

## **The complaint**

Mr and Mrs W complain that Shield Financial Planning Ltd (an appointed representative of The Right Mortgage Limited) caused delays in their mortgage application because of its poor advice and inaction. Mr and Mrs W say they were given a timescale of 10 days for a re-mortgage initially, and later five days once a mortgage offer has been issued – and neither turned out to be correct. Mr and Mrs W say they have incurred financial losses and have experienced trouble and upset because of Shield's actions.

## **What happened**

Mr and Mrs W first approached Shield during August and September 2021. Shield has said the mortgage wasn't affordable at the time due to Mrs W not working. And, it's said it has nothing on file confirming that it told Mr and Mrs W a re-mortgage would take 10 days. It's said it's standard practice that it'd inform a client is that it would take around two to three weeks for a mortgage offer to be obtained.

Mr and Mrs W contacted Shield again on 16 March 2022 requesting a call as their existing fixed interest rate deal was due to end in June 2022. Following that, the adviser carried out affordability checks with a potential lender, but it was only able to lend £85,000. The adviser said that Mr and Mrs W would either need to re-mortgage with their existing lender or to move onto the lender's Standard Variable Rate (SVR) until Mrs W had a job. In response, Mr and Mrs W said that Mrs W would be getting a job and that Mr W would be getting a pay rise in April. And, that they'd probably stay on the SVR for a month or two. The adviser said that once Mrs W had a job, she wouldn't be classed as being financially dependent on Mr W.

Mr and Mrs W contacted Shield again on 8 April 2022. By this point, Mrs W had received a job offer but was still considering her options. Mr and Mrs W asked the adviser if Mrs W needed to be paid from a job or, for example, to have worked through probation, for her income to be considered as part of a mortgage application. The adviser explained that this was dependent on the lender and said that once Mrs W had accepted a job offer, they could go through what lenders would require. In a later message, the adviser said, "We can get a remortgage through within 5 days from date of offer."

Mrs W started her new job at the end of April 2022. Mr and Mrs W contacted Shield on 1 May 2022 to confirm this and to ask if they should re-mortgage now or whether it was better to wait until Mrs W had been working for a few months. The adviser asked to arrange a call to discuss the details and said he could then see which lenders would accept Mrs W's employment contract.

After Mr and Mrs W sent a copy of Mrs W's employment contract to the adviser, further conversations took place and Mr and Mrs W sent the requested documentation to the adviser. A conveyancing solicitor was also instructed, and a fact find was completed. A decision in principle was obtained with a new lender, who I'll call "Lender A" and a mortgage illustration was provided to Mr and Mrs W on 11 May 2022. This illustration set out proposed borrowing with Lender A of £135,495 based on an estimated property value of £160,000. Shield sent its suitability report to Mr and Mrs W on 29 May 2022, which set out – among other things – that they wanted a better interest rate as their existing deal was ending and additional borrowing to repay their help to buy loan.

Mr and Mrs W asked Shield some questions about the help to buy aspect of the process. The adviser suggested that they may wish to speak to the solicitor about those matters.

Unfortunately, following a valuation of Mr and Mrs W's property, Lender A said the maximum it could lend was £123,745 (inclusive of fees). Mr and Mrs W said they wanted to proceed with this amount – they'd use the additional borrowing to repay half of their help to buy loan and the rest to repay a car loan. Lender A sent a mortgage offer to Mr and Mrs W on 27 June 2022, which was valid until 24 December 2022.

Mr and Mrs W contacted Shield on 3 July 2022 asking if it'd heard anything from the solicitors. The adviser replied to Mr and Mrs W the next day and said the solicitor probably wouldn't contact him until completion. And he suggested that Mr and Mrs W may want to call the solicitor to speed things up.

Towards the end of August 2022, Mr and Mrs W expressed some concerns they had about the solicitors to the adviser, when trying to resolve a valuation issue for their help to buy loan.

