

## **The complaint**

Mr and Mrs G's complaint is about unsuitable advice and poor service they received from AMG Financial Management Limited.

Mr G, who has dealt with the complaint throughout, says that his broker at AMG led him and Mrs G to believe they'd been approved for a mortgage of £650,000, but the lender would only offer £519,000.

To settle the complaint, Mr and Mrs G want AMG to pay compensation of £34,608.01, which is the difference between the 0.98% mortgage interest rate they thought they had an Agreement in Principle (AIP) for and the mortgage interest rate they are continuing to pay.

## **What happened**

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs G being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision.

Mr and Mrs G approached AMG for mortgage advice, as they wanted to re-mortgage both their residential property, which comprised of a house, and a buy-to-let (BTL) property, which was the basement flat in the same building, onto one single mortgage secured on the residential property. Their existing residential mortgage was £367,000 and the BTL mortgage was £277,400, a total of £644,400. Mr and Mrs G wanted to borrow £650,000.

The choice of lenders was limited, because the property was a combination of leases, as well as the freehold title, and the upper part of the property had been turned into a house without removing the leases. In addition, some lenders don't allow residential borrowing to repay BTL, and the options were further reduced by Mr and Mrs G wanting an interest-only mortgage.

An AIP was obtained from a lender I will call HS, for a loan of £650,000. However, the application was declined by HS at an initial stage on the basis of affordability. Another lender, NW, was approached, and an AIP was issued for £557,400. I will explain here that an AIP is not a mortgage offer, it is simply an indication of how much a lender might be prepared to lend.

An application was made to NW, and ultimately NW was only prepared to offer a mortgage of £519,200 on a five-year fixed rate of 0.98% until 28 February 2027. The broker attempted to get NW to increase its offer, but wasn't able to do so. Mr and Mrs G accepted the offer of £519,200, but this wasn't sufficient to pay off the entirety of the BTL mortgage.

It was at this point that things started to go wrong. Mr G says he was led to believe by the broker that NW was going to honour an AIP for £650,000, and that it was going to pay

compensation for not doing so. A payment of £2,000 compensation was made in May 2022 (which Mr G was told had been paid by NW), but this was paid by the broker.

In addition, Mr G was told by the broker that NW was going to pay further compensation. This was because Mr G said he'd had an AIP from NW for £650,000 but the actual amount NW would lend was £519,200, so the difference was £130,800. Mr G said he'd be prepared to accept the amount as £125,200 (which was the difference between his previous two existing mortgages and the £519,200 borrowed from NW).

As the £125,200 remained secured on the BTL mortgage, Mr G wanted NW to pay the difference in the interest he was paying on the BTL mortgage and the 0.98% interest rate he'd taken out with NW, over the five-year fixed-rate period.

Mr G was led to believe by the broker that this would be paid, but in fact it was never something that was offered by NW. Mr G said he was also told by the broker that a complaint had been made to our service, when it had not.

Once the broker's actions came to light, Mr G complained to AMG. After looking at what happened, it was explained to Mr G that there had never been an AIP from NW for £650,000. NW had only ever been prepared to lend £519,200, and so there was no basis on which AMG was prepared to compensate Mr and Mrs G for losing out on borrowing that NW had never been prepared to offer them.

Mr and Mrs G brought their complaint to our service. An Investigator looked at what had happened. She agreed that the broker's actions were unacceptable. However, she was satisfied that there had never been an AIP from NW for £650,000 (the only AIP for this amount had been from the first lender, HS, which had declined the application). There was therefore no basis on which Mr and Mrs G could be compensated for NW not lending them what they wanted.

The Investigator was satisfied that the £2,000 paid by the broker was more than any award our service was likely to make, and so didn't recommend AMG did anything further. Mr G said that the compensation is only for issues up to May 2022, and that it didn't cover what had happened since then.

The Investigator clarified that she didn't think AMG needed to do anything further for the following reasons:

- There was no actual financial loss, as NW had never been prepared to lend £650,000.
- Therefore, even if the broker had been upfront about this from the start, rather than leading Mr and Mrs G to believe NW had done something wrong, the outcome would not have been any different.
- Mr and Mrs G could have fixed the interest rate at any time on their BTL mortgage and had been advised that they could do this in September 2021.
- Whilst she'd have expected Mr and Mrs G to be compensated, she was satisfied the £2,000 already paid (albeit directly by the broker) was more than she'd have asked AMG to pay.

