

## **The complaint**

This complaint is about a new fixed rate product Miss H and Mr S arranged on their mortgage via IMH, the trading name of a mortgage broker firm that is part of Connells Limited.

The essence of the complaint is that having arranged the new product approximately two months in advance of it taking effect, IMH didn't give them enough information about who should be monitoring the market for better deals coming on stream, and whether the lender had a deadline for substituting a better deal for the one already agreed.

## **What happened**

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll focus on giving the reasons for my decision. 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.

Briefly, our investigator didn't think IMH had done enough to support Miss H and Mr S' understanding of who should be monitoring the market and whether there was a deadline for selecting a better deal. He recommended IMH pay them £300 compensation for their trouble and upset. But he stopped short of recommending it pay them redress (which they've estimated at around £3,000) for the extra interest they'll pay on their new product compared with what they could have paid if they'd substituted a better product before the lender's cut-off date.

Miss H and Mr S have asked for the complaint to be reviewed by an ombudsman.

## **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

This isn't a case where I have to decide fault; that's been established. What I have to decide is whether IMH needs to do more to put things right than the £300 recommended by the investigator. Having considered everything that both parties have said and provided, I'm not persuaded it does. I'll explain why.

Even where a business has been found to have done something it shouldn't have done (or as is the case here, failed to do something it should have done) I have to consider whether and to what extent Miss H and Mr S could have mitigated the effect of IMH's omission.

The general position is that mitigation requires a person to take steps to minimise their loss and to avoid taking unreasonable steps that increase their loss. A person can't recover damages for any loss (whether caused by a breach of contract or breach of duty) which could have been avoided by taking reasonable steps. A person is said to have a "duty to mitigate".

This isn't a duty that's enforceable by anyone, rather it is a recognition that if a person fails to do so, their capacity to seek redress will be affected by that failure. In my view, that's relevant and appropriate here.

IMH didn't tell Miss F and Mr S that it would monitor the market for them, so I'm satisfied they had no reason to assume that it would. By the same token, IMH omitted to suggest to Miss H and Mr S that they should monitor the market; in short, it gave them no indication either way. But that doesn't mean Miss F and Mr S could not have taken the decision to monitor the market themselves.

Insofar as the information from IMH was silent, and therefore ambiguous, it would in my view have been prudent of Miss H and Mr S to monitor the market themselves. It was in their interests to do so, and given the point about mitigation, I don't think they should have needed prompting by IMH to do so.

If Miss F and Mr S done that, they'd have been able to contact IMH about substituting products as soon as they found something better than what they'd already selected. That would also have rendered the point about the lender's deadline moot. Overall, then, I'm persuaded that the investigator's recommended outcome is fair and reasonable

### **My final decision**

My final decision is that I uphold this complaint in part. In full and final settlement, I direct Connells Limited to pay Miss F and Mr S £300. I make no other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H and Mr S to accept or reject my decision before 19 February 2025.

Jeff Parrington  
**Ombudsman**