

The complaint

Mr I and Mrs G complain that Diane Gwyther trading as Cascade Mortgages (“Cascade”) took out a remortgage for them without their permission. They said they were arranging a better option elsewhere, but were now paying more on the mortgage Cascade arranged.

What happened

Mr I and Mrs G said Cascade had arranged a remortgage for them with their existing lender, without their explicit consent. And they said Cascade also failed to inform them when this was done. They said they only found out when they were finalising a mortgage offer with another bank and their existing lender asked them for an early repayment charge (“ERC”).

Mr I and Mrs G said when they complained, Cascade tried to persuade them that the deal they had was a better deal, but they said the deal Cascade had arranged wasn’t the right product for them. They said Cascade should have known there was a problem, from the fact that they didn’t reply to the mortgage advisor in March of 2023 when she asked which rate they preferred. So they said Cascade shouldn’t have gone ahead in June without confirming they were still happy to proceed.

Mr I and Mrs G said they had been able to source a better offer elsewhere, which would have allowed them to include some other borrowing with their mortgage. They were now having to pay interest separately on that loan.

Mr I and Mrs G said Cascade failed to provide a high level of service because it didn’t communicate with them in an accurate and straightforward way. And because the broker arranged the product three months after talking to them, Mr I and Mrs G thought the broker didn’t obtain clear information from them at the point of sale. Mr I and Mrs G said the broker assumed their consent, which they thought was illegal. And they said if the broker had sent a courtesy email after the deal was fixed, they would have known in time to cancel, but the broker didn’t even do that.

Mr I and Mrs G wanted Cascade to contribute to the interest on the loan they were now paying separately, which they’d wanted to add to the mortgage.

Cascade didn’t agree that it had made a mistake. It said Mr I and Mrs G first spoke to its broker in January 2023, about their fixed rate deal which was due to expire at the end of June 2023. The broker shared two and five year rates which were available with their existing lender in January. Mr I and Mrs G preferred to stay with that lender, as the deals on offer were competitive and this avoided the costs of changing.

The broker explained that if rates reduced between then and May, Mr I and Mrs G could change to the lower rate. The broker emailed Mr I and Mrs G about the available rates in January, but they didn’t respond.

In February, the broker emailed Mr I and Mrs G again, with lower rates. At that point Mr I replied, asking the broker to go ahead with the five year fixed rate. The broker confirmed she would do so, and said she’d be back in touch if rates changed again. At this point, their

lender posted Mr I and Mrs G a mortgage offer.

The broker did contact Mr I and Mrs G again at the start of March, saying rates had dropped again, and including details of the two and five year rates available then. Mr I and Mrs G didn't respond, but as they had previously expressed a preference for the five year rate and asked the broker to go ahead with this, she opted for the five year rate for them. Cascade said Mr I and Mrs G's lender sent them another mortgage offer at this point.

On 6 June, their lender wrote to Mr I and Mrs G telling them that they would go onto their new rate from 1 July. This letter also gave Mr I and Mrs G 28 days to cancel the deal. The new rate started on 1 July 2023.

Cascade said it didn't think Mr I and Mrs G had any ground for a complaint, because suitable advice was provided to them, and they'd received reasonable service to accommodate their objective of securing the most attractive rate available to them from their existing lender.

Our investigator asked Mr I and Mrs G some questions about why they hadn't told their broker they had changed their mind about the product. Having considered their replies, as well as all the other evidence in this case, she didn't think this complaint should be upheld.

Our investigator said having looked at the fact find documentation the broker completed, she didn't think that the broker had offered unsuitable advice about their product transfer. She said Mr I had told the broker he wanted to go ahead with the five year rate. And neither Mr I nor Mrs G had told the broker after this that they had changed their mind.

The broker then contacted Mr I and Mrs G again at the start of March, saying rates had reduced further. She didn't receive a response to this, but did then submit the product transfer for the five year fixed rate, at this reduced rate. Our investigator said Mr I and Mrs G had said the broker shouldn't have taken out this rate for them, without their permission, but she said Mr I gave his permission on 2 February, and the broker confirmed then that she would act on this for Mr I and Mrs G.

Our investigator said both parties could have communicated better, but on the whole she did feel Mr I and Mrs G did have a number of opportunities to respond to emails from the broker, telling her they were exploring other options, or telling her they didn't want to go ahead with this option any more. But they didn't do that. The broker thought it was in Mr I and Mrs G's best interest to take up the reduced rate, for the fixed period they had requested.

Our investigator didn't think the broker had secured this rate without Mr I and Mrs G's consent, because they had already consented in February. But she did think the broker should have confirmed that she'd then taken out the deal, so that Mr I and Mrs G were aware of that. Their lender did then contact them about the new fixed rate, but Mr I and Mrs G said they didn't get that letter.

