

The complaint

Mr R and Miss B's complaint is about advice they received from One 77 Mortgages Limited trading as 177 Mortgages to apply for a mortgage that they later discovered they were not eligible for. This meant that the mortgage offer was withdrawn very late in the process and caused a delay in them being able to complete on their onward purchase. Mr R and Miss B have said the process was very stressful, their possessions were placed in storage at an additional cost and they had to live in hotels. This situation lasted six weeks.

In settlement of the complaint, they want 177 Mortgages to reimburse them for the additional costs they and the elderly relative moving in with them incurred during the six weeks between the sale of their home and onward purchase. In addition, they want compensation for the stress, material inconvenience, pain and suffering they and their elderly relative experienced.

What happened

Mr R and Miss B approached 177 Mortgages for assistance in arranging a new mortgage in early March 2022. It was recommended that they stay with their existing lender and port their interest rate product to the new property, as they were tied into a fixed rate until November 2023. This would avoid them paying an early repayment charge (ERC), and the additional borrowing they wanted would be on a then current interest rate product. They asked to borrow £230,000 plus fees over a term of 14 years, which was around £50,000 more than the existing mortgage.

The new property was being purchased to enable Mr R and Miss B to provide support for an elderly relative. The arrangements were that both they and the relative would sell their homes. Equity from both of the properties would then be used as the deposit for the new, larger house, and Mr R and Miss B would take out a mortgage for the remainder of the purchase price. All of them would live in the property. Initially, Mr R and Miss B proposed that all three would be on the property title, but only them on the mortgage. This was later changed to only them being on both the mortgage and the property title.

The mortgage application process took some time. The lender required Mr R and Miss B to reduce the amount of unsecured debt they had, and ultimately it was only willing to lend them the same amount as they had outstanding on their existing mortgage. This mortgage offer was not issued by the lender until 28 June 2022. When Mr R and Miss B's solicitors became aware of the details of the offer, it questioned why the elderly relative was not named on the mortgage, given they would be living in the property and paying part of the deposit. The solicitors didn't think this scenario fell within the lender's criteria. It raised the issue directly with the lender.

The solicitors were correct – the lender would not allow a person gifting a deposit to live in the property. The mortgage offer was withdrawn the week after the lender was told about the situation. In the meantime, Mr R and Miss B decided to complete on their sale on 30 June 2023 and the elderly relative did the same, so as not to lose their buyers. The vendors of the property they were purchasing agreed to delay completion, but this meant Mr R, Miss B and

the elderly relative had to move into temporary accommodation until they were able to complete on their purchase.

A new mortgage application was made to a different lender via 177 Mortgages on 1 July 2022 and this resulted in an offer being issued on 20 July 2022. This offer was for the full £230,000 Mr R and Miss B had originally wanted. They completed on their purchase on 11 August 2022.

In early July 2023 Mr R and Miss B complained to 177 Mortgages, which responded in a letter of 13 July 2023. It set out what had happened and concluded that the costs Mr R and Miss B had incurred had resulted from their decision to complete on their sale before being in a position to complete on their onward purchase. It said this was their decision and it was not responsible for the consequences of it. However, as a gesture of goodwill in recognition of the impact of the events that had occurred, it offered Mr R and Miss B £800.

Mr R and Miss B didn't accept 177 Mortgages response and referred the complaint to this service.

One of our Investigators considered the complaint, but he didn't recommend it be upheld. He confirmed that 177 Mortgages should have known that the existing lender would not accept the application if the elderly relative would be living in the property. This was based on the information clearly documented on the lender's website for brokers. As such, the application should not have been made. However, the Investigator was also satisfied that the error had been identified before Mr R and Miss B, and their elderly relative, had decided to complete on the sales of their properties. As the losses they had suffered had come about from that decision, they didn't need to have been incurred and so 177 Mortgages couldn't be held responsible for them. The Investigator considered the level of compensation that had been offered was commensurate with the error 177 Mortgages made and the amount of delay that error caused.