Shield next contacted Mr and Mrs W on 24 November 2022 asking if they'd received a completion date. Mr and Mrs W again expressed concerns about the solicitor. They said they were hoping for an extension of the mortgage offer from Lender A so they don't need to get a new deal, as completion would still be four to six weeks. The adviser responded the same day and said the offer had been extended to 3 January 2023. Mr and Mrs W indicated completion won't have taken place by then due to the time the help to buy process takes – and because the solicitor had only recently sent the required information to the help to buy administrator. They also said the solicitor only did this after they investigated the requirements themselves and asked the solicitor about it. And that the matter would have been done by August if the solicitor knew what he was doing.

Mr and Mrs W contacted Shield on 30 November 2022. At this point they expressed that the solicitor had caused an issue. They asked the adviser how quickly a new offer could be arranged and said that the help to buy loan provider won't allow any additional borrowing. So, a new application would need to be made for the outstanding mortgage balance and half of the help to buy loan only – approximately £102,000 for the mortgage and £14,500 for half of the help to buy loan.

Lender A issued a new mortgage offer to Mr and Mrs W on 11 December 2022. This was for total borrowing of £117,047 (inclusive of fees). However, the offer document said it was only valid until 24 December 2022. Mr and Mrs W queried this with Shield's adviser who, in turn, contacted Lender A. On 17 December 2022, Mr and Mrs W said that unless Lender A would extend the offer for over 6 weeks, there was no point in proceeding. They asked the adviser to look at sourcing a new deal.

Shield asked Lender A to consider extending its offer further, but these requests were declined. The adviser researched new deals and found that limited options were available due to affordability. On 4 January 2023, Mr and Mrs W opted for a two-year fixed rate with Lender A and a decision in principle was obtained. But, on 11 January 2023, Mr and Mrs W asked the adviser to look at tracker products as they thought interest rates were going to drop. An application was made to another lender, who I'll call "Lender F" and a decision in principle was accepted. In the meantime, on 18 January 2023, Lender A sent a mortgage offer to Mr and Mrs W based on a two-year fixed rate.

On 23 January 2023 Lender F issued a mortgage offer to Mr and Mrs W. However, Mr and Mrs W contacted Shield a few days later asking if the adviser had told Lender F about the help to buy loan. The adviser confirmed he hadn't told Lender F about the help to buy loan as they weren't making payments towards it and Lender F's application didn't ask for this information.

Further communication took place between Mr and Mrs W, the adviser, the solicitor, and Lender F. On 7 February, Lender F said that the mortgage wasn't affordable with the help to buy loan in place. And so, it was unable to proceed with the application. Mr and Mrs W decided to stay with their existing lender and switch to a new interest rate deal. They took out a two-year fixed rate of 6.38%.

Mr and Mrs W complained to Shield about the service and advice they'd received. They sought compensation. Shield didn't agree that it was responsible for any delays up until January 2023 and felt the adviser had supported Mr and Mrs W. However, it accepted the adviser caused a delay with the last application through Lender F. Shield offered to pay Mr and Mrs W £250 to recognise the distress and inconvenience caused and to refund its fees totalling £100.

Because Mr and Mrs W didn't agree, they referred their case to the Financial Ombudsman Service. Our Investigator upheld Mr and Mrs W's complaint in part. She felt that Shield had given mis-leading information about there being a five-day timescale. She felt this caused a loss of expectation and recommended that Shield should pay a further £100 to Mr and Mrs W to recognise the impact of this. She didn't agree that Shield had delayed Mr and Mrs W's application with Lender A. And, while she acknowledged Shield's error with the application to Lender F, she felt its offer to put things right in relation to that was fair.

Mr and Mrs W didn't agree with the Investigator. They've said Shield gave them negligent advice and is therefore liable for the damages and costs incurred by them in relying on that advice. They said that they'd relied on the adviser telling them a re-mortgage was possible within five days from the date of offer. Mr and Mrs W say the adviser told them this to give them confidence things would move quickly so that they didn't agree a new deal with their current mortgage lender. They say this was so Shield could benefit from the new lender's commission. They've said it would never have been possible for a mortgage to complete within five days and feel the adviser ought to have known this. They say that because of Shield's advice, they didn't consider selling their house and downsizing, or signing a re-mortgage deal with their existing lender at a much lower rate, compared to the one they are now on. They feel the Investigator's recommendation is incorrect in law but that it shows she agrees they were reasonable to rely on the advice they were given.

