

The complaint

Mr M complains about a re-mortgage application he made through Hey Habito Ltd. He says that due to errors and omissions on Habito's part, he lost out on a low interest rate and will pay more over the next five years. He says the matter has caused him significant worry and stress and has impacted his health.

What happened

Mr M has a repayment mortgage with a lender I will refer to as (L). Habito had helped him secure a fixed rate product at 1.84% with L, which was due to end on 30 June 2022. In late 2021, Habito contacted Mr M to remind him that his product would shortly be coming to an end, and Mr M asked Habito to find him a new product.

In March 2022, Habito recommended a five-year fixed rate product at 1.99% with L and shortly after a mortgage offer was issued. This provided a start date of 1 June 2022 and an offer expiry date of 26 June 2022. The cover letter explained that Mr M didn't need to sign or return the offer, but he would be required to contact his broker to accept the deal. Mr M confirmed his acceptance to Habito, and he believed the new product had been agreed.

However, L had required further information due to the offer expiring before the end of Mr M's existing product. No response was provided to L and the offer expired on 26 June 2022. Mr M's mortgage reverted to L's Standard Variable Rate (SVR) on 1 July 2022.

On 8 July 2022, Mr M realised something had gone wrong and he contacted Habito, and it became clear the offer had expired. On the same day, Habito recommended a new product. This was a five-year fixed rate product at 2.99%. Mr M says he decided against proceeding at that time because he was concerned about the financial implications of being tied into a higher rate and the impact this might have on the complaint he'd registered with Habito.

On 28 July 2022, Habito recommended a five-year fixed rate product at 3.24% and Mr M accepted this.

Habito issued its final response letter in August 2022. In summary, it accepted that it had made errors that had caused Mr M financial detriment. But it felt Mr M was partially responsible for not spotting the errors with the relevant dates and it felt he could have mitigated this loss by accepting its recommendation for a fixed rate product at 2.99% on 8 July 2022. It made an offer to settle to complaint as follows:

- To pay 50% of the difference in the interest charged between the 1.99% rate product that had expired and the 2.99% rate product that it had recommended on 8 July 2022.
- To pay 50% of the difference in interest charged between L's SVR and Mr M's existing interest rate for the month of August 2022.

It said Mr M would have needed to end his existing product early to secure the 1.99% fixed rate product before it expired and an Early Repayment Charge of £202 would have been applicable – so this should be deducted from the settlement amount.

Unhappy with Habito's response, Mr M referred his complaint to this Service. An Investigator reviewed the complaint and thought it should be upheld. In summary, she said:

- Habito was entirely responsible for errors that had occurred, so it should pay the total amount of redress to be calculated.
- The ERC shouldn't be deducted.
- Habito should pay 8% interest on the extra Mr M has paid on his monthly payments.

She also felt Habito's offer to pay Mr M £500 for the distress and inconvenience the matter had caused was fair and reasonable in the circumstances.

Habito agreed to pay the full amount of the settlement and also to pay 8% interest on the extra Mr M had paid on his monthly payments, but it maintained its view that the ERC should be deducted from the amount payable to Mr M.

The Investigator felt Habito's approach was fair, and she put Habito's revised offer of settlement to Mr M.

Mr M didn't agree with the amount of interest calculated. He felt Habito had carried out the calculations incorrectly and hadn't taken into account interest that was being accumulated on top of his mortgage.

As agreement hadn't been reached, the complaint was passed to me for a decision. I issued a provisional decision to give both parties the opportunity to comment before I finalise my decision.

My provisional decision

In my provisional decision, I explained that I'd considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'd reached a similar conclusion to the Investigator. This is that Habito is responsible for the errors and omissions that have caused financial detriment to Mr M and Habito needs to make a financial settlement to put things right. However, my view differs on some of the detail about the parameters for the settlement.

Habito has accepted that it is responsible for the errors and omissions that have caused financial detriment to Mr M, and it has made an offer to put things right. So, the issue for me to decide here is whether this offer is fair and reasonable in all the circumstances.

I explained that as a starting point, where a customer has lost out financially, we would look to put them back in the position they would have been in as far as possible, if the business hadn't got things wrong.

Here, Habito should have ascertained the correct end date of Mr M's existing mortgage product and found a suitable product that would have been valid to start on 1 July 2022. Or, if it was Mr M's preference to proceed with the 1.99% fixed rate product, it should have arranged for his existing mortgage to end early, and at the latest possible point before the offer expired on 26 June 2022 because Mr M's existing rate was slightly less.

Habito has told this Service that a five-year fixed rate product of 2.09% would have been available to start from 1 July 2022. However, given the urgency and importance of securing a competitive rate that Mr M had conveyed in his emails to Habito, on balance, I thought Mr M would have chosen to proceed with the 1.99% rate – especially because the amount of the ERC payable (£202) is likely to be less than Mr M would have paid over five years at a higher rate. Because the payment of the ERC would have been necessary to secure the new rate, I agreed that this should be deducted from the settlement.

Habito has argued that Mr M ought to have accepted a new fixed rate at 2.99% when this was offered to him on 8 July 2022, and the settlement should be based on him obtaining this rate – rather than the higher rate of 3.24% he accepted on 28 July 2022. However, I didn't agree this is fair in the circumstances and I explained why.

