

The complaint

Mr and Mrs H complain that HL Partnership Limited selected a three-year product when it applied for a mortgage on their behalf, despite them saying they wanted a five-year product.

Mr and Mrs H ask for an indemnity for any losses they incur in the two years after their product ends, or suitable compensation. Mrs H has dealt with the complaint.

What happened

Mr and Mrs H took mortgage advice from HLPL in mid-2021. It recommended a five-year fixed rate product and the lender issued a mortgage offer.

Mr and Mrs H's sale fell through and the mortgage offer expired. They re-applied for a mortgage with the same lender in early 2022. HLPL said interest rates had reduced and gave them the rate for the product equivalent to the product in their expired mortgage offer. Mr and Mrs H went ahead with this. They said there was no mention of this being a three-year product. They said they weren't aware of this until after their mortgage completed in April 2022.

HLPL accepts it made an error. The lender offered a five-year product and a three-year product at the same interest rate. HLPL selected the three-year product in error. It offered £2,500 to Mr and Mrs H to settle the complaint. It also pointed out that a mortgage offer was sent to Mr and Mrs H which set out the product term and they said it was fine.

Our investigator said it was reasonable to expect Mr and Mrs H to read their mortgage offer. He said the £2,500 offered by HLPL was fair and reasonable. He said any future loss can't yet be determined and we wouldn't usually recommend an indemnity as there are risks with this.

Mrs H said as HLPL had admitted the error the question was only about the amount of compensation. She said they calculated their likely losses as between £25,000 to £75,000 and couldn't see how £2,500 could be fair. Mrs H disagreed that they contributed to the loss by not picking up the error by reading the mortgage offer.

Mrs H said if they aren't happy with the outcome of this complaint, they'll take the matter to court once their losses can be determined.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

There's no dispute that HLPL made an error. It selected a three-year product for Mr and Mrs H's mortgage instead of the five-year product they wanted. The products had the same

interest rate. But Mr and Mrs H will only have the benefit of that interest rate for three years. Interest rates have increased since early 2022. Mr and Mrs H say they will have significant additional interest costs as compared to having a fixed rate for five years.

We don't know what mortgage interest rates will be in mid-2025 or what interest rate products will be available to Mr and Mrs H. This means I can't at this point determine what Mr and Mrs H's losses might be.

While Mrs H says this could be addressed with an indemnity, there are problems with this. The wording of the indemnity would need to be agreed between Mr and Mrs H and HLPL. There could still be dispute in 2025 about the amount of the loss. While Mrs H says they'd allow HLPL to find a new product for them to mitigate its loss, that might turn out not to be straightforward. The product with the lowest rate might not suit Mr and Mrs H for other reasons. The parties would need to agree how possible changes in their circumstances would be dealt with. For instance, if Mr and Mrs H were in a position to repay part of the mortgage loan in 2025, which would reduce the amount of interest they pay overall and could give them access to a different loan to value product range.

That's not to say that the parties can't agree an indemnity if that's what they want to do, or that contingencies can't be addressed with careful drafting. But I don't think it's fair and reasonable to require HLPL to provide an indemnity to resolve this complaint when there are number of matters that the parties would need to reach agreement about.

And Mr and Mrs H would be at risk of HLPL ceasing to trade before they could claim on the indemnity.

In fairness, I must also take into account that Mr and Mrs H were given information about the mortgage product in January 2022. The key facts illustration and the mortgage offer, both issued in January 2022, say the product has a fixed rate until 30 April 2025.

A mortgage offer is an important document. It's reasonable to expect customers to read a mortgage offer before accepting it. The cover emails/letter from HLPL and the lender asked that Mr and Mrs H check the offer. There's no dispute that HLPL made an error when it selected a three-year product. But I do need to take into account that Mr and Mrs H ought reasonably to have been aware of this if they'd read the mortgage offer. It's likely they'd have been able to switch to a five-year product if they'd wanted to do so.

Mr and Mrs H would have been upset when they found out they had a three-year product. Given the increase in interest rates since early 2022 I can understand their concern about what might happen in 2025. I think it's right that HLPL offered compensation. Taking everything into account, I think HLPL's offer to pay compensation of £2,500 is fair and reasonable in the circumstances.

Mrs H says they might take the matter to court once the amount of their loss becomes clear. If Mr and Mrs H don't accept my decision they will be free to take the matter to court if they want to do so.

My final decision

My decision is that HL Partnership Limited should pay £2,500 to Mr and Mrs H, as it offered to do (unless of course it has already made the payment).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 9 February 2024.

Ruth Stevenson
Ombudsman