

## The complaint

Mr G and Mrs A's complaint about Objective Wealth Ltd (OW) relates to their applications for two mortgages; a let to buy mortgage and a standard repayment mortgage. In making the applications the mortgage adviser (MA) made an error resulting in there being a deficit of the funds requested, of around £100,000, leading to a delayed completion.

## What happened

Mr G and Mrs A asked MA to help them find a suitable mortgage on a brand-new property they wanted to buy (BW). When they instructed MA, their existing property (FC) was already on the market for sale and a potential sale fall had fallen through.

The MA discussed with Mr G and Mrs A the option of renting out FC, as the developer/seller of BW was exerting some pressure on them to complete the purchase and had suggested this as an option. Whilst not Mr G and Mrs A's initial plan, they ultimately decided to let FC and asked MA to apply for two mortgages; one to enable them to let FC and one to purchase BW. The MA obtained mortgage offers for each property, but one contained an error which neither he nor Mr G and Mrs A spotted. The error was that in relation to the let to buy mortgage he had requested too little by way of the amount to be borrowed. The Suitability Report he prepared, and gave to Mr G and Mrs A, indicated that for the let to buy mortgage the monthly payment would be approximately £150, which they were happy with.

Contracts for the purchase of BW took place on 6 August 2021 with a completion date set for around the end of September. Four days before completion, Mr G and Mrs A spoke with MA as they had received a completion statement from their solicitor indicating a shortfall in the mortgage funds required. MA searched for alternative mortgage products and obtained two new offers which Mr G and Mrs A accepted, although the time taken to do this resulted in the completion date being postponed. That in turn led to increased costs for Mr G and Mrs A.

When the new let to buy mortgage offer was received the cost increased from £150 to over £900 per month. The cost of the other mortgage they were getting remained broadly the same. But, Mr G and Mrs A say they incurred additional expenses because of the delay, and they have increased mortgage costs on the let to buy mortgage going forward, which they feel OW should pay as it was their error which led them to this position.

OW accepted they had made an error but argued that Mr G and Mrs A, and their solicitors, should bear some responsibility since should have spotted the error when the offers were produced. OW offered to pay one half of Mr G and Mrs A's incurred expenses (totalling around £1,800) on the basis that they weren't completely at fault, and also offered to pay £500 in compensation.

Mr G and Mrs A were unhappy with OW's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that there had been poor service by OW and that the offer to pay one half of the incurred expenses was insufficient. Our investigator thought OW should pay all of the expenses which amounted to £3,623. Regarding compensation for distress and inconvenience, the investigator concluded

that £500 was a fair and reasonable. OW agreed with the investigator's view but Mr G and Mrs A didn't and asked for the complaint to be passed to an Ombudsman for a final decision.

### **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 issued my Provisional Decision on 26 May 2022 and Mr G and Mrs A and OW have responded. Both disagree with my decision, but for different reasons. OW accept the facts, as I have set them out to be, but feel that Mr G and Mrs A together with their solicitors ought to shoulder some of the responsibility for their loss. OW repeat the point, previously made, that the solicitors have a responsibility to ensure that there are sufficient funds in place to complete the proposed purchase, and they do not feel that OW are entirely at fault for a part of the conveyancing process over which they had no control. They repeat that Mr G and Mrs A ought to have seen that there was going to be a shortfall in the mortgage amount.

On that latter point, OW recognise they are the professionals and Mr G and Mrs A are not. I do not think the argument that Mr G and Mrs A ought effectively to have spotted OW's error and notified OW to prevent the problem, to have merit. OW were instructed for their expertise and it is entirely reasonable for Mr G and Mrs A to rely upon the advice given, even though in hindsight it is surprising that they did not spot the shortfall sooner.

