

## **The complaint**

Mr H and Mr P complain Age Partnership Limited made mistakes in processing their application for an equity release mortgage which led to them borrowing at a higher interest rate and their mortgage costing more overall.

## **What happened**

In September 2021 Mr H and Mr P approached APL to arrange an equity release mortgage when they were looking at moving home. They initially discussed borrowing around £102,000. But they required around an additional £10,000 when the price of the property they wanted to buy increased. APL confirmed their previous recommendations about the proposed lending and basis of borrowing remained suitable when Mr P spoke to them about that on 29 September. And they said they'd issue a revised Key Facts information document (KFI) setting out the proposed lending.

Mr H and Mr P submitted a signed application form on 30 September. Mr P chased the KFI on 5 October. And APL sent it out the following day. The KFI confirmed Mr H and Mr P could borrow the £111,790 they required at an interest rate of 2.55% with a cashback sum of £1,000.

It came to light in mid-October that the request APL had made to the lender for the KFI had contained incorrect information about the property Mr H and Mr P were buying. So, the KFI was invalid and the application hadn't been processed. APL submitted two further requests. But they used the wrong process which didn't reflect the correct interest rates available at the time. Interest rates had increased twice – on 6 and 12 October – since Mr H and Mr P had made their application. And although the lender issued an offer on 25 October for £110,000, it was at an interest rate of 3%.

Mr P complained to APL. On around 28 October, they gave him a choice between borrowing the higher amount at an interest rate of 3% or the lower amount at the rate of 2.55%. They warned interest rates were about to change the following day, so an immediate decision was necessary. Mr P couldn't speak to Mr H at the time. He decided to go ahead based on the lower borrowing. But they later realised it wouldn't be possible financially. They took advice from an independent financial adviser (IFA) and secured borrowing at £110,000 with the same lender at a rate of 2.95%. They completed the loan on 28 January 2022.

Mr H and Mr P felt they'd missed out on the interest rate of 2.55% because of mistakes APL had made. They thought APL should compensate them for the additional £15,000 they calculated they'll accrue over the mortgage term as a result of the higher interest rate they're now subject to. And they were unhappy with the service APL had provided.

In responding to their complaint APL said the lender's rate changes had affected the deals available to Mr H and Mr P. But they acknowledged they'd made some mistakes. To put things right they offered to waive their fee of £1,795 and to pay compensation of £500 for any distress and inconvenience Mr H and Mr P had suffered if they agreed not to disclose the settlement. Since Mr H and Mr P weren't happy with that, they brought their complaint to the Financial Ombudsman.

Our investigator upheld Mr H and Mr P's complaint. She took the view that, if their application had been correctly submitted by APL, they would have secured the borrowing they required at the 2.55% interest rate. She said APL should compensate them for the additional interest they'd pay until the younger of them reached the age of 85.

Since APL disagreed, Mr H and Mr P's complaint was passed to me to decide. I recently issued a provisional decision, an extract of which follows:

### ***What I've provisionally 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 provisionally reached a similar outcome to our investigator for broadly the same reasons. But the way in which I think it should be resolved is different in some respects. So, I'm issuing a provisional decision to give the parties the chance to provide any further comments they may wish to make before I reach a final decision.*

*Between Mr P's initial contact with APL and his discussions with them on 29 September 2021, some adjustments were made to the basis on which Mr H and Mr P originally planned to borrow. The available cashback changed, which affected the amount they needed to borrow. But I'm satisfied the parties understood that day that Mr H and Mr P wanted to borrow around £111,790 at the 2.55% interest rate available at the time. APL agreed to issue a KFI on that basis. And Mr H and Mr P submitted their signed application recording those proposed terms on 30 September.*

*Even though there was a delay in Mr H and Mr P receiving the KFI until 6 October, I think it's fair to say it related to the application they'd already sent in and should have been sent to them sooner. They understood they'd secured the 2.55% interest rate once they'd received the KFI. I think that was reasonable since it set out clearly, "Interest is charged at a fixed rate which is currently 2.55%. We will hold the interest rate that's applicable on the day we receive your application for 14 weeks."*