Mr R and Miss B didn't accept the Investigator's conclusions. They said the root cause of the situation was the incorrect advice by 177 Mortgages regarding the first mortgage recommended. They said if the relevant issue had been taken into account they would have been recommended a mortgage with the lender they ended up with, and the sale and purchase could have gone ahead without any problems. It was also confirmed that the reason their purchase had taken three weeks to complete following receipt of the new mortgage offer was due to their vendor not being able to arrange removals any earlier. Mr R and Miss B asked that the complaint be referred to an Ombudsman.

I issued a provisional decision on 28 March 2024, in which I set out my conclusions about this complaint and my reasons for reaching them. Below is an excerpt.

'While 177 Mortgages has not acknowledged the error it made in recommending that Mr R and Miss B remain with their existing lender, I consider it is clear that a mistake was made. There is no doubt that 177 Mortgages knew that the person gifting part of the deposit would be living in the property. It is also very clear from the lender's intermediaries' website that this type of arrangement would not be acceptable to the lender. As such, I can only find that 177 Mortgages should not have recommended the mortgage it did to Mr R and Miss B, because it should have known they were not eligible for it and ultimately the application would be declined.'

When considering redress we aim to place a consumer in the position they would have been in, but for the financial business' error. In this situation, that would have been for 177 Mortgages to have recommended a mortgage with a lender that accepted applications for situations like Mr R and Miss B's. 177 Mortgages found a lender that would do this very

quickly when it became obvious that it had made an error, and so I am satisfied that lender could have been found in March 2022 when the original advice was given.

The original application took some time to go through due to Mr R and Miss B's credit situation. It is likely that at least some of the things required by the first lender would also have been needed by the second one, so I think it likely the application would have taken time to reach offer stage. However, I am also satisfied that it is likely the offer would have been received in time for Mr R and Miss B to have completed on their sale and onward purchase on or before 30 June 2022. As such, none of the storage and accommodation costs they incurred in July and August 2022 would have been incurred. They would also have had lower removals costs, as the removals would not have involved taking their possessions to and then retrieving them from the storage facility.

It has been highlighted that a consumer has a responsibility to mitigate their losses. This has been interpreted in such a way as to mean that Mr R and Miss B should not have sold their home at the end of June 2022. I can understand why this has been said, but there were other losses that Mr R and Miss B needed to consider when making their decision about whether to complete on their sale.

Mr R and Miss B were selling and buying in order to have a home that meant they could care for their elderly relative. They could have pulled out of the chain and that would have meant they wouldn't have incurred housing and storage costs. However, it is clear that they understood that if they didn't exchange and complete on their sale on 30 June 2022 they would lose their buyer. This would likely have had the knock-on effect of them losing the house they were buying and postponing their plans to look after their elderly relative for an unknown period. That could possibly have stopped the plans completely depending on how long finding a new buyer and onward property took. This was clearly a risk Mr R and Miss B were not willing to take and I don't consider their decision not to take that risk was unreasonable or inappropriate in the circumstances.

While a consumer is expected to mitigate any financial losses caused by a financial business, they would not reasonably be expected to do so at other unreasonable cost to them. I consider expecting Mr R and Miss B to have pulled out of the property chain in order to mitigate the effects of the mistake 177 Mortgages made, would have been expecting too much of them. As such, I consider it is reasonable for 177 Mortgages to be responsible for the additional costs Mr R and Miss B incurred because of the delay between the completion of their sale and that of their onward purchase. However, they have requested that the costs incurred by and relating to the elderly relative also be paid. As that person did not have a direct customer relationship with 177 Mortgages, I can't make an award for those costs. I know this will disappoint Mr R and Miss B, but our rules don't allow us to make awards to third parties.

I now turn to the matter of compensation for the upset and inconvenience the mistake on the part of 177 Mortgages caused Mr R and Miss B. As with financial redress, I can't make an award for the upset and/or inconvenience their elderly relative suffered because of the delay in their plans going ahead. That said, it is clear from the email exchanges leading up to what should have been the completion date on both the sale and purchase, the whole situation was stressful for Mr R and Miss B. Some of that was simply because selling and buying houses is a stressful process in normal circumstances, but I am satisfied that finding out two days before the deadline for their sale to go through that the mortgage offer they had gone to so much effort to obtain might not be valid and could be withdrawn, would have increased the stress levels significantly.

