

The complaint

Mr and Mrs B complain that O'Neill Private Finance Ltd trading as The Independent Mortgage and Loan Company (OPF) gave unsuitable advice when recommending a re-structure of their mortgage arrangements. They're unhappy they've not ended up with the ability to offset their savings against the mortgage interest as intended.

What happened

Mr and Mrs B had a repayment mortgage with a lender I'll refer to as S. That mortgage had an offset facility whereby Mr and Mrs B were able to offset the funds they held in a linked savings account against the interest they were charged on their mortgage.

In 2022 their interest rate product was coming to an end and the adviser at OPF contacted them to discuss their requirements. During those interactions Mr and Mrs B asked about taking additional borrowing. They enjoyed the use of the offset facility on their existing mortgage and wanted to increase their borrowing on that basis.

The adviser recommended Mr and Mrs B take out a new interest rate product on their existing mortgage, and apply for additional borrowing on an interest only basis with the same lender. Mr and Mrs B agreed to proceed on that basis, and the application was submitted. After the additional borrowing application completed and the funds were released, Mr and Mrs B were made aware by their mortgage lender that the additional borrowing did not have the offset facility they expected it to have. Mr and Mrs B complained to the lender, but the complaint wasn't upheld. They referred that complaint to our service, and we said it had been referred out of time and so couldn't consider it.

Mr and Mrs B then complained to OPF. They were unhappy they'd been advised to take out a new mortgage that wasn't suitable for their needs, and they were suffering a financial loss as a result, as they were being charged interest on funds they weren't using.

OPF didn't uphold the complaint. It said the adviser who recommended the mortgage to Mr and Mrs B didn't know they wouldn't be able to access the offset facility on the additional borrowing. It said all the documentation, including the mortgage offer, suggested otherwise. It also said it had discussed the issue with the lender and the representatives it'd spoken to weren't aware of its policy either. So the adviser couldn't have known the mortgage would be unsuitable for Mr and Mrs B before he gave the advice.

Mr and Mrs B referred the complaint to our service.

My provisional decision

I issued a provisional decision which said the following:

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

There is no dispute here that Mr and Mrs B have ended up with a mortgage that is not suitable for their needs, or what they thought they were applying for. However, OPF says the fault for that lies with Mr and Mrs B's mortgage lender. So it doesn't consider it fair that it should have to put things right here.

Mr and Mrs B have complained to both the lender and OPF. Our service was unable to consider the complaint against the lender as it had been referred to us out of time. This complaint, and decision, deals only with the complaint against OPF, although I have considered information our service has received from Mr and Mrs B's mortgage lender insofar as it is relevant to this complaint.

Looking at the fact find document OPF completed in May 2022, I'm satisfied it was clear what Mr and Mrs B's overarching needs and priorities were at the time OPF approached them. They wanted to borrow more funds so that they had a cash reserve they could draw on if and when needed. They had no immediate need or plans for the funds but anticipated they might at some point in the future. They enjoyed the benefits their current offset mortgage provided and wanted to extend it. They wanted to take a new interest rate product on their existing mortgage, and they wanted to switch all of their borrowing to interest only. None of that is in dispute.

Mr and Mrs B's lender has said that all of those things would have been possible if the application had been made in a different way. It doesn't allow more than one mortgage sub-account to benefit from having an offset savings account linked to it, but it says that if Mr and Mrs B had applied for further borrowing before they switched the interest rate products, they could have merged the sub-accounts and taken out a new interest rate product as long as all the other terms were the same (repayment type, term length etc).

At the time of the application, the proposed repayment type and interest rate products for the two tranches of lending weren't the same. Mr and Mrs B's existing mortgage was on a repayment basis, which they wanted to switch to interest only. And the new borrowing was interest only from the outset. They also ended up on different mortgage products, albeit both five year fixed rates, just the actual rate was different (presumably because the rates had changed by the time the further advance was applied for). But as the original mortgage account was in fact switched to interest only shortly after the changes had been made, I see no reason why this couldn't have been done before OPF ought to have requested to merge the sub-accounts.

After the new mortgage had completed, Mr and Mrs B were unable to make the amendments needed to ensure they could benefit from the offset savings account for the total borrowing without incurring significant Early Repayment Charges (ERCs). So it would have cost them a lot of money to re-mortgage, and interest rates had also increased in the meantime.

When OPF gave advice to Mr and Mrs B in 2022, it needed to ensure that advice was suitable based on their needs and circumstances at the time. Mr and Mrs B were entitled to rely on the information they were given by OPF as the expert in the transaction at the time. Having considered everything, I'm not persuaded OPF did give suitable advice to Mr and Mrs B.

OPF has made several arguments about that in its submissions to us. It says that it was reasonable to assume that the offset mortgage would continue to operate in the way it had done after the further advance was taken out. It says there wasn't any clear information it had seen to suggest otherwise, and it's an unusual policy that other lenders don't apply. It has carried out a lot of research since this complaint was

made, and has told us that several staff members that worked for the lender weren't aware of the policy either. So it says it's not unreasonable the adviser didn't check, and wasn't aware that Mr and Mrs B weren't going to be able to offset their savings against the mortgage in the same way they had been doing before the changes were made.

I've thought very carefully about everything it has said, but having done so I agree with the Investigator that OPF is responsible for the position Mr and Mrs B find themselves in now. I say that because I've seen the product literature that would have been available to OPF on its website for intermediaries at the time it gave Mr and Mrs B advice.

