

The complaint

This complaint's about a mortgage application that Mr P and Mrs T made through Quilter Wealth Limited (QW). They say that due to errors on QW's part, they didn't have enough money to complete their purchase. The transaction was delayed whilst the lender agreed to provide a bigger mortgage, and Mr P and Mrs T say they've lost out financially as a result.

What happened

By way of a provisional decision dated 17 July 2023, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are known to Mr P, Mrs T and QW. I'm also aware that the investigator issued a 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 Mr P and Mrs T being identified. Instead I'll give a brief summary of the key events, rounding the figures, and then 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.

Mr P and Mrs T wanted to buy a new home together. Mr P already part-owned a shared ownership property, subject to a mortgage of around £51,500 with a lender I'll call B. The plan was for the new mortgage to be with B, so that Mr P's existing fixed rate deal could be ported to the new mortgage. His share of the sale proceeds from the shared ownership was recorded as being about £102,000, and he and Mrs T were providing about £8,000 from savings. The new property they were buying was priced at £390,000; with all costs factored in, QW's advisor worked out that they'd need to borrow around £293,000.

The application was made to B, and a mortgage offer was issued in two parts; a little under £242,000 of new borrowing on a five-year fixed rate of 1.53%, and around £51,500 at the ported rate of 1.79%, fixed until January 2026. However, when Mr P and Mrs T's solicitor were preparing for completion, it became apparent there wasn't enough money in the equation. What hadn't been factored in was that the existing mortgage of £51,500 with B needed to be repaid from the sale proceeds of Mr P's 30% share in his existing home. In reality, the available funds from the sale were only about half what had been recorded on the fact-find

At short notice, B was asked to increase the new mortgage; it did so, agreeing to make a new offer of approximately £332,500; a loan-to-value ratio (LTV) of 85%. Again, the offer was made up of two parts; just under £281,000 of new borrowing on a five-year fixed rate of 2.15%, and around £51,500 at the ported rate. This left Mr P and Mrs T having to find £58,500 from other sources, which they managed to do. Completion was delayed whilst all this was organised. When Mr P and Mrs T complained, QW rejected the complaint.

When the case came to us, our investigator found QW to have been at fault, and recommended it reimburse Mr P and Mrs T for the extra interest they'll pay on the new borrowing element of the mortgage, and pay them £300 compensation. Miss B and Mr M accepted the investigator's findings. QW disagreed, saying it wasn't its advisor's fault. Mr P and Mrs T had too small a deposit. The case comes to me to decide.

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.

Having done so, I've reached a similar conclusion to the investigator; QW, by its errors and omissions, has caused significant financial detriment to Mr P and Mrs T. But more detail is required about where QW went wrong and the parameters for the settlement I will be requiring it to provide. By issuing this provisional decision, I'm giving both parties the opportunity to comment before I finalise my decision.

The underlying problem that gave rise to this complaint is simpler than it might seem, and contrary to its claims otherwise, QW is very much responsible. When the interest rate product of an existing mortgage is ported (i.e. carried over) to a new mortgage, it is just the product that is ported; the debt itself is not. The money owed under the existing mortgage has to be repaid, and the legal charge vacated, in order that the property being sold can be passed on without any incumbrance.

What this means is that the £102,000 that Mr P and Mrs T thought would be the sale proceeds from the sale of Mr P's shared-ownership property would be only about half that, once the existing mortgage with B had been repaid. So it was always the case that they'd need to borrow the higher figure they've ended up borrowing.

I wouldn't necessarily expect lay persons such as Mr P and Mrs T to understand that distinction, but I would very much expect QW's mortgage advisor, as an industry professional, to understand that mortgage lending can't be in two places at once. Yet, it is clear from the messages he exchanged with Mr P and Mrs T when the shortfall became apparent just before scheduled completion that he did not. Instead, QW's advisor repeatedly sought to shift the blame to their solicitor. I don't know if QW has studied those messages, but if it has, it should be embarrassed by the position it has taken on this complaint.

What should have happened here is that QW's advisor should have made sure Mr P and Mrs T understood, *at the start of the application process in summer 2021*, that:

- the actual net proceeds from the shared-ownership sale would be more like £50,000 rather than £102,000, and;
-
- to purchase a new home at £390,000, taking into account the £8000 they were putting in, the new mortgage would need to be in the region of £332,000

That being so, the position in which Mr P and Mrs T currently find themselves is, in all likelihood, not hugely different from where they would have been if QW hadn't failed to make sure they understood how much deposit they really had. They'd still have ended up borrowing the amount they have. But if QW's advisor hadn't got things so badly wrong, it would not have come as such a shock to Mr P and Mrs T that they'd need to borrow the amount they did. The larger mortgage from B would still have

happened, but it would have been arranged in a more orderly fashion, and in a calmer environment where Mr P and Mrs T weren't not under the pressure of a delayed completion.