*I can understand Mr H and Mr P were disappointed to receive an offer on 25 October which showed an interest rate of 3%. And I can understand too why Mr P felt under pressure to make a quick decision about whether to go ahead on that basis or borrow less at the 2.55% rate he'd been expecting when he spoke to APL a few days later, given interest rates were about to rise again.*

*APL have acknowledged they provided incorrect details about the property Mr H and Mr P were buying in the request they'd made to the lender for the KFI. But they don't think it's fair to hold them responsible for financial losses Mr H and Mr P incurred. In summary, they say:*

- *The KFI made clear it wasn't a legally binding mortgage offer*
- *Even if the request had been generated correctly, there was no guarantee Mr H and Mr P would have secured the 2.55% interest rate when the offer was produced later as it was always subject to the lender's underwriting process*
- *The lender ought to have realised the mistake APL had made in the property details since information they'd provided previously had been correct*
- *If the lender hadn't delayed dealing with the application and told them about the mistake sooner, APL could have produced a new request sooner and may have been able to take advantage of a lower interest rate before the second increase on 12 October*

- *It's not fair for APL to pay the difference in accrued interest over the estimated term of the plan between an offer that had been issued (£102,000 at 2.55%) and an offer whose terms could not have been predicted before Mr H and Mr P's decision to withdraw their application*

*Even though the KFI wasn't a binding offer, it guaranteed the rate would be held at the level it was at when the application was submitted on 30 September. So, I think it's fair to say the 2.55% rate is likely to have been available to Mr H and Mr P subject to their application being successful. If APL had sent an accurate request for a KFI sooner, it's likely Mr H and Mr P would have received a valid KFI at an interest rate of 2.55%.*

*I think it's more likely than not Mr H and Mr P's application would have led to an offer if the lender had considered it at the time. The lender issued three offers to Mr H and Mr P – one on 25 October, another on 2 November and a third when they applied through another broker. Whilst the amount of borrowing and interest rates varied, it seems Mr H and Mr P met the lender's other lending criteria.*

*Even if the lender made some mistakes as APL allege, I don't think it's fair for APL to rely on them to avoid responsibility to Mr H and Mr P. The application was rejected because of mistakes APL made. It would be for APL to seek redress from the lender if they felt it had contributed in any way.*

*Based on what I've seen, I think it's likely, but for APL's mistakes, that Mr H and Mr P would have secured an offer from the lender to borrow £111,790 at the rate of 2.55%. In the end they accepted an offer from the same lender for £110,000 at the rate of 2.95% and completed on the loan on 28 January 2022.*

*I've thought carefully about the basis on which it's fair for APL to compensate Mr H and Mr P for the additional interest that will accrue to the mortgage they took. I've looked at the information APL gathered about Mr H and Mr P's preferences and priorities, the KFIs and the mortgage offers that were issued.*

*I think their key preferences and priorities were as follows:*

- *Mr H and Mr P wanted fees to be added to the amount they were borrowing*
- *Cashback was factored into the amount they were borrowing*
- *A gilt based early repayment charge (ERC) was recommended on the basis it had the least impact on their estate*
- *They had no intention of making any voluntary repayments to reduce the loan*
- *They weren't considering moving again*
- *Mr H was 64 years old and Mr P was 60; their estimated life expectancy was 85*

*Based on the KFI dated 6 October, Mr H and Mr P intended to borrow £111,790 inclusive of a £5 arrangement fee at a fixed interest rate of 2.55%. Interest was illustrated on the basis of a 24 year term. Mr H and Mr P would have received £1,000 cashback. The ERC would have been payable until July 2052 and calculated by reference to the movement in gilt redemption yields, which could change. They would have had downsizing protection, which meant that if they decided to downsize and their new property didn't meet the lender's criteria they would have avoided paying an ERC. And they would have had the possibility of repaying up to 10% of the loan each year, which would have reduced the interest that accrued.*

*The offer issued in October didn't reflect the October KFI. The sum offered was lower; the interest rate was higher than expected; and the ERC terms were different. So, I think it's reasonable to ignore it in considering the basis on which compensation should be paid.*

*The offer issued in early November was for the lower amount, but inclusive of the £5 fee, at an interest rate of 2.55%. It offered a £500 cashback, downsizing protection and the possibility of making overpayments of 10% a year. Interest was illustrated on the basis of a 24 year term. The ERC was payable until July 2052 and calculated by reference to gilt yields. Overpayments of up to 10% a year were allowed.*