Regarding Mr G and Mrs A's solicitors, I did say that I found it was also surprising that the solicitors had not pointed out the potential problem to Mr G and Mrs A. The difficulty I have in attempting to reach any assessment upon the culpability or otherwise of the solicitors is that I have no evidence as to what information they had about the transaction at the relevant times. I have no information as to what the solicitors were told regarding how the transaction was to be structured. It may well be that the solicitors have some responsibility in this matter but equally it may be that they have none. I also have no jurisdiction over the solicitors.

What I am concerned with is what OW did or did not do, and it seems to me that the root cause of this complaint stems and flows from the mistake MA made and did not correct. Had it not been for that mistake, the complaint would never have arisen. OW were specifically instructed to advise upon the financial aspects of the transaction. It is reasonable for the solicitors, and indeed Mr G and Mrs A, to have relied upon their advice and to have assumed the financial elements were correct. I do think it surprising that the solicitors did not spot the potential problem earlier, but not doing so does not necessarily import any blame, and in no way detracts from the responsibility and duty of OW towards Mr G and Mrs A.

Mr G and Mrs A also disagreed with my provisional decision. They repeated the points they had previously made, their central point being that had they been correctly advised in the beginning, then they would not have proceeded with the transaction and not incurred the higher monthly mortgage costs. They think they paid OW a fee, twice, and ask whether that should be refunded too. They have not said when that fee was paid nor how much it was. In the absence of any evidence that this was paid, I cannot agree that it should be refunded.

I dealt with the issue of what I thought Mr G and Mrs A would most likely have done had they received the correct advice prior to exchanging contracts. I appreciate that in hindsight Mr G and Mrs A say they wouldn't have gone ahead with the letting of FC, but the evidence shows they were very keen not to lose the purchase of BW. Had they been resolute in only wanting to sell FC before they committed to the purchase of BW then I think they would have done just that. But the fact that they were entertaining a possible letting of FC tells me they were

keen not to lose the purchase of BW and willing to accept all the risks that accompany letting out a property. As I said in my provisional decision, when new mortgage offers were obtained with the correct figures, Mr G and Mrs A did not at that point refuse to go ahead with them on the grounds that they couldn't afford it. Further the lender, having checked their circumstances, must also have assessed that the mortgage was affordable for them. So, I remain of the view that in all probability Mr G and Mrs A would have gone ahead with the letting of FC and purchase of BW had they obtained the correct mortgage offers initially.

Mr G and Mrs A have also queried why I cannot look into the issues of the affordability of the mortgage, and upon that point I can state that it is because OW have not yet had the chance to respond to that particular complaint issue, since it was not mentioned when they first brought the complaint to this service or indeed OW. So, if that is something Mr G and Mrs A wish to pursue then a fresh complaint for that issue will need to be raised first with OW.

In summary having considered what each party has said in response to my provisional decision and am not persuaded that there is any material evidence which causes me to change my view, and accordingly that provisional decision will now be made final. For ease of reference I repeat it below.

There is no great dispute as to what happened here. It is accepted that an error was made by the MA with the mortgage application. The crux of the complaint now relates to the amount of compensation that it would be reasonable to award Mr G and Mrs A. There are two parts to this; the first part relates to the direct costs of the error, and the second relates to the distress and inconvenience caused by the error.

There can be no doubt that OW, through MA's mistake, is at fault. The error ought not to have occurred and when it did the MA ought to have spotted it and corrected it before Mr G and Mrs A exchanged contracts on BW. I can't ignore that Mr G and Mrs A quite obviously undertook some exercise in planning what funds they would need prior to contacting OW, as they would need to know roughly how much money they were going to have to borrow. They have said that when the mistake was uncovered they were £100,000 short and so it is surprising they didn't notice this when the mortgage offers were received. I appreciate they were relying on the expertise of OW to assist them with their mortgage application, but I would have expected that they would have been able to see that there was going to be a shortfall. It is equally surprising that their solicitor did not point this out either, but as our investigator has rightly pointed out I am not concerned with any failings in that regard.