Mr and Mrs W asked for the complaint to be reviewed by an Ombudsman, so it was passed to me to decide.

### **My provisional decision**

I didn't think Shield's offer went far enough to put things right, so I issued a provisional decision on 9 April 2024. I proposed that Shield should compensate Mr and Mrs W further for the impact its errors had on them. I said:

"Having considered everything carefully, I've come to the same conclusion as the Investigator on some parts of the complaint but a different conclusion on other parts.

First of all, I note that Mr and Mrs W have questioned The Right Mortgage Limited's involvement in their complaint. It isn't unusual for a broker to be an appointed representative of a wider network; the network will then take responsibility for complaints. At the time of the advice in 2022, Shield Financial Planning Ltd was an appointed representative of The Right Mortgage Limited. The Right Mortgage Limited is therefore the correct respondent to this complaint.

Turning to the merits of the complaint, I'll first consider Mr and Mrs W's concerns about the five-day timescale given to them by Shield's adviser. Shield has said that the message containing the five-day timescale was early in the process and didn't give any guarantees. It's also said that it took this as a generic statement of what is possible but that it understands it could be misinterpreted by Mr and Mrs W.

Mr and Mrs W have referred to case law – *Headley Byrne v Heller*. They say that based on this, the law states that in a scenario such as this one, a party giving negligent advice is liable for the damages and costs incurred by the “innocent” party relying on that advice. They’ve also provided further extracts from the legal case which they feel supports their argument. And, they’ve said there isn’t any precedent in law that advice being generic absolves the party giving advice of their liability. They feel that if Shield couldn’t give them specific advice, then it shouldn’t have given them any advice. Ultimately, Mr and Mrs W have said being given the five-day timescale meant they didn’t consider other options – such as downsizing or taking a new rate with their existing lender.

Whilst I’m required to take into account relevant law amongst other things, I’m not bound by it. Ultimately, I must decide what I think is a fair and reasonable outcome in all the circumstances of this complaint. I agree with Mr and Mrs W that Shield’s statement being “generic” doesn’t excuse it from any loss that statement has caused. So, I next need to consider what loss has been caused by this statement, if any.

I consider the statement provided by Shield about a five-day timescale post-offer was mis-leading. It may be possible for a re-mortgage to complete within five days of a mortgage offer in some scenarios. One of those, for example, might be where an application is made to switch an interest rate product with a borrower’s existing lender with no other changes being made. But that wasn’t what Mr and Mrs W were looking to do at that point. The adviser was commenting on a part of the process Shield had no control over – completion of the legal process by the acting solicitor and the final stages of the mortgage process completed by the lender. I can’t see that any further explanation was provided by Shield, at the time of this message, to explain any of these aspects to Mr and Mrs W. Put simply, I consider the adviser shouldn’t have commented on the possible timescale for part of the process Shield had no control over. Or, if he did, he should have first conducted research into the relevant and accurate timescales where a help to buy loan was involved.

Mr and Mrs W have said that they relied on the five-day timescale given by Shield and that they would have acted differently had Shield not given incorrect information. During the application, Mr and Mrs W had spoken to the solicitor and conducted their own research into the help to buy process. They said that it could take in the region of four to six weeks for the requirements to be met. Had Shield’s adviser investigated this further and given Mr and Mrs W the same timescale from the outset, I’m not persuaded they would have acted differently. I’ll explain why.