Our investigator didn't think it was fair to ask Cascade to cover any costs associated with the financial loss Mr I and Mrs G had told us about. But she did say Cascade should pay £100 for the broker's lack of communication and the impact this had.

Cascade agreed to make this payment. But Mr I and Mrs G didn't want to accept it. They said Cascade had made a significant error, which impacted them financially. They said they had asked for a quote, and had also asked that when the rate was finalised, they should be contacted to confirm their decision. Or if Cascade had let them know that they'd been signed up to a new fixed rate, they would have been able to respond in time to undo what had been done.

Mr I and Mrs G wanted their complaint to be considered by an ombudsman, so this case was then passed to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

I do understand why Mr I and Mrs G feel strongly about this case, and I appreciate their viewpoint, that they last spoke to the broker some months earlier, and thought she ought not to have gone ahead, so much later, without securing their confirmation to this.

There are two points in Cascade's favour here.

The first is that Mr I had agreed to go ahead with the five year fixed rate that he was told about in February 2023.

The second point is that Mr I and Mrs G have unfortunately failed to respond to a number of emails from the broker, both before and after they agreed to go ahead with a five year fixed rate. So although Mr I and Mrs G then didn't respond to later emails from the broker offering a lower fixed rate when rates changed, I don't think it would have been clear to the broker that this meant they had changed their minds.

But there is a point in Mr I and Mrs G's favour, which I don't think has been considered thus far. I do think it's relevant that the instruction to proceed Mr I gave, was issued before any mortgage offer had been produced in this case. Regulations require that firms must not undertake any action which would commit the consumer to an application before the consumer has had the opportunity to consider the information which is included with that offer.

Because Mr I's instruction to proceed was issued before any offer was produced, and there was no further response to any of the emails that the broker issued after this, I think it was a mistake for Cascade's broker to go ahead and commit Mr I and Mrs G to the eventual deal that they are now tied into, without any more recent response from them.

I think these problems could have been avoided, if Cascade had made further attempts to contact Mr I and Mrs G when the second offer was issued. They may also have been avoided if Cascade had alerted Mr I and Mrs G to their new deal, and the deadline for cancellation.

I also think it's worth considering the reverse scenario here, what would have happened if the broker hadn't committed Mr I and Mrs G to this deal. And on balance, I think if the broker had not gone ahead and committed Mr I and Mrs G to this deal, and they'd then complained they were disadvantaged by this (perhaps as a result of missing out on a better rate) I would have been likely to say that they needed to indicate their acceptance to the mortgage offer, if they wanted it to be taken out for them.

Considering all of the above, I don't think a payment of £100 provides a fair and reasonable outcome to this complaint.

However, I don't think that it would be fair and reasonable for me to ask Cascade to pay Mr I and Mrs G for all the losses they say they have incurred, and will incur in future, as a result of this mistake. That's because I do think that our investigator was right to say

that Mr I and Mrs G missed quite a number of opportunities to avoid this problem. They told their broker they wanted to go ahead, then simply failed to respond to any further emails. If they had told the broker they were pursuing a different option, then this problem would not have arisen.

Mr I and Mrs G also said they didn't get any letter from their lender, telling them a new rate would be applied on 1 July. The broker has shown us this letter. I do think it was sent, and it is correctly addressed. Although Mr I and Mrs G are adamant they would not have ignored this letter, it does seem more likely that it did arrive. And I have to bear in mind that Mr I and Mrs G did ignore a number of other emails and letters from the broker and from their lender during this time. I think it's more likely that this letter did arrive, and was overlooked by the couple. And because of that, a further opportunity to correct this mistake was missed.

For those reasons, rather than asking Cascade to cover all the costs that might arise out of Mr I and Mrs G being tied into a rate now for the next five years, I think Cascade should contribute to the costs of the ERC that Mr I and Mrs G must pay, if they still want to remortgage elsewhere before this deal is up.

As Mr I and Mrs G continue to pay interest on their other loan, the cost of that interest will rise. Remortgaging elsewhere to bring this other lending within their mortgage may still be something that Mr I and Mrs G would wish to do. So, I think a contribution towards the ERC which is now being charged on their mortgage, would be appropriate here. (I don't think it would be appropriate, for the reasons set out above, to ask Cascade to pay the ERC in full.)

So my decision will require Cascade to pay 50% of the ERC Mr I and Mrs G will have to pay to redeem their mortgage within the existing fixed interest rate term, if Mr I and Mrs G remortgage within six months of accepting my final decision in this complaint. Mr I and Mrs G will have to provide Cascade with a redemption statement setting out the amount.

I also think that Mr I and Mrs G have been caused some distress here, so I will ask Cascade to pay compensation of £600 in this case, to reflect its part in what has gone wrong.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Only Cascade replied.