The 'Further advance hints and tips' document says the following on the first page:

"If the term of the additional borrowing is to be aligned with the main mortgage please ensure you select this option on the application form (instead of selecting years and months). If you state years and months this could result in a small difference in term between the additional borrowing and main mortgage, preventing the two elements being rolled up into a single rate with the same end date. This would also limit the potential amount to offset against: whereas if the additional borrowing is rolled up with the main mortgage your client could offset against the combined amount."

The 'Guide to offsetting' document says the following in the Frequently Asked Questions section:

"If my mortgage is made up of more than one rate or repayment method, can I offset against my total mortgage balance?"

No. You can only offset against one rate/repayment method – at application stage you'll need to choose which one."

The same question and answer is featured in the 'Offsetting features and FAQs' document.

The lender has confirmed that all of these documents were available on its intermediaries website in 2022 when OPF gave advice to Mr and Mrs B.

So I don't agree that it's unreasonable to have expected OPF to have known this information before it gave Mr and Mrs B advice, despite what it's said about the people it has spoken to that worked for the lender and who were unaware of the policy. As an intermediary, I would expect OPF to have taken steps to make itself familiar with the guidance to intermediaries before giving advice. If it had done so, it would – or should – have understood that to meet Mr and Mrs B's requirements their application had to be made in a specific way. By not doing that, it arranged a mortgage for Mr and Mrs B which didn't meet their needs.

OPF has also said it relied on the wording of the mortgage offer, which it says was misleading. The further advance mortgage offer said the following in section 9 'Flexible features':

"Where all or part of your mortgage is on a variable, tracker, or specific fixed rate product you have the option of applying for an Offset Saver Account, which allows you to offset your savings against this portion of your mortgage. Instead of earning interest on your Offset Saver Account, you will not be

charged interest on the equivalent amount of your mortgage. Our offset facility allows you to benefit by either reducing the term of your mortgage or reducing your monthly payment. Please refer to the product brochure for further details."

Firstly, the mortgage offer was sent to the relevant parties *after* the advice had been given by OPF to restructure the mortgage. By the time the offer had been produced for the further advance, Mr and Mrs B had already applied to switch the interest rate on their existing borrowing. And secondly, the wording in the offer explains that Mr and Mrs B had the option of applying for an Offset Saver Account. It didn't guarantee that Mr and Mrs B would be able to offset the funds in their existing savings account against the interest charged on their further advance. It also referred to the product brochure for more details. And the product brochure contained the information I've already set out above.

Overall, I'm satisfied that OPF was responsible for ensuring it provided advice to Mr and Mrs B that was suitable, it had information available to it that allowed it to do that, but it provided unsuitable advice. Therefore, I think it needs to put things right for Mr and Mrs B.

If it had given suitable advice, I think Mr and Mrs B would have first applied for the additional borrowing, then applied to convert the existing mortgage to interest only, and then applied to merge the two sub-accounts before taking one new interest rate product on the total borrowing amount. Whilst completing the steps in that way may have taken slightly longer overall, it would have resulted in Mr and Mrs B getting the mortgage facility they wanted.

Putting things right

Putting things right in this case is not straightforward. OPF is unable to make any changes to the mortgage directly without having to make an application to the lender which will involve additional costs, and there is no guarantee that an application will be accepted.

When Mr and Mrs B's re-mortgage completed in 2022, they paid the further advance funds into their offset savings account. But the funds have not been offset against the interest charged on the mortgage. So Mr and Mrs B have been charged interest on those funds when they should have been offset had OPF processed the application in the way necessary to achieve Mr and Mrs B's objectives.

I'm aware Mr and Mrs B have since used some of the funds. They withdrew £20,000 in October 2022, and £140,000 in February 2023 to repay a buy-to-let mortgage. But over £380,000 has remained in the savings account and has not earned any interest, and Mr and Mrs B have been paying interest at 3.81% on the additional mortgage borrowing, most of which they haven't used.

Initially, to put things right Mr and Mrs B wanted to have access to the facility they initially asked, and thought they were applying, for. They said they were prepared to swap to another equivalent product as long as they didn't suffer financially, and were compensated for the losses they have already suffered. More recently they've said they would be prepared to lose the facility in its entirety and suffer the loss of not having access to those funds, as long as they are compensated for the losses already suffered, and are continuing to suffer, each day they're being charged interest.

When deciding appropriate redress, it's important that I consider the steps Mr and Mrs B have taken to mitigate their losses. Having considered everything that's happened, I'm not persuaded Mr and Mrs B have taken reasonable steps to mitigate all of their losses here.

They found out very soon after they'd drawn down the funds that they weren't offsetting the interest charged on the mortgage, or earning any interest on the funds. Yet they've chosen to keep them in that savings account when they could have been moved to a different account that would have earned them interest. Whilst I appreciate they say they were hoping the matter would be resolved following their complaints to the relevant firms, I still think they could have taken more steps than they have done to minimise their losses in the meantime. Because they didn't do that, I don't think it would be fair to expect OPF to pay for those.

With that in mind, I think it's reasonable that Mr and Mrs B are given two options in how OPF should put things right for them.

Option one

OPF should submit a new application to lender S for a re-mortgage to repay the two sub-accounts and merge them into one on a new interest rate product that ends as close to the existing ones as possible (in 2027). That will of course be subject to the lender's approval. The application should be submitted within one month of Mr and Mrs B accepting the