Even allowing for six weeks in addition to an average re-mortgage timescale – which according to several lender’s websites is up to eight weeks (from initial application) – it would still be reasonable to consider it likely the mortgage would complete within the six-month mortgage offer deadline. I don’t consider it would be fair to say that Shield ought to have known from the outset that the legal process would take longer than this. It had no reason to believe this would be the case when Mr and Mrs W’s application was first made – nor did it have any reason at the start of the application to think the property would be down valued, restricting the amount of lending available. From Mr and Mrs W’s testimony, it was issues with the solicitor and restrictions on what the help to buy loan provider would accept that delayed the process and caused their initial offer with Lender A to expire, rather than anything Shield could reasonably have known at the start of the process. I can’t hold Shield liable for actions of a third-party nor any losses that might have been incurred because of those actions.

For these reasons, having carefully considered what’s happened, I’m not persuaded Shield’s actions – initially providing a mis-leading timescale – have caused Mr and Mrs W to incur a financial loss. I’m also satisfied that Shield didn’t cause any

avoidable delays during its processing of Mr and Mrs W's applications – until January 2023 which I will consider further below. And, that Shield tried to help Mr and Mrs W on several occasions when they told it the solicitor had caused delays. However, like the Investigator, I do agree that Shield giving a five-day timescale may have caused a loss of expectation which, in turn, has caused some avoidable upset to Mr and Mrs W. And so, I've kept that in mind when deciding what Shield should do to put things right.

Mr and Mrs W have said it wasn't until towards the end of November 2022 that the solicitor sent the required information to the help to buy administrator. And, due to the timescales they'd been given on how long the help to buy loan process would take, the offer from Lender A was likely to expire. Despite Shield's efforts to get Lender A to extend Mr and Mrs W's mortgage offer, Lender A wouldn't extend it for long enough for the help to buy process to complete.

Because of the delays with the process, Mr and Mrs W asked Shield to source them a new deal as the legal process wasn't going to complete in time. Mr and Mrs W's options, in terms of lenders that would provide the lending they needed, were limited at this point due to affordability. However, Shield arranged a new application with Lender A which provided Mr and Mrs W with an offer based on a two-year fixed rate. At this point, Mr and Mrs W asked the adviser to look into tracker and/or variable rate mortgages instead, as they felt interest rates would fall. It's not in dispute that the adviser then incorrectly applied with Lender F – which he shouldn't have done as the application wouldn't succeed due to the help to buy loan remaining in place.

Our Investigator didn't think Mr and Mrs W would have been able to obtain a different tracker or variable product with another lender at this point, as the broker's research showed very limited options due to affordability requirements. Having considered the available evidence, I agree. I think it's unlikely Mr and Mrs W would have been able to obtain a suitable product that would have been competitive, when compared to the product they've ended up with, if any product at all.

The Investigator also felt that if Mr and Mrs W had been given correct information, instead of an application being made with Lender F, that they would have chosen to apply for a new product with their existing lender directly and I agree. I note that following Shield's application on Mr and Mrs W's behalf, Lender A had provided a mortgage offer to Mr and Mrs W for a lower fixed rate, than they ended up with, which was still available until July 2023. But, by this point I consider it's more likely than not that due to their experience of the wider application process (and because despite several months, the legal process still hadn't completed) they would have chosen to apply for a new product with their existing lender directly, had they been given correct information by the adviser. This is supported by what Mr and Mrs W went on to do once they found out their application with Lender F had been declined – they applied for a fixed rate with their existing lender.

The Investigator concluded that even if Mr and Mrs W had applied for an interest rate with their existing lender in January 2023 instead of the application being made with Lender F, that their new fixed rate wouldn't have been applied any sooner. However, based on the current submissions, I'm provisionally minded to reach a different conclusion. I think that, had Mr and Mrs W been told no suitable variable or tracker products were available, that they would have had enough time to book a new rate with their existing lender to apply from 1 February 2023.

I say this because Mr and Mrs W found out on 7 February 2023 their application with Lender F was declined and, on the same day, their existing lender offered them a new interest rate product to apply from the start of the following month. So, I consider that if it weren't for the adviser's incorrect application to Lender F, Mr and Mrs W would have had the opportunity to take a new interest rate to start in February 2023.