Mr G disagreed with the Investigator's findings and asked for an Ombudsman to review the complaint.

### **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 will start by clarifying that we're not the regulator of financial businesses, and we don't "police" their internal processes and systems, or how they operate generally; that's the role of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers.

We also have no power to sanction, punish or fine businesses – that's the role of the FCA. Nor do we have the authority to determine whether or not a business has breached legislation, broken the law, or is in breach of contract, and we don't award damages – all of those matters fall within the remit of the courts.

The Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint. So although I've noted the questions which Mr G would like answered, it's not my role to put those questions to AMG or act as a representative or go-between on this case.

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. My role is to review the complaint, not to re-investigate it, and so I won't be commenting on each and every document in the file.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and 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. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

I'm satisfied there was never an AIP from NW for £650,000. The only AIP for this amount was from HS, which declined the application. The only AIP from NW was for £557,400, but ultimately NW would only lend £519,400, which Mr and Mrs G accepted.

I don't know why the broker led Mr G to believe that NW would be paying compensation of almost £30,000 to cover additional interest that he and Mrs G would have to pay on their BTL mortgage because they weren't given the full amount of the mortgage they wanted from NW. I've seen the emails the broker produced which purported to be from NW, and I can see why Mr G believed his claim for compensation was being progressed by NW.

However, logically, there is no basis for NW to have offered compensation. Lenders do not compensate borrowers for additional interest the borrowers will pay on debt that they've been unable to consolidate where the lender has declined to offer them the full amount they wanted. Given this, I cannot reasonably find that AMG should be held responsible for this either, as it is not something Mr and Mrs G would ever have been entitled to claim, either from NW or from AMG.

I'm satisfied Mr G was given advice about BTL options in September 2021, but declined to go ahead with a new fixed rate product at that time "*.. as we have no ERC and a relatively low rate at the moment...*" It is clear from the correspondence that Mr G did not want to be tied into a new product with a product fee and an ERC. Mr and Mrs G could have fixed their BTL mortgage onto a new rate at any time, and so I don't find that AMG is responsible for any interest rate increases that might have impacted the cost of this, as Mr and Mrs G could have mitigated their position and taken out a new rate.

Overall, I'm not persuaded there has been any actual financial loss, as Mr and Mrs G were never entitled to, or offered, a mortgage of £650,000. On that basis, I'm not ordering AMG to pay any redress for the losses claimed by Mr and Mrs G.

But I'm satisfied that Mr and Mrs G have been caused upset, distress and inconvenience and that they are entitled to be compensated for this. As I said above, we do not punish or fine financial businesses. What I have to decide is whether the compensation paid is sufficient, or if there is anything more AMG needs to do to put things right.

There is no doubt the broker's actions were egregious, and if no compensation had been paid, I would be making an award to Mr and Mrs G for the distress and inconvenience they've been caused. My recommendation would, if no compensation had already been paid, have been for a payment of £1,000. Because Mr and Mrs G have been paid compensation of £2,000, I'm therefore not going to order AMG to pay anything more. It matters not that the compensation of £2,000 paid to Mr and Mrs G came directly from the broker, because they have received more than I would have awarded in any event.

I know this isn't the outcome Mr and Mrs G were hoping for. I don't underestimate Mr G's strength of feeling about what happened, and I agree the service he and Mrs G received from the broker fell short of the standard I'd have expected, particularly in relation to the non-existent compensation from NW that Mr G was led to believe would be made. But on the basis of the evidence, and what I consider to be fair and reasonable, I'm satisfied that the payment of £2,000 is sufficient, fair, reasonable and proportionate to the errors made by AMG.

I appreciate Mr G is likely to disagree with my decision, and he and Mrs G are under no obligation to accept it. If they decide not to accept the decision, it won't be legally binding on them or AMG, and Mr and Mrs G will be free to pursue their grievances against AMG in court, should they wish to do so.

### **My final decision**

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 7 June 2024.

Jan O'Leary  
**Ombudsman**