

## Notice of Undertaking

### The Co-operative Bank p.l.c. (trading as Platform)

#### Summary

The Co-operative Bank p.l.c. (trading as Platform) has made changes to a term in its Mortgage Offer document.

Platform has given us an undertaking, under the Consumer Rights Act 2015 (the CRA), in relation to the term that sets out the interest rate charged for any additional secured borrowing. This is because we had concerns that the term was not sufficiently transparent under the CRA, as consumers were unable to understand what rate of interest they would pay if the firm provided additional borrowing.

We summarise our concerns and the action the firm has taken below.

#### Why did we have concerns?

The relevant term in the contract stated *"If we agree additional borrowing, it will be charged at the interest rate applicable at the time....."*

We were concerned that the wording *"the interest rate applicable at the time"* was ambiguous as it was not clear what interest rate would be charged. The term had the potential to give the firm the discretion to charge any number of interest rates. This could cause detriment to consumers as they would be unable to understand what rate of interest they would pay.

#### What has the firm done?

Platform has:

- Told us that the term had been in use since March 2008
- Agreed that the relevant term was not as clear as it could have been
- Amended the term so all new contracts state that the interest rate charged for additional borrowing will be based on the firm's range of additional borrowing rates which are set out on their website. The new term also explains that the interest rate could be higher than the existing interest rate a consumer is paying for their main mortgage account
- Written to approximately 69,000 existing consumers to inform them about the new term
- Agreed to apply the unclear term in a fair way until the new term was in use

- Agreed to carry out a redress exercise to identify consumers who may have been affected by the unclear term and to provide redress where it was appropriate to do so. To date, this exercise has led the firm to estimate that £3.4m redress will be paid to approximately 1,200 consumers who had taken a further advance between March 2008 and May 2019
- Confirmed that contracts entered since February 2019 contain the new term
- Fully cooperated with us in resolving our concerns.

### **What does this mean for consumers?**

The change that Platform has committed to make should ensure that consumers are clear about what rate of interest they will pay if the firm agrees to provide any additional borrowing.

Consumers who are entitled to redress have been contacted by the firm.

# Undertaking from The Co-operative Bank p.l.c. (trading as Platform)

The Co-operative Bank p.l.c. (trading as Platform) has given this undertaking to the FCA under the Consumer Rights Act 2015 (the CRA) in respect of its Mortgage Offer v2 document which applied to contracts entered into from 1 October 2015 to 25 February 2019.

## Platform contract

Under the heading '*Additional secured borrowing*' in the Mortgage Offer, term 12 stated:

*"You may apply for additional secured borrowing 6 months after completion, subject to our lending criteria being satisfied at that time. A revaluation of the property may be required. We have no obligation to agree additional secured borrowing.*

*If we agree additional borrowing, it will be charged at the interest rate applicable at the time.*

*Any borrowing you take up will increase the amount of borrowing secured on your home."*

## Applying the CRA

We considered the transparency of term 12 under the CRA and relevant case law.

Under section 68(1) of the CRA, firms are required to "*ensure that a written term of a consumer contract...is transparent*". Under section 64(3) of the CRA, a term is transparent if "*...it is expressed in plain and intelligible language and (in the case of a written term) is legible.*"

In our view, term 12 was likely to be considered insufficiently transparent under the CRA because the wording "*the interest rate applicable at the time*" was ambiguous and could mean any number of interest rates. The term had the potential to cause harm to consumers as they would be unable to fully understand what rate of interest they would pay if the firm agreed to provide additional borrowing.

Under section 69(1) of the CRA, where a contract term in a consumer contract could have different meanings then it must be applied in the way that is most favourable to the consumer.

## How the term has been changed

Platform has:

- Informed us that the wording was included in the Mortgage Offer document since March 2008. The firm has also informed us that the term had been applied to charge some consumers a rate of interest for additional borrowing that was higher than the interest rate the consumers were paying for their main mortgage account.
- Agreed that the term was not as clear as it could have been under the CRA.
- Informed us that all new contracts entered into since 25 February 2019 contain the new term 12.

- Contacted approximately 69,000 existing consumers to amend term 12, such amendment having taken effect in May 2019. The new term explains that the interest rate charged for additional borrowing will be based on the firm's range of additional borrowing rates found on their website, which could be higher than the existing interest rate on a consumer's main mortgage account.
- Agreed to apply the unclear term in a fair way until the new term applied in May 2019. Where consumers had, requested additional borrowing prior to June 2019 and were unhappy with the interest rate offered so therefore decided to re-mortgage with another firm, the firm offered to waive any early repayment charge payable.

## **Other information**

The firm was fully cooperative in providing this undertaking.

Undertaking published 26 September 2019.

## **Legal information**

As a Regulator, we, the Financial Conduct Authority (FCA), can challenge firms using terms that we view as being insufficiently transparent under the CRA. We review contract terms that we come across in our supervision of firms. This includes contract terms that are referred to us by consumers, enforcement bodies and consumer organisations. This has led to The Co-operative Bank p.l.c. t/a Platform's undertaking to replace the term that we consider is likely to be insufficiently transparent.

The FCA has a duty under Schedule 3 of the CRA to notify the Competition and Markets Authority (the CMA) of the undertakings we receive. The CMA may publish details of these undertakings, which it puts on [www.gov.uk](http://www.gov.uk). We also publish the undertakings on our website. Both publications will name the firm and identify the specific term and the part of the CRA that relate to the term's transparency.

Even if firms have not given an undertaking or been subject to a court decision they should remain alert to undertakings or court decisions concerning other firms as part of their risk management. These will be of potential value in showing the likely attitude of the courts, the FCA, the CMA or other regulators to similar terms or terms with a similar effect.

Ultimately only a court can determine the fairness or transparency of a term and, therefore, we do not recommend terms that have been revised by a firm to address our concerns as being fair or transparent. We cannot approve terms for the purposes of the CRA; it is for firms to assess the fairness and transparency of their terms and conditions under the CRA and in the context of the product or service in question.

It is important to bear in mind that wording that is fair or transparent in one agreement is not necessarily fair or transparent in another. Where we accept an undertaking given to us from a firm to revise a term, this means that, on the evidence currently available we consider the term to be improved enough that further regulatory action is not required.