holding that it was not entitled to vary the interest rate on its buy-to-let tracker mortgages (where interest rates are tied to the Bank of England base rate) when the Bank of England's base rate itself did not change. The Court also held that a power to demand repayment of the entire mortgage balance on one month's notice, in the absence of any default by the borrower, could not be exercised by the lender.

The principal terms of the contract between West Bromwich Mortgage Company Limited and the various affected borrowers were included in the mortgage offers. In the case in question, the relevant mortgage offer included clauses to the effect that the term of the mortgage would be 25 years, and that the interest rate would be fixed for two years, and then at a variable rate of 1.99% above the Bank of England base rate. However, provided alongside the offers were the Lender's standard mortgage conditions. These contained further provisions relating to the mortgage term and the setting of interest rates, importantly allowing the lender to call in the entire mortgage balance on one month's notice and to change the variable rate for a number of reasons unrelated to movements in the base rate, including general market conditions.

When the fixed rate period under the tracker mortgage

came to an end, prevailing market conditions were such that in order to preserve the levels of interest paid to savers with West Bromwich Building Society, a decision was taken by West Bromwich Mortgage Company Limited to increase the variable rate under its tracker mortgages to 3.99% above base rate. Notably, the base rate itself did not change from 0.5%.

The borrower who brought the action (as a representative of the 'Property 118 Action Group') claimed that the powers to vary the interest rate and to demand repayment on one month's notice were not consistent with principal terms set out in the mortgage offer and therefore were not validly incorporated into the contract between the borrower and the lender. At first instance the High Court held in favour of the lender. However, on appeal the Court of Appeal found in favour of the borrower. It was found that the conflicting provisions between the mortgage offer and the standard mortgage conditions could not be 'fairly' or 'sensibly' interpreted together and therefore the contradictory provisions from the latter did not form part of the contract. The lender has accepted the decision and has announced that it will be reimbursing all affected customers the additional interest that was charged.

This case serves as a valuable reminder to lenders offering mortgage products that the description of a product in a mortgage offer can prevent the lender's ability to exercise powers under its mortgage conditions. In particular, if a

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lender wants to be able to vary interest rates on a tracker mortgage without reference to base rate changes, its power to increase the tracker margin should be clearly disclosed in the mortgage offer. Similarly, a description of product in a mortgage offer as having a set contractual term may preclude the lender from exercising any unilateral powers to terminate the contract early in the absence of a default by the borrower. The case is a clear warning to lenders that relying on standard mortgage

conditions in isolation will not allow this flexibility. It also highlights the need for due consideration to be given to standard documentation and the possible consequences of conflicting provisions.

For further information or advice on any of the issues discussed in this briefing note, please get in touch with your usual Shepherd and Wedderburn contact.