The other key difference is that if the right amount had been applied for at the outset, the right amount would have been offered first time around, and the new borrowing would have been at an interest rate that B was offering in January 2022 rather than in March 2022. B has provided us with details of the rates it was offering in January 2022. For an 85% LTV and a broker fee of £999 – so like for like - the five-year fixed rate in January 2022 would have been 2.05%.

It's reasonable to conclude that but for QWs' failings, the new mortgage from B would have been issued in time for Mr P and Mrs T to complete the transaction on the original schedule, and with the new borrowing at 2.05% rather than 2.15%. If that had happened as it should, Mr P and Mrs T would have been paying interest on the new borrowing at a lower rate than they currently are.

However, the new, bigger, mortgage would have started sooner than it actually did. So whilst they may not have realised it, Mr P and Mrs T have also accrued a small saving to offset against the extra cost. For the purposes of calculating redress, I have used the original intended completion date, assuming nothing had gone wrong, of 25 February 2022. The actual completion date was 17 March 2022

Mr P and Mrs T are paying interest on the extra borrowing at 2.15%, instead of 2.05% and will continue to do so until 31 May 2027. So, the additional borrowing cost to them of QW's failing is:

- the difference in interest charged each month on the new borrowing part of the mortgage from 17 March 2022 to 31 May 2027, between 2.15% and 2.05%; less
- the interest that would have been charged at 2.05% on the new borrowing part of the mortgage from 25 February 2022 to 17 March 2022.

On the assumption that all payments to B are made in full and on time, QW will then have to calculate each month's differential interest, and show its workings. QW doesn't need to calculate and present the redress figure in response to this provisional decision; at this stage, QW (and Mr P and Mrs T) are being asked to agree to the principal of the settlement. If the parties do agree, then QW will be required to present the calculation when carrying out the settlement.

I've then considered the question of interest on the interest reimbursements. Each time Mr P and Mrs T have paid more each month than they needed to due to QW's shortcomings, they've been unfairly deprived of the extra amount. That would, ordinarily, entitle them 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 they haven't yet made, but will make between the date the complaint is settled and 31 May 2027. For those, Mr P and Mrs T are going to receive redress before the loss has been incurred, so no interest is due. In fact, not only is no interest due, but there's also a theoretical financial benefit to them receiving the redress before the loss has occurred. In the interest of fairness and simplicity, I'm minded to conclude that the two should cancel each other out, and that I should not include an award of interest.

Mr P and Mr T have told us they also had to reimburse their buyer £415 for accommodation and storage costs, because his move in was held up. Subject to them providing corroborative evidence of the agreement, and the payment being made, I am presently minded to order QW to reimburse this sum to Mr P and Mrs T. I'd ask Mr P and Mrs T to include this proof, if they have it, with their response to this provisional decision. To be clear, without it, I shall not make this part of the award in any final decision.

Lastly, for the impact this situation has had on Mr P and Mrs T, I'm not persuaded £300 is adequate compensation. The whole experience of making these unnecessarily high monthly payments, and fighting for a fair outcome, will have caused Mr P and Mrs T lot of worry and stress that could have been avoided if QW hadn't got thing wrong in the first place, and then secondly, had responded to the complaint fairly and reasonably. As things stand, I have detected a complete lack of understanding on QW's part, and an absence of any empathy towards Mr P and Mrs T for what it has put them through."

Both parties were given a two-week time frame in which to make their further comments. Both have accepted the provisional decision, but QW disagreed with my reference to "significant financial detriment". It also took exception to the tone and language I used when describing the advisor's actions and the investigation.

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 considered afresh everything that both parties have said and provided. Having done so, and both parties accepting the gist of it, I won't be changing my decision. However, I'll address QW's points about my narrative.

The reference to financial detriment should have read "non-financial detriment"; I apologise for the omission. As for the tone of my comments about the advisor's actions and the investigation, I stand by them. They reflected my very genuine concern about the tone and content of the comments the advisor made about the solicitors in particular – which QW has implicitly defended, when it should have known the position was indefensible.

My final decision

My final decision is that I uphold this complaint, by ordering Quilter Wealth Limited to do the following:

- reimburse Mr P and Mrs T the difference in interest charged each month on the new borrowing part of the mortgage from 17 March 2022 to 31 May 2027, between 2.15% and 2.05%, less the interest that would have been charged at 2.05% on the new borrowing part of the mortgage from 25 February 2022 to 17 March 2022;
- subject to evidence of the payment having been made, reimburse Mr R and Mrs T £415 paid to their buyer; and
- pay Mrs and Mr P £750 compensation for their time, trouble and upset.

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 Mr P and Mrs T to accept or reject my decision before 8 November 2023.

Jeff Parrington
Ombudsman