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.

Cascade replied, to object to my provisional decision. It said I'd considered a hypothetical scenario, if Mr I and Mrs G complained about not getting this mortgage, and explained I would have said they needed to accept the offer, in order to secure it. Cascade disagreed with that. It said if the amended rate available at the start of March hadn't been booked then Mr I and Mrs G would have remained on the rate which had been applied for at the start of February, and which they had already given email consent for.

Cascade felt that if Mr I and Mrs G wanted to cancel the original application, they would have had to contact the broker directly, as set out on the client offer letter. Cascade said Mr I and Mrs G had up until 30th June 2023 to cancel the rate.

I do think that if Mr I and Mrs G wanted the rate on offer in March, they ought to have responded to request that rate. And in the absence of such a request, I could not have upheld any hypothetical complaint from them, that they'd missed this better option.

But Cascade says the fallback position is Mr I and Mrs G would still have been committed to the rate booked for them in February. I think there are also some problems with that.

I can see that Mr I responded to an email about lowered interest rates, on 2 February 2023, saying he wanted to go ahead. At that point, it appears that Mr I and Mrs G had not received a mortgage illustration setting out the full details of this deal, as I can see this was only produced by the lender on 3 February. So, whilst they had told the broker to go ahead with their application, they hadn't seen the full details of that offer.

My provisional decision drew Cascade's attention to the provisions in the *Mortgages and Home Finance: Conduct of Business Sourcebook* ("MCOB") which say the purpose of a mortgage illustration is to make sure the customer is properly informed about the product, BEFORE entering into the contract.

The relevant provisions state clearly that –

A firm must not undertake any action that commits the customer to an application (including accepting product-related fees in relation to the regulated mortgage contract concerned) until the customer has had the opportunity to consider an illustration [MCOB 5.5.4]

Here, Cascade appears to have considered that Mr I and Mrs G were committed to their mortgage application by an email in February which told Cascade to go ahead. Mr I and Mrs G appear not to have understood that they were committing themselves to an application at that point. And I think that happened partly because Cascade didn't follow the information provision requirements which are set out in MCOB. Instead it assumed Mr I and Mrs G not only wanted to see further details on the mortgage they'd expressed an interest in, but also wanted an application to be made, even though they hadn't received the details required before a broker can consider a client to be committed to such an application.

So I don't think that the only thing Cascade did wrong here, was to go ahead with Mr I and Mrs G's application for a mortgage in March. I think it also made a mistake by committing them to a mortgage deal in February too, because the required information hadn't been provided to them when they indicated consent, and Cascade simply didn't check again, once this information was sent, to see whether Mr I and Mrs G still wanted to go ahead.

Cascade said my proposal that Mr I and Mrs G should remortgage raised concerns. It thought they would be better off keeping the favourable rate they had on their existing borrowing, and applying for a further advance with their existing lender, to pay off their other lending. It said that would avoid moving all of their borrowing onto the less favourable rate they could secure now, and would avoid payment of an ERC on their existing mortgage.

I should note here that my decision in this case is not advice to any party. It's for Mr I and Mrs G to decide how they want to proceed. The need to pay an ERC if they do move will clearly be a consideration for them, as will the difference between their current rate and any rate they can now secure. But if they should decide they want to remortgage now, to combine all their borrowing into one mortgage, then I still think Cascade should make the contribution I suggested to the ERC they will be charged.

Cascade also said it was concerned that our service's initial response (which appears to refer to the investigator's view, summarised above) and the provisional decision which followed it, reached such very different conclusions. They said this was disappointing.

Further details on how our service operates can be found on our website, but in short, when a case is passed to an ombudsman for a formal decision, it receives a full review. My duty is now to decide this complaint "*.. by reference to what is, in [my] opinion, fair and reasonable in all the circumstances of the case.*" I am not bound by the initial assessment issued by our investigator, and my provisional decision was issued to explain why I'd come to a different conclusion.

I appreciate that Cascade has found it disappointing that this complaint has been upheld, but I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Diane Gwyther trading as Cascade Mortgages must pay 50% of the Early Repayment Charge that Mr I and Mrs G will have to pay to redeem their current mortgage, if Mr I and Mrs G remortgage within six months of accepting my final decision in this complaint. (Mr I and Mrs G must provide Diane Gwyther trading as Cascade Mortgages with a redemption statement setting out the amount of the Early Repayment Charge, and evidence of this Early Repayment Charge then having been paid, as part of redeeming this mortgage.)

My decision is also that Diane Gwyther trading as Cascade Mortgages must pay Mr I and Mrs G £600 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr I to accept or reject my decision before 14 August 2024.

Esther Absalom-Gough

Ombudsman