*The offer issued in late November, which Mr H and Mr P accepted, was for borrowing of £110,000 at a rate of 2.95% with £1,000 cashback, downsizing protection and the possibility of making overpayments of up to 10% a year. Interest was illustrated on the basis of a 23 year term. The ERC was payable until July 2052 and calculated by reference to gilt yields.*

*I think Mr H and Mr P would have accepted an offer to borrow £111,790 at an interest rate of 2.55% if one had been made to them in line with the 6 October 2021 KFI. The offer they accepted was in similar terms, save that the amount was lower at £110,000.*

*It's difficult to predict how long the mortgage will run for. But since Mr H and Mr P took a mortgage based on an illustration of interest over a term of 23 years, I think it's reasonable to assume it will run from completion on 28 January 2022 to 28 January 2045. Mr P, the younger borrower, will turn 85 later that year so it's broadly in line with his life expectancy.*

*Although Mr H and Mr P have the opportunity of making 10% payments to reduce the loan each year, they've said they don't intend to do that. And although there's the possibility of avoiding an ERC if the mortgage is repaid on downsizing, it's not possible to predict if those circumstances will arise. It's perhaps more likely the mortgage would be transferred. But they'd still be tied into the mortgage and fixed interest rate if that happened. I'm conscious Mr H and Mr P have said they don't intend to move again. So, on balance, I think it's fair to assume they won't. Given the potentially substantial ERC, I think it's unlikely they would choose to repay the mortgage during the term.*

*Bearing everything in mind, on balance, I think it's fair that APL compensate Mr H and Mr P for the difference between*

*(1) the total interest that would have accrued to a mortgage of £111,790 at a rate of 2.55% a year on a rolled up (compound) basis between 28 January 2022 and 28 January 2045; and*

*(2) the total interest that will accrue to their mortgage of £110,000 at the rate of 2.95% on the same basis and over the same period.*

*I recognise there is a benefit to Mr H and Mr P in receiving a lump sum interest payment now bearing in mind they may not have paid it for many years or at all. But, for the reasons I've explained, I think it's fair and reasonable in the circumstances.*

*I understand APL waived their arrangement fee. And Mr H and Mr P paid a lower amount to the broker who arranged the mortgage they entered into. So, they aren't out of pocket there. But Mr P's explained the impact on him and Mr H of the errors APL made. They were shocked to receive the offer of 25 October with a higher interest rate than they'd been expecting. Mr P felt under pressure to decide on the level of borrowing without having the chance to speak to Mr H. And they then realised they couldn't go ahead with borrowing the lower amount. They were inconvenienced by the mistakes APL made and felt it was necessary to get separate advice. Mr P's described the sleepless nights he had at the time. And Mr H was upset APL required them to sign a non-disclosure agreement when they proposed terms to settle their complaint. I'm mindful it took around three months for things to*

*be resolved. Considering everything, I think the compensation APL proposed of £500 is fair to compensate Mr H and Mr P for the distress and inconvenience they suffered.*

### ***My provisional decision***

*My provisional decision is that APL should pay to Mr P and Mr H*

*1. the difference between*

- a) the total interest that would have accrued to a mortgage of £111,790 at a rate of 2.55% a year on a rolled up (compound) basis between 28 January 2022 and 28 January 2045; and*
- b) the total interest that will accrue to their mortgage of £110,000 at the rate of 2.95% on the same basis and over the same period; and*

*2. compensation of £500 for distress and inconvenience.*

### **Developments**

In response to my provisional decision APL said they were prepared to make a compensation payment of £500. But they didn't think it was appropriate for them to pay redress in relation to interest on the basis I'd provisionally proposed.

APL explained the lender had never been in a position to offer to lend Mr H and Mr P £111,790 at 2.55%. So, they felt it was inappropriate to use those figures as a basis for calculating the redress. They'd asked the lender recently to clarify the rate that would have been available had the correct property details been provided at the time of the enquiry. And the lender had said the best rate that was available to Mr H and Mr P was 2.62%.

