

## **The complaint**

This complaint's about a mortgage that Mrs F and Mr M applied for through Wealthwise Financial Services Ltd (WFS). The mortgage application was unsuccessful but in the meantime Mrs F had sold her existing property and repaid the mortgage she had on it in her sole name, incurring an early repayment charge (ERC). If the new application had succeeded, that ERC would have been refunded.

That didn't happen because Mrs F and Mr M ended up taking the new mortgage from a different lender, using a different broker firm. The essence of the complaint is that Mrs F and Mr M believe WFS should have warned them the new mortgage application might not succeed and that they should wait until an offer had been received before committing to the sale.

## **What I've decided – and why**

The broad circumstances of this complaint are known to Mrs F and Mr M and WFS. I'm also aware that the investigator issued a comprehensive response to the complaint, which has been shared with all parties, and so I don't need to repeat the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mrs F and Mr M being identified. Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

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

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases. In doing that, I have to consider whether and to what extent Mrs F and Mr M would have made different decisions based on circumstances as they were at the time. I can give make no allowance for hindsight.

If I'm to order WFS to pay Mrs F and Mr M the compensation they're seeking, I have to be satisfied that WFS made specific errors or omissions in the handling of the application, *and* that those errors or omissions were the sole or over-riding cause of loss, financial or non-financial, to Mrs F and Mr M.

Arranging a mortgage isn't an exact science; nor is it a mechanical process. There may be anticipated timescales for how long an application might take, but occasionally things take longer than expected. Also, queries and issues might arise that couldn't have been predicted at the outset, and which either delay the application or take it in an unexpected direction. For the most part, I think the latter is what happened here.

This was a "porting" application; that is, one where the interest rate product from an existing mortgage is transferred to the new mortgage. Where that happens, the lender will typically

waive (or refund if the new mortgage starts after the existing one has been repaid) any ERC that would be due on redemption. Mrs F and Mr M's biggest grievance is that in their view WFS should have warned them not to complete on their sale until they had the certainty of a new mortgage offer from Mrs F's existing lender. But they also maintain WFS repeatedly assured them the lender, a business I'll call S, was certain to agree to the new mortgage. I'll deal with the latter first.

This wasn't a straightforward mortgage for WFS to arrange; the application to port involved a significant amount of extra borrowing and the addition of Mr M as joint borrower. Added to that, Mrs F's business had been impacted by the COVID pandemic, requiring support in the form of a government loan. Whether and how that might affect her capacity to borrow meant the porting application was far from being a formality, and it's likely WFS will have known this. Given that wider context, I'm not persuaded that WFS would have made the mistake of implying the porting application was assured of being accepted.

Turning to the decision to complete the sale before an offer had been issued, my starting point is that Mrs F and Mr M knew, or should reasonably have known, that an ERC would be payable on redemption of the existing mortgage. Mrs F's existing mortgage offer set out the terms in which an ERC would be payable. It also made clear that in order for the ERC to be waived or refunded, any porting application would be subject to meeting S's lending criteria at the time of applying.

Our investigator recommended WFS pay Mrs F and Mr M £750 compensation. This was for what he perceived as a lack of clarity on the broker's part about the possible risk of paying the ERC before knowing it could be refunded. After a great deal of consideration, I've come to the same conclusion. In my view, WFS didn't do enough to meet Mrs F and Mr M's information needs on the risk they were taking.

In the end, I don't think it changed the eventual outcome. In my view, it was always more likely than not that Mrs F and Mr M would have proceeded with the sale by 30 June 2021 as planned (and thus incurred the ERC), notwithstanding the other options they've now told us would have been available to them. Given this, I'm not persuaded it would be fair or reasonable to order WFS to reimburse them for the ERC they paid to S. But I can understand why they felt the sense of grievance they've expressed.

That brings me to compensation for time, trouble and upset. Even in the best-ordered situation, some things can or will go wrong in such a complex transaction as a non-simultaneous house sale and purchase, and some degree of stress and inconvenience is to be expected. Taking into consideration everything that both parties have said and provided, and mindful of our general approach, the £750 proposed by the investigator for failing to meet Mrs F and Mr M's information needs is at the upper end of the scale, but fair overall.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from their submissions how important this is to Mrs F and Mr M. That's a natural reaction, and entirely understandable when you're as close to a situation as they have been here. This is very much a subjective area; everyone reacts to and perceives things differently, especially "in the moment", when subject to the stresses that are inherent in a house transaction.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not

required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

### **My final decision**

My final decision is that I uphold this complaint in part only. In full and final settlement, I direct Wealthwise Financial Services Ltd to pay Mrs F and Mr M £750 for distress and inconvenience. I make no other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr M to accept or reject my decision before 15 August 2023.

Jeff Parrington

**Ombudsman**