

The complaint

Mr T complains about the interest rate applied to his buy to let mortgage with Godiva Mortgages Limited.

What happened

Mr T applied for a new interest rate on his buy to let mortgage with Godiva via a broker. In January 2023 Godiva issued a product transfer offer including an interest rate that tracked 0.58% above Bank of England base rate, which would take effect from 1 May 2023 on expiry of the old rate.

Godiva sent the offer to Mr T's broker and asked that signed acceptance be returned by the broker via email. However, Mr T posted the signed acceptance himself.

Mr T says he then heard nothing further until April 2023, when Godiva wrote to him to tell him that his interest rate was about to expire and his mortgage would move to the reversion rate.

Mr T contacted his broker, who contacted Godiva. Godiva says it didn't receive the acceptance form, so the new interest rate wasn't put in place. It said the offer had expired. It offered Mr T a new interest rate, this time at 0.88% above base rate.

Mr T accepted that rate to prevent his mortgage becoming more expensive, but also complained that Godiva hadn't implemented the earlier rate. He said that it had made an offer, and he had accepted it, so the rate should be honoured.

Mr T points to the wording of the mortgage offer itself, which says

“All borrowers must sign this copy of the Product Special Conditions, all pages of which should then be returned to the Company for the product transfer to be made.”

Mr T says he did this – he signed and returned the offer as directed. He wasn't told to do anything different, and while the broker shared a copy of the offer he wasn't given a copy of the covering letter asking for acceptance to be returned by email. The instruction in the offer contradicted the instruction given to the broker.

Mr T says that the “postal rule” of contract law applies – which states that a contract acceptance is valid from the moment it is posted, whether or not it arrives. He said that if the broker had made an error in not telling him that acceptance needed to be sent by the broker by email, that doesn't make a difference since the broker was acting as Godiva's agent in selling him the mortgage so Godiva is liable for its agent's error. And he said that in any case he had already accepted the rate when it was put to him by the broker.

Our investigator didn't recommend upholding the complaint, so Mr T asked for it to be reviewed by an ombudsman.

What I've decided – and why

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

I've looked at what Godiva sent when it sent the mortgage offer to the broker. The offer does contain the wording I've quoted above, which Mr T referred to.

The covering email from Godiva to the broker, enclosing the mortgage offer, said (bold text and larger font in the original):

"Important information:

- **As this product is still available, we will need to receive the fully completed and signed paperwork by the 23rd of the month, for the new product to commence on the 1st of the following month. Please note, the paperwork must be returned prior to this product being withdrawn or within two working days of our notice to withdraw.**
- **We only accept paperwork that has been signed with a "wet" signature. We do not accept any form of eSignature.**

The signed applications should be emailed to [email address]

Subject to the above important information, the product transfer will commence on the date shown..."

So the mortgage offer itself just says that the signed acceptance should be returned, but doesn't specify how. The covering letter sets out the deadline for return, and says that it should be returned by email. This is made clear prominently.

Mr T says that he wasn't told this by his broker. The broker isn't party to this complaint so I haven't seen all communications between them. But Mr T has given us an email in which the broker sent, as an attachment, a copy of the mortgage offer. The covering email from Godiva doesn't appear to have been included as an attachment and isn't reproduced in the body of the email from the broker. I don't know what other discussions Mr T and the broker may or may not have had. But the email I have seen doesn't make clear to Mr T that acceptance should be sent via email from the broker and not, for example, posted by Mr T himself. I also don't know why, regardless of what Mr T did, the broker didn't email acceptance as required by Godiva.

However, if the broker didn't make Godiva's requirements clear to Mr T, or comply with those requirements itself, that doesn't mean Godiva is responsible for that. In arranging his mortgage, the broker acted as an agent of Mr T, not of Godiva. A mortgage broker represents a borrower in dealings with the lender, not the other way round. And for the same reasons I don't think that Mr T telling his broker that he would accept the rate is equivalent to notifying Godiva of acceptance. Any complaint about the acts or omissions of the broker needs to be made to the broker, not Godiva.

I also don't agree with Mr T that the postal rule is relevant here. The postal rule is a rule of English contract law that acceptance of a contract is valid from the moment the acceptance is posted, not from when it is received. Questions of whether, as a matter of law, there is a valid contract are a matter for the courts. But I take relevant law into account in deciding what's fair and reasonable in all the circumstances. And I don't think it's likely a court would find that the postal rule applies here. Godiva made clear to the broker (who was acting as

Mr T's agent) that it required acceptance to be sent by email to a specific address, not by post. A rule about when acceptance by post becomes valid isn't relevant where postal acceptance isn't accepted at all. Godiva made its requirements for acceptance clear when sending out the product switch offer, and therefore that was part of the terms on which it issued the offer – even if done so in the covering email rather than the body of the offer.

I think the product switch offer was therefore clear that it would only be deemed accepted, and put into effect on Mr T's mortgage, if it was signed in ink by Mr T and then emailed to the specific Godiva email address given by the deadline. In this case, the deadline was the earlier of 23 April (as the new rate would start from 1 May) or when Godiva withdrew the rate.

Godiva says it didn't receive the signed acceptance. Generally speaking, it's more likely than not that properly addressed post is delivered – though it does go astray from time to time. Hence the requirement to use email. Godiva says that if it had received the postal acceptance it would have acted on it. But it didn't receive it, and it doesn't follow up product switch offers because it's not uncommon for borrowers to change their mind – and in any case Mr T had a broker acting for him.

Whether or not it received the postal acceptance, there's no dispute the acceptance wasn't sent to Godiva in the way it required. The rate wasn't implemented as a result. By the time Mr T and his broker enquired why not, the rate had been withdrawn and so the deadline for valid acceptance had passed.

Mr T also says it's unfair that Godiva requires an acceptance form to be returned, as by applying for the rate he should be deemed to have accepted it. I don't agree about that. It's standard – not just for Godiva, but across the mortgage industry – to require a rate switch offer to be accepted rather than automatically implemented following an application. There are good reasons for that – not least because it allows borrowers time to reflect and change their minds before being bound and subject to an early repayment charge.

In deciding this complaint, I'm required to consider what's fair and reasonable in all the circumstances. I've set out what Godiva required to happen for acceptance of the rate to be valid, and noted that it didn't happen. I've also taken into account Godiva's argument that in cases where a broker has been instructed by a borrower, it's reasonable to expect the broker to ensure the requirements are met. And I think it's relevant to bear in mind that this was a buy to let mortgage. That means both that it's not a regulated mortgage, and that Mr T was not acting as a consumer taking out a loan over his home; he was acting as someone running a property rental business for profit, and who had appointed a professional to act on his behalf. I think that's a relevant matter when considering whether it's fair that Godiva expected its specific requirements to be met.

Taking everything into account, therefore, I don't think it was unfair that Godiva didn't implement the rate in the January offer. It sent the offer to Mr T's broker, with an explanation of what needed to happen next to ensure the rate was implemented. That didn't happen, so the rate wasn't put in place. By the time Mr T and his broker followed it up, in April, that rate was no longer available, which meant a fresh application for a rate available at that time had to be made.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 March 2024.

Simon Pugh
Ombudsman