Mr R and Miss B then had the inconvenience of having to find somewhere to live at short notice and then continuing to do so on several more occasions, along with having to live in

those hotels with restricted facilities, rather than their own home. There would also have been the ongoing concerns during the three weeks it took for them to receive a new mortgage offer of that vendor they were buying from might have lost patience and put the property back on the market. I have considered this issue carefully, but I think the £800 177 Mortgages has already offered is sufficient to compensate Mr R and Miss B in the circumstances.

Putting things right

I am satisfied 177 mortgages should reimburse Mr R and Miss B for the following costs:

- *Storage costs for their possessions for the period from 30 June 2022 to 11 August 2022. Supporting evidence in the form of invoices/receipts will need to be provided.*
- *The additional removal costs incurred due to having to put their possessions into storage. Supporting evidence in the form of invoices/receipts will need to be provided.*
- *Accommodation costs for the period 30 June 2022 to 11 August 2022. Supporting evidence in the form of invoices/receipts will need to be provided.*
- *Additional food costs while they were staying in alternative accommodation**

Interest at 8% simple should be added to the above costs from the date of payment to the date 177 Mortgages pays the relevant sums to Mr R and Miss B. If 177 Mortgages considers it has to deduct tax from the interest payments, it should confirm the amount and provide documentation to Mr R and Miss B for use with HM Revenue & Customs.

**Mr R and Miss B have asked that they be reimbursed the cost of food for the period they were living in the hotel. This request is entirely reasonable, but I can't ask 177 Mortgages to pay all the costs they incurred, as they would have been paying out for food had they been living in their new home. As such, I can only award any increase in their food outgoings during the relevant period. There are two ways the amount can be determined. The first is by Mr R and Miss B providing receipts for all of their food outgoings during their stay in the hotel, and evidence of their outgoings for the month of June 2022. This can then be compared, and the additional costs reimbursed. However, this will be onerous and, at this distance in time, possibly be very difficult for Mr R and Miss B to evidence.*

The second option for this is for me to make an award on the same basis we do in insurance claims where a consumer doesn't have cooking facilities. This would be a payment of £10 per adult per day – so £20 for each day Mr R and Miss B were staying in a hotel without cooking facilities. This is the most straightforward of the options and that which I am inclined to make my award on. As such, unless Mr R and Miss B provide good reason for the award to be calculated differently, I will require 177 Mortgages to pay them £20 per day for the period they stayed in hotels.

Mr R and Miss B have also said they want the cost of fans they purchased because the hotel was hot during the relevant period. I am not minded to award this cost as this is rightly something the hotel should have provided and, Mr R and Miss B have an item of lasting value that they can use going forward from their outlay.

In addition, 177 Mortgages should pay Mr R and Miss B £800 compensation for the upset and inconvenience they suffered due to its mistake.'

177 Mortgages didn't accept my provisional decision. It highlighted that the provisional decision was based on the premise that Mr R and Miss B would have lost both their buyer and seller if they had decided not to complete on the sale of their property and move into temporary accommodation. It disagreed with this, as the vendors of the property they were purchasing had said they would wait until the end of July 2023 (a month) for completion. It

also again highlighted that the onward purchase had not completed as soon as the new mortgage offer was issued – it concluded that this meant there were other things in the chain that affected the situation. In addition, 117 Mortgages raised the point that while Mr R and Miss B were living in the hotel, they were not paying out the usual costs associated with owning a home – mortgage, utility bills and council tax.

In summary, 177 Mortgages concluded that the onward purchase of the property Mr R and Miss B bought was not in danger, and other parties were speaking and possibly giving advice to them. As such, it considered an element of the consequences of the decision they made should be attributed to Mr R and Miss B.

Mr R and Miss B asked that I reconsider making an award in relation to their elderly relative's costs. They highlighted that it was 177 Mortgages' mistake that caused these costs to be incurred. They also confirmed they were happy for the award for food costs to be settled on the basis of £10 per day per person, but wanted the award to include their relative for the relevant period.

I considered the points from 177 Mortgages made and concluded that it was correct in respect of some of the normal outgoings associated with living in a property. As such, we confirmed to both parties that it would be reasonable for 177 Mortgages to make a deduction from the award I had set out in my provisional decision for the council tax and utility bills that Mr R and Miss B would have incurred had they been living in their new home. I confirmed that the utility costs should be based on the costs Mr R and Miss B incurred for the same period in 2023 and the council tax would be based on their bill for the 2022/23 financial year.

