

The complaint

Mr C has complained about the service he received from Hey Habito Ltd when applying for a mortgage to buy a property. He says he lost out on the mortgage rate he'd applied for because Habito didn't respond to messages from the lender.

What happened

Mr C found a property he wanted to buy and applied for a mortgage through Habito, which is a mortgage broker.

He received a mortgage offer on 29 June 2022 from lender N.

The property was leasehold, and there was an issue with the ground rent clause contained in the lease. Mr C and the vendor were resolving that issue through their solicitors, with a deed of variation having been drafted that was close to being finalised at the relevant time.

On 7 July 2022 lender N emailed Habito to let it know there was an issue with the valuation. That email said:

"We are in receipt of the valuation report and regrettably the valuer has deemed the property not suitable security, therefore we are unable to proceed with this property. Please advise how the customer wishes to proceed and whether the customer will be looking for another property or not. Valuer's comments received as follows: It is not possible to recommend the subject property as a suitable security as the terms of the Ground Rent, doubling every 15 years, are not acceptable, are considered to be onerous and could impact future saleability and mortgagability As such the property cannot be considered suitable security. The minimum term that doubling of the ground should occur is every 20.

Property not suitable security. Kindly advise how the customer wishes to proceed."

As it hadn't received a response lender N sent a further email to Habito on 1 September 2022, saying:

"Please contact [lender N] on [phone number] to confirm the application is still proceeding.

If no contact received the application will be lapsed in 10 working days."

Habito didn't respond and so lender N, on 16 September 2022, confirmed the application had been lapsed and a new application would be required.

On 23 September Mr C contacted Habito. He said his solicitor had been notified that the mortgage application had been cancelled and couldn't be reinstated. He said if Habito had contacted either him or his solicitor then it would have been told the ground rent issue was close to being resolved, so a single message would have kept the mortgage application on track.

There was some back and forth between Mr C and Habito, and a complaint was raised.

Habito issued its response to the complaint on 23 September 2022. It said it had received the three emails from lender N but hadn't responded or made Mr C aware of the contact. It apologised for not doing so and offered £150 compensation. However it said it didn't think it would have changed anything if it had responded to the emails (or made Mr C aware of them).

Mr C made a further application to lender N for the same property (without the involvement of Habito), which led to a mortgage offer being issued on 2 November 2022 and the mortgage completing on 16 December 2022.

Unhappy with Habito's response Mr C referred his complaint to our service where it was looked at by one of our Investigators.

Our Investigator upheld the complaint and said Habito should pay Mr C the loss he will incur due to the November mortgage offer being at a higher interest rate. He also said Habito should pay Mr C £250 compensation.

A month later Habito responded to our Investigator, saying:

"Habito is a mortgage broker. We have no say on a lender's decision to lend to someone or withdraw a mortgage offer.

There's no dispute [lender N's] emails were missed. We've offered fair compensation for these errors. Even if we had replied to the emails, the circumstances wouldn't have changed - the mortgage offer still would've been withdrawn.

Habito became aware of the issues with the property on 23 September and tried to get the mortgage offer reinstated. We were informed [lender N] would require a full Deed of Variation, which would need to be considered by both the valuer and [lender N's] underwriter.

At this point, [Mr C] only had a draft version of the Deed of Variation and we forwarded the draft to [lender N's] Business Development Manager who stated 'I've made enquiries and it is doubtful the deed of variation would make any difference'. This clearly suggests the mortgage offer would always have been withdrawn and the mortgage wouldn't have proceeded, even had we replied to the emails.

[Mr C] would've been informed of the need for a Deed of Variation before 23 September. If he contacted Habito sooner, more could've been done to help him. But he would've still needed a full Deed of Variation for the mortgage to proceed.

The need for a full Deed of Variation was a requirement of [lender N] and is something outside of Habito's control as a mortgage broker.

[Mr C] decided to proceed with a mortgage directly through [lender N]. He wasn't under any obligation to do so at the higher rate. There were other options available to him.

Habito hasn't seen anything to suggest [Mr C] could've been able to provide a full Deed of Variation before the mortgage offer expired. Given he proceeded with a mortgage from [lender N], I'd ask why [lender N's] Business Development Manager couldn't help more."