APL calculated that if Mr H and Mr P had completed a plan based on an initial release of £111,790 with an interest rate of 2.62% they would have owed £202,646.54 after the estimated 23 year period. They said the amount they will owe on their current plan at the end of the same period will be £214,683.54. If APL made a lump sum payment to Mr H and Mr P of £6,350 towards their current plan at the end of the first year, the total balance after 23 years would be £202,646.54. So that would put them back into the position they would have been in but for APL's mistake.

We put APL's proposal to Mr H and Mr P and told them we thought it was fair. They weren't happy with the proposed redress and compensation for several reasons, which I'll summarise:

- They'd raised concerns that the application form was ambiguous at the time of completing it and APL had later confirmed they'd filled it in correctly
- APL took over nine days to produce the KFI, much longer than previous ones, and did so only after Mr P had chased it
- They'd received an offer at 2.55% and had agreed to go ahead on that basis
- The 2.55% interest rate was a key factor in deciding to move house in the first place
- The proposal doesn't allow for them living longer than 23 years
- APL should have got the information about the available rate sooner and offered redress before now
- £500 doesn't adequately compensate them for the time spent dealing with the complaint and they remain unhappy about being asked to sign a non-disclosure agreement

## **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 thought carefully about the responses to my provisional decision. On reflection, I think APL's proposal in relation to redress is fair and reasonable. I'll explain why.

The KFI made clear it wasn't a legally binding offer and didn't oblige the lender to provide Mr H and Mr P with the mortgage described in it. Based on what the lender has said, it's unlikely they would have issued an offer to Mr H and Mr P for the £111,790 at 2.55% as I originally thought. But it's likely they would have offered that amount at 2.62%.

Although Mr H and Mr P say they initially decided to move on the basis they would be paying interest at 2.55%, they went ahead at a much higher rate in the end. And, on balance, I think they would probably have accepted 2.62% if that had been offered at the time.

Since the mortgage could never have gone ahead for £111,790 at 2.55%, I don't think it's fair to require APL to pay redress as if it would. Their proposal to pay Mr H and Mr P £6,350 so they can reduce the mortgage balance by that amount at the end of the first year of their current mortgage – by 28 January 2023 - is reasonable. It will put Mr H and Mr P back into the same financial position they would have been in but for APL's mistakes. If Mr H and Mr P use it to reduce the balance of their mortgage, they will owe the same after 23 years as they would have owed if they'd borrowed £11,790 at 2.55% over the same period.

There's no bar on them reducing the mortgage in that way. Their mortgage allows them to make overpayments of up to 10% a year without incurring an ERC. If, however, they had to pay a fee or other charge when making the overpayment, I'd expect APL to reimburse it, subject to evidence of payment. And, if APL don't make payment in time for Mr H and Mr P, acting reasonably promptly, to ensure the overpayment is made at the end of the first year of the mortgage, APL will need to adjust the amount they pay to make sure it does.

I explained in my provisional decision why I think it's reasonable to assume the mortgage will run for 23 years. I see no reason to change my mind about that.

I acknowledge Mr H and Mr P's strength of feeling about what happened and the time taken to resolve things. I took Mr H and Mr P's concerns about APL's handling of the application into account when considering compensation. I appreciate it's taken time to resolve the dispute since they complained to us. And APL could have made their offer sooner. But I think £500 compensation is fair even taking that into account.

## **Putting things right**

Bearing everything in mind, I think APL should pay Mr H and Mr P £6,350, or whatever sum is required at the time APL make payment, to put them into the position they would have been in had they completed a plan based on an initial release of £111,790 with an interest rate of 2.62%, plus any fees and charges they have to pay in making an overpayment to their mortgage, should they choose to do so, and compensation of £500.

## **My final decision**

I direct Age Partnership Limited to pay Mr H and Mr P

1. The sum of £6,350, or whatever sum is required at the date of payment, to put them

into the position they would have been in had they completed a plan based on an initial release of £111,790 with an interest rate of 2.62%;

2. Any fee or other charge the lender requires Mr H and Mr P to pay to reduce their mortgage balance, subject to evidence of payment; and
3. Compensation of £500 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mr P to accept or reject my decision before 9 February 2023.

Julia Wilkinson  
**Ombudsman**