I did not, however, consider the mortgage payments should be taken into account in this assessment as while the first mortgage payment would have been made earlier but for 177 Mortgages' mistake, they would still be making the same amount of payments to the new mortgage. If the equivalent of the mortgage payments were deducted from the costs associated with the hotel stay, this would effectively mean the mortgage would be paid for longer than the actual term of the borrowing.

Mr R and Miss B made no further comment, but provided some information about their utility costs in 2022 before they moved out of their old home. While I thank them for this information, I would highlight that it would be the costs associated with the new property that would need to be taken into account, as that is the property they would have been living in, but for the error with the initial mortgage application.

177 Mortgages didn't provide any further comment, but I am satisfied it received the clarification regarding redress.

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.

Mr R and Miss B have asked that I reconsider making an award for the costs their relative incurred due to the error on the part of 177 Mortgages, as those costs were only incurred because of its error. I understand why they have asked this, and I accept that the costs were likely incurred on that basis. However, we have rules that govern what we can and can't do. This includes to whom we can make an award of redress and, quite simply, for us to do so in circumstances such as this, the parties need to have a customer relationship with the financial business the complaint is about. As Mr R and Miss B's relative didn't have that relationship, I can't make the award they have requested.

I have also considered the comments of 177 Mortgages. It has said the onward purchase was not in danger as the vendors had confirmed they were willing to wait for the month of July 2022. While they may have been willing to wait, had Mr R and Miss B not completed on their sale, they believed the sale would fall through, and I am persuaded the email exchanges indicate was a reasonable belief.

Mr R and Miss B needed the equity from their sale to enable them to complete the purchase of the new property. Had they not completed on their sale, they would have had to start marketing the property again from scratch and find a new buyer. Finding a new buyer and completing on the sale within approximately four weeks is not something that was at all likely. So I remain satisfied that Mr R and Miss B were faced with the option of either doing what they did, or risk their plans for caring for their elderly relative collapsing. It was not unreasonable for them to decide that they were not willing to take that risk.

177 Mortgages has again raised the issue that the onward purchase didn't complete as soon as the new mortgage offer was issued. That is the case and Mr R and Miss B have confirmed that was because the vendor couldn't arrange removals any sooner. That seems entirely plausible as Mr R and Miss B also had difficulties in this regard and had to hire a trailer to move some of their possessions themselves. I don't consider it indicates anything more was at issue than simple logistics and it should not affect the outcome of this complaint or the redress I concluded was appropriate.

Putting things right

One 77 Mortgages Limited should reimburse Mr R and Miss B for the following costs:

- Storage costs for their possessions for the period from 30 June 2022 to 11 August 2022*. Supporting evidence in the form of invoices/receipts will need to be provided.
- The additional removal costs incurred due to having to put their possessions into storage*. Supporting evidence in the form of invoices/receipts will need to be provided.
- Accommodation costs for the period 30 June 2022 to 11 August 2022*. Supporting evidence in the form of invoices/receipts will need to be provided.
- Additional food costs while they were staying in alternative accommodation at a rate of £20 per day.

*Interest at 8% simple should be added from the date of payment to the date

One 77 Mortgages Limited pays the relevant sums to Mr R and Miss B. If One 77 Mortgages Limited considers it has to deduct tax from the interest payments, it should confirm the amount and provide documentation to Mr R and Miss B for use with HM Revenue & Customs.

From this figure the cost of utility bills and council tax that would have been associated with the new property for 30 June 2022 to 11 August 2022 can be deducted. For these figures to be determined, Mr R and Miss B should provide evidence of the council tax payable on their property for the financial year 2022/23 and the utility costs based on the same period for 2023.

In addition, One 77 Mortgages Limited should pay Mr R and Miss B £800 compensation for the upset and inconvenience they suffered due to its mistake.

My final decision

My final decision is that I uphold this complaint. I order One 77 Mortgages Limited to pay Mr R and Miss B redress as set out in 'putting things right' above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R and Miss B to accept or reject my decision before 28 May 2024.

Derry Baxter
Ombudsman