Our Investigator replied to Habito confirming Mr C had provided a full deed of variation before the offer would have expired, and the new mortgage (also with lender N) had completed on 15 December 2022, so before the original offer would have expired. He asked

Habito to clarify why it felt the offer would still have been withdrawn in those circumstances and he provided evidence of the mortgage completion.

Seven months have now passed and, despite several chase ups, Habito still hasn't responded. We can't keep matters in abeyance indefinitely, so the case has now been passed to me to decide without any further information from Habito.

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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr C approached Habito to act as his professional mortgage intermediary in this transaction. Habito has admitted that it received the emails from lender N and that it should have done something with them but didn't. That's not in dispute.

I've taken into account everything Habito has said in that it said it wasn't told by Mr C or his conveyancer that they were working on a deed of variation for the lease. But that isn't the deciding factor in this complaint.

I've also not commented on what lender N could have done, or what it said, as this complaint is about Habito not lender N.

Had Habito done what it should, which is read the emails from lender N and contacted its customer Mr C about them, then Mr C would have had the opportunity to explain that everything was in hand and should be in place for the mortgage to complete by the deadline in the June 2022 mortgage offer (which was 29 December 2022).

Lender N wouldn't contact Mr C or his conveyancer directly as Mr C had appointed Habito to act as his mortgage intermediary, which is why lender N emailed Habito. As a mortgage intermediary Habito needed to discuss those messages with its customer Mr C, but it didn't.

Had Habito contacted Mr C (at any time between the first email on 7 July and when the application was lapsed on 16 September) then I've no doubt this application wouldn't have lapsed and would have completed before the deadline given in the June mortgage offer. We can see this was possible by the fact a later application to lender N for the same property completed on 16 December 2022 following the provision of the deed of variation to lender N.

I'm satisfied the only reason this mortgage application was lapsed, which meant Mr C could no longer obtain the original mortgage interest rate, was because Habito didn't act on the emails it received over that two-month period. Had it acted on those emails then I'm satisfied the application would have continued, and Mr C would now have a mortgage being charged at the June 2022 mortgage interest rate.

Habito has offered to pay Mr C £150 *"For the trouble and upset caused by not sharing these important emails"* but I agree with our Investigator that doesn't go far enough.

If Habito had shared those important emails then I'm satisfied Mr C would now have an interest rate fixed at 2.63%, rather than one fixed at 3.79%. For that reason, Habito needs to compensate Mr C for that loss he'll incur.

Mr C borrowed £280,995 on a repayment basis over a 27-year term, which is the same as he'd applied for through Habito. So Habito needs to calculate the difference in payments for that mortgage (comparing the 2.63% he should have had to the 3.79% he got) until 31 July 2027 and pay that to Mr C as a lump sum.

The date of 31 July 2027 is to be used as that is when the original interest rate would have ended, and no additional interest needs to be paid on that lump sum because whilst Mr C has already paid out almost a year of higher payments, that will be offset by the fact he will be getting the remainder of the higher payments as a lump sum before he needs to pay them.

Mr C explained the impact on him of what happened, and I can see he tried to resolve things with Habito. He was shocked to find his mortgage application had been lapsed due to Habito not dealing with the contact from lender N, and Mr C was under pressure to arrange a new mortgage so the property purchase could complete. He was inconvenienced by the mistake Habito made and, considering everything, I think the amount our Investigator proposed of £250 is fair to compensate Mr C for the distress and inconvenience he suffered.

My final decision

I uphold this complaint and order Hey Habito Ltd to:

- Pay Mr C a lump sum equivalent to the difference in mortgage payments from 16 December 2022 until 31 July 2027. That calculation should be based on a mortgage amount of £280,995 held on a repayment basis over a 27-year term, comparing the 2.63% rate Mr C should have got, with the 3.79% that he has. The mortgage offers we hold show the monthly payments as £1,212.24 (at 2.63%) and £1,386.65 (at 3.79%).
- Pay Mr C £250 (less any amounts already paid, if any) in recognition of the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 December 2023.

Julia Meadows
Ombudsman