

## **The complaint**

Mr and Mrs M complain about the mis-sale of the mortgage to them by OneSavings Bank Plc trading as Rochester Mortgages in 2006/7 and the delay by the bank in confirming whether it agreed the sale of the house and whether it would accept the sale proceeds in full and final settlement of the mortgage debt.

## **What happened**

Mr and M had a mortgage on a property with Rochester. The mortgage was taken out in 2007 for £109,750 and their statements show they paid £69,626.64 in interest. The mortgage involved the consolidation of existing debts. The property was let out, but the rent wasn't covering the mortgage and then the tenant left. Mr and Mrs M then contacted Rochester about a shortfall sale and asking for authority to sell and for it to agree to accept the proceeds of sale in full and final settlement. There was a delay in Rochester returning to them and they got a confirmation that the sale could go ahead just before completion.

Mr and Mrs M bring two complaints. Firstly, they complain about the initial sale of the mortgage to them in 2007 but I've already issued a decision explain why we are unable to consider that complaint. Secondly Mr and Mrs M also complain about the impact that the delay by Rochester in coming to a decision on whether it would accept a full and final settlement had on them including forcing them to sell the property.

Our investigator felt that Rochester had already made a satisfactory offer of compensation of £50. Mr and Mrs M disagreed and asked for a review.

## **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 and Mrs M put their property up for sale because of increasing monthly costs as it was costing more than the rental income and, as the mortgage was interest-only, they didn't have a way to repay the capital at the end of the mortgage term. Mr and Mrs M had other financial difficulties and were involved in an individual voluntary arrangement ("IVA") and the stress was affecting their health. They gave the tenant notice and put the house up for sale in October 2023. There were three bids on the property, and they sold for £93,000. The sale completed on at the beginning of February 2024.

I can see that at an early stage in October in advance of the sale that Mr and Mrs M mentioned to Rochester the shortfall sale, that they were looking for a full and final settlement figure and about the financial difficulties they were in. I see that on 24 November 2023, Rochester sent out a shortfall pack to which Mr and Mrs M responded but Rochester didn't deal with the request until they got a call from Mr and Mrs M's solicitors just before completion.

My view on this is that Rochester should have dealt with the shortfall pack earlier and responded to Mr and Mrs M's request to sell with a shortfall earlier. Although Mr and Mrs M

would have liked a full and final settlement figure I can't fault Rochester for not supplying it. Mr and Mrs M wanted to negotiate a figure to settle the mortgage debt, but Rochester doesn't have to provide that figure. Unfortunately for Mr and Mrs M, Rochester is entitled to the full amount it is due and is not required to negotiate a lesser sum. As Mr and Mrs M are in financial difficulties and can't pay the full sum due, we would expect Rochester to work with them to come to affordable repayments, but we don't require Rochester to forego some of the money that they are owed. So, I don't expect Rochester to negotiate with Mr and Mrs M about a full and final settlement of the debt at a lower figure than is owed if Rochester choose not to.

Mr and Mrs M say if Rochester had told them earlier that it wouldn't accept the sale proceeds in full and final settlement they would have withdrawn from the sale. But at no stage did Rochester ever indicate that it would do a deal. There are some references to the possibility of discussing it but that's it. There is simply no negotiation. I don't believe that Mr and Mrs M could fairly conclude that if they sold the property that Rochester would agree to forego the remaining debt. Indeed, that's clear from the letter Rochester sent to Mr and Mrs M dated 22 November 2023 which says:

*" if we agree to remove our charge and there are insufficient funds to repay our loan in full, you will still be responsible for paying off the outstanding balance on your loan. We will contact you to inform you how much your new monthly repayment will be. The remaining balance will become an unsecured loan"*

There's no suggestion in that correspondence or in any other correspondence that Rochester will accept the sale proceeds in full and final settlement. So, if Mr and Mrs M decided to sell the property it would be in the knowledge that Rochester didn't agree to accept the sale proceeds in full and final settlement of the loan debt.

Although I agree that Rochester should have responded to the shortfall pack earlier I can understand some of the delay. Rochester wasn't given a date when a response was required such as a completion date until 19 January which would have focused the time of the response. When Mr and Mrs M's solicitor contacted Rochester to approve the shortfall sale, there was a few days delay and a further email from Mr and Mrs M before Rochester confirmed its approval. Given that Rochester had the shortfall pack returned to them sometime previously I agree there should have been a more immediate response. So, I believe that a small amount of compensation for Mr and Mrs M's inconvenience would be due and the £50 offered seems fair.

### **My final decision**

OneSavings Bank Plc trading as Rochester Mortgages has made an offer of £50 to settle this complaint which I consider fair and reasonable in all the circumstances. So, I order the bank to pay Mr and Mrs M £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 25 February 2025.

Gerard McManus  
**Ombudsman**