The evidence shows that at least one sale had fallen through, possibly two, and that Mr G and Mrs A were coming under pressure to exchange contracts on their purchase. It is common knowledge that in every house sale and/or purchase there is always present a degree of pressure leading to stresses for those concerned. It is also clear that Mr G and Mrs A were determined to buy BW and were going to do so by either letting FC or selling it.

That leads me to consider whether Mr G and Mrs A would have gone through with the letting of FC if they had received the correct mortgage offer for the let to buy mortgage, or would they have chosen to wait and try to sell FC. It is now known that the correct let to buy mortgage cost considerably more per month than the £150 they were initially told. That is because Mr G and Mrs A were borrowing a lot more money. Mr G and Mrs A say that this mortgage is unaffordable for them now, but as that specific complaint has not been directly made to OW I can't consider it, and this will have to form the basis of a new complaint if that is what Mr G and Mrs A wish to do.

If they had chosen to wait in order to try to sell FC, the risk was that they might lose the purchase of BW. At that point in time, they had already lost the sale of their existing property at least once, and there was no prospect of an immediate sale, in addition to which the

developer of BW was putting them under pressure to complete the purchase. When the correct let to buy mortgage offer was received, the lender had checked whether it was affordable, and decided it was, and Mr G and Mrs A must also have thought it affordable because they accepted the offer. I do appreciate that Mr G and Mrs A felt they had no choice but to accept the new mortgage, but that is not entirely accurate. They could have chosen not to proceed with their new purchase and faced the potential losses through a breach of contract claim, which might possibly have been minimal should the seller have been able to sell it to another willing purchaser.

So, taking all of this into account, I think it is more likely than not that what Mr G and Mrs A would have done, had they known the true cost of the let to buy mortgage, is gone ahead with that rather than risk losing the purchase of BW.

### **Putting things right**

That leads me on to consider what direct losses then can be attributed to OW. Having found that they would most likely have gone ahead with letting FC, then it follows that they would have exchanged contracts on BW just as they in fact did. The direct losses which then follow from OW's error relate to the postponement of the completion date and the costs that were incurred because of that. These costs have been identified by our investigator and I agree that these have been caused by OW's error and so should be refunded to Mr G and Mrs A by OW. I have also identified a further cost of the additional survey fees to Kent Reliance. Mr G and Mrs A say these were £445 and I find that these would not have been incurred had the correct application been made initially. So, I feel it is fair that OW refund these fees too.

The remaining issue relates to the distress and inconvenience caused to Mr G and Mrs A. Whilst I can accept that this was a very distressing time for them both, what I have to consider is the level of distress and inconvenience caused by OW's error. As I have already found, I think Mr G and Mrs A would have gone ahead with the letting of FC in any event and so any impact caused by learning of the increase in monthly mortgage payments, or having a larger mortgage, I do not attribute to OW.

When we make awards of compensation we categorise them, and examples of these can be found on our website. What is important to remember is that there is no set figure, since the facts of each case are different, and ultimately it is an exercise of judgement, looking at all the circumstances of the case and coming to a figure which feels fair, when set against the effect upon the complainant of any particular service failures.

I think the relevant category of award this complaint 'An award .. of up to £750'. For this category, awards are made for complaints where the impact of a mistake has caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needed a lot of extra effort to sort out. The impact here might last over many weeks or months, but it could also be fair to award in this range if a mistake has a serious short-term impact. The MA was able to provide new mortgage offers within a reasonably short period of time and the completion of BW was thankfully saved. So, although it was a very worrying time for Mr G and Mrs A it was short lived.

OW has accepted that it didn't get things right and agreed with our investigator's view that £500 compensation should be paid for the distress and inconvenience, and having thought about it again, I think that is a fair sum.

**My final decision**

My final decision is that Objective Wealth Ltd shall pay to Mr G and Mrs A £4,068 in respect of their direct losses and a further £500 for the distress and inconvenience caused, totalling £4,568.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr G to accept or reject my decision before 20 July 2022.

Jonathan Willis  
**Ombudsman**