Mr M says he only became aware that things had gone wrong on 8 July 2022, when he received a letter from L saying his mortgage had reverted to its SVR and his payments had increased. Habito provided its recommendation for the 2.99% fixed rate product that same day. Mr M says he didn't agree to this at that time because he was concerned about being tied into a product that he didn't think he could afford. He was also worried that this would negatively impact the complaint he'd made to Habito.

I hadn't seen any evidence to show Habito had addressed Mr M's concerns about his complaint being impacted or explain the urgency in him accepting a new product in order to mitigate his loss until 28 July 2022, and Mr M agreed to accept the rate available on that day which had increased to 3.24%.

I didn't think Mr M's reasons for not agreeing to a product sooner, or the amount of time he waited - approximately 20 days, were unreasonable in the circumstances. I noted that this was clearly a difficult and stressful time for Mr M, and I wasn't satisfied Habito had adequately addressed his concerns until 28 July 2022. Considering this, I felt the settlement should be based on the actual fixed rate of 3.24% that Mr M agreed to on 28 July 2022.

A further consideration was that, had the product transfer gone through as intended, the fixed rate of 1.99% would have run until 31 July 2027. As I can't know what will happen to rates after that date, 31 July 2027 is the end date for calculating redress.

I also considered the question of interest on the interest reimbursements. Each time Mr M has paid more each month than he needed to, he's been unfairly deprived of the extra amount. That would, ordinarily, entitle him to interest on each overpayment, from the time it was paid, up to the time it is reimbursed. The relevant rate is 8% simple per annum.

However, that's not the case for the extra interest payments Mr M hasn't yet made but will make between the date of settlement and 31 July 2027. For those, Mr M is going to receive redress before the loss has been incurred, so no interest is due. There's also a theoretical financial benefit to him receiving the redress before the loss has occurred. So, in the interest of fairness and simplicity, I was minded to conclude that the two should cancel each other out, and that I should not include an award of interest.

I'd also thought very carefully about the impact the matter has had on Mr M. I noted that Mr M making unnecessarily high monthly payments and trying to resolve the matter has caused him a lot of worry and stress. I also mentioned that he'd provided evidence to show the ongoing matter has impacted his health. Habito has offered to pay Mr M £500 for the distress and inconvenience it has caused, and I felt this is fair compensation in the circumstances.

To settle this complaint, I explained that I was minded to require Habito to calculate redress as follows:

- From 1 July 2022 to 28 July 2022, calculate the difference in interest charged between L's SVR and 1.99%.
- From 28 July 2022 to 31 July 2027, calculate the difference in interest charged each month between 3.24% and 1.99%
- Calculate the ERC that would have been applicable for Mr M ending his existing product early and deduct this from the settlement.

I said that the remaining balance calculated should be paid to Mr M.

I explained that Habito doesn't need to calculate and present the redress figure in response to my provisional decision. Habito and Mr M were being asked to agree to the principal of the settlement.

I also said that Habito should make a separate award of £500 for the distress and inconvenience caused by its actions.

Responses to my provisional decision

Mr M responded to my provisional decision, and I've summarised his key points below:

- He feels he should be paid interest on the reimbursement of the overpayments he's made. He says that, as a result of paying a higher amount, he has defaulted on other debts which has impacted his credit file.
- Mr M doesn't agree he would have paid an ERC had Habito not got things wrong, so he doesn't think this should be deducted.

Habito has also responded to my provisional decision. In summary, it said it believes the rate of 2.99% should be used as the basis for redress. It said it had encouraged Mr M to proceed with this product while his complaint was being investigated, and it feels it made every effort to mitigate the financial loss.

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 taken into account Mr M's comments about wanting interest on the reimbursement of the overpayments he's made. However, it remains my view that his receipt of the of the extra interest payments not yet made provides a theoretical benefit to him, and I remain satisfied that a fair approach here is for the two to cancel each other out. So, I won't be requiring Habito to award interest on the overpayments Mr M has made.

Mr M has explained that he's defaulted on other debts as a result of making higher payments, but he hasn't provided this Service with evidence to show that any defaults, or any negative impact on his credit file, has directly resulted from this matter. As a result, I'm unable to take this into account when deciding what Habito needs to do to put things right.

I've also taken into account Mr M's view that the ERC shouldn't be deducted. However, for the reasons that I've explained in my provisional decision, it remains my view that Mr M would have needed to pay an ERC to secure the lower rate of 1.99%, and the amount applicable should be deducted when calculating the settlement.

I've also taken into consideration what Habito has said in response to my provisional decision. However, for the reasons that I set out in my provisional decision, it remains my view that Mr M's reasons for not agreeing to a product sooner, or the amount of time he waited before securing a new product, were not unreasonable in the circumstances.

After reviewing everything, I see no reason to depart from my findings in my provisional decision.

Putting things right

I require Hey Habito Ltd to calculate redress as follows:

- From 1 July 2022 to 28 July 2022, calculate the difference in interest charged between L's SVR and 1.99%.
- From 28 July 2022 to 31 July 2027, calculate the difference in interest charged each month between 3.24% and 1.99%
- Calculate the ERC that would have been applicable for Mr M ending his existing product early and deduct this from the settlement.

The remaining balance calculated should be paid to Mr M.

I also require Hey Habito Ltd to make a separate award of £500 for the distress and inconvenience caused by its actions.

My final decision

My final decision is that I uphold this complaint, and I require Hey Habito Ltd to calculate redress as I've set out above. I also require Hey Habito Ltd to make a separate award of £500 for the distress and inconvenience caused by its actions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 October 2023.

Michelle Griffiths
Ombudsman