It follows that I provisionally find Shield should compensate them for the financial loss they may have incurred – and possibly will incur – as a result.

### **Putting things right**

Mr and Mrs W went on to take out a two-year (24 month) fixed rate of 6.38% with their existing lender, starting from 1 March 2023. I provisionally consider that it's most likely that they would have taken the equivalent product sooner but for Shield's error with the application to Lender F. I've not seen evidence to suggest a different interest rate would have been available to Mr and Mrs W with their existing lender had they applied in January 2023. And I also bear in mind that as their product lasts for a fixed term of 24 months, had they applied for it sooner it would have ended a month earlier.

I provisionally consider that the fairest approach to compensation is to direct Shield to compensate Mr and Mrs W on the basis that they would have taken the 6.38% fixed rate one month earlier. Shield will need to calculate the difference in how the mortgage will amortise over the 24-month period starting from 1 March 2023, against how it would have amortised were the rate to have started from 1 February 2023. If Mr and Mrs have paid, and will pay, more as a result, Shield should pay the difference to them. I will reconsider this approach if, in response to this provisional decision, either Shield or Mr and Mrs W provide details of an alternative help to buy two-year fixed interest rate with Mr and Mrs W's existing lender which was available on 11 January 2023 – and for which Mr and Mrs W are likely to have been eligible given their mortgage loan-to-value and other relevant circumstances.

Shield has already offered to pay Mr and Mrs W £250 to recognise the distress and inconvenience caused by this matter. It has also agreed with the Investigator's recommendation to pay a further £100 in recognition of the upset caused by a loss of expectation. I consider that its total offer of £350 is a fair award in recognition of Mr and Mrs W's non-financial loss. I appreciate that they have experienced some trouble and upset which could have been avoided, or at least alleviated, but for some of Shield's actions.

I note Shield has also offered to refund its fees totalling £100 as it felt the fee agreements were unclear. I think this is a fair offer to recognise that.

So, to settle this complaint, I proposed to require The Right Mortgage Limited to:

- Calculate the difference in interest Mr and Mrs W will pay on their 24-month interest rate of 6.38% which started on 1 March 2023, compared to it starting on 1 February 2023, and – where Mr and Mrs W will pay more as a result – pay the difference to them; and,
- Pay Mr and Mrs W £350 compensation; and,
- Refund Shield's fees totaling £100.

I don't intend to require The Right Mortgage Limited to pay interest on any extra interest Mr and Mrs W have paid due to the rate application being delayed. This is because payment of a lump sum now to compensate Mr and Mrs W for future losses will offset any interest I might have awarded for loss of use of that money."

I invited Mr and Mrs W and Shield to let me have any further comments or evidence they wanted me to consider before I make my final decision. Mr and Mrs W didn't agree, they said, in summary:

- The extra steps they had to take in relation to their help-to-buy loan, including obtaining a specialist valuation, meant it could take between 12-14 weeks for their mortgage to complete. They say if they'd been made aware of this, they would have considered staying with their current provider. The

interest rate it offered at the time was 3.78%.

- Because of what Shield's adviser had told them, they believed they had time so they didn't act as quickly as they could have. They've also referred to delays of up to six weeks caused by this and other actions of Shield. And, that but for that delay, they would have been able to obtain a lower interest rate. They've estimated they could have obtained a rate of around 2.26% lower than the one they ended up with.
- They appreciate I am not bound by the relevant law, but they feel the law is on their side. So, they feel if I make a decision that opposes the legal position it would seem counterproductive.
- They feel it isn't relevant whether they would have acted differently if the information/advice given to them was different. They've explained that – with the benefit of hindsight – they would have taken another two-year fixed rate with their existing lender at the point their existing deal ended. They've also said that the longer they were paying their existing lender's variable rate, the less beneficial taking out the proposed five-year fixed rate with Lender A became.
- Ultimately, Mr and Mrs W have said that if they'd known they'd be on the variable rate for at least two months, that it'd cost them more to move to Lender A, as well as the stress and work involved in re-mortgaging, then it would not have been worth doing. They've said the decisions they made were based on the timeframe given to them by Shield and they therefore believe Shield is responsible for the loss and suffering they've incurred.

Shield agreed to pay Mr and Mrs W the increased compensation amount set out in my provisional decision.

However, on consideration of the additional information Mr and Mrs W had provided about their interest rate, I wrote to Shield and Mr and Mrs W explaining that the interest rate on which the compensation should be calculated had changed. Shield agreed to the amended and increased compensation amount. Mr and Mrs W didn't provide any further comments.

### **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 appreciate Mr and Mrs W feel very strongly about what's happened and the losses they have said they've incurred – and will incur – as a result. However, having carefully considered their response to my provisional decision and all other submissions, I can see no reason to depart from what I provisionally decided.

Mr and Mrs W have raised several points about Shield's actions and what they would have done with the benefit of hindsight. However, I cannot base my decision on what Mr and Mrs W might do differently now that they know about several other factors which they and Shield would not have known at the time. For example, the extent of the difficulties Mr and Mrs W would face with third parties. I set out, in my provisional decision, why I'm not persuaded Shield's actions – of initially providing a mis-leading timescale – have caused Mr and Mrs W a financial loss. And, while I appreciate it'll come as a disappointment to Mr and Mrs W, I can see no reason to depart from that conclusion.

I do, however, think that Mr and Mrs W would have acted differently from January 2023 onwards but for the mistake Shield's adviser made at that point. Mr and Mrs W went on to take out a two-year (24 month) fixed rate of 6.38% with their existing lender, starting from 1 March 2023. But they've now shown us that a product switch offer was made to them by their existing lender on 11 January 2023 for a discounted variable rate which was 5.63% at

the time. This was a “switch to fix” product, meaning that they could switch to a fixed rate with their existing lender during the two-year period of the discounted product, without incurring an early repayment charge.

Around the time Mr and Mrs W received this offer from their existing lender, Mr and Mrs W told Shield they thought interest rates were going to drop, and they wanted to look at variable rates. So, if Shield hadn’t incorrectly applied to Lender F, I think it’s most likely Mr and Mrs W would have gone ahead with this variable rate product with their existing lender, thinking it might reduce.

However, interest rates started to increase shortly after this which had an impact on the variable rate the discounted product was linked to. I can see from Mr and Mrs W’s existing lender’s website that its variable rate increased by 0.5% following a change to the Bank of England base rate in February 2023. This would have, in turn, increased the discounted interest rate to 6.13% from 1 March 2023. I note it increased further in March 2023, by another 0.25%. And so, I find it most likely Mr and Mrs W would have sought a fixed rate product with their existing lender, when rates began to rise – something which they were not expecting to happen. It’s also what they went on to do when they decided to no longer pursue a mortgage through Shield.

I consider that the fairest approach to compensation is to direct Shield to compensate Mr and Mrs W on the basis they would have first taken the 5.63% discounted rate starting on 1 February 2023, until moving to the fixed rate of 6.38% from 1 March 2023. I also consider Shield should add 8% compensatory interest to the refunded amount, as it’s to compensate them for a loss they’ve already incurred, instead of a potential future loss.

### **My final decision**

My final decision is that I uphold this complaint. The Right Mortgage Limited must:

- Calculate the difference in interest Mr and Mrs W paid for the month of February 2023 on their existing lender’s variable rate, compared to what they would have paid at a discounted rate of 5.63%, and pay the difference to them (plus 8% simple interest for the loss of use of those funds from the date of payment to the date of settlement\*); and,
- Pay Mr and Mrs W £350 compensation; and,
- Refund Shield’s fees totaling £100.

\* If The Right Mortgage Limited considers that it’s required by HM Revenue & Customs (HMRC) to deduct tax from the interest refund, it should tell Mr and Mrs W how much it has taken off. It should also give Mr and Mrs W a tax deduction certificate if they ask for one, so they can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W and Mr W to accept or reject my decision before 3 July 2024.

Maria Drury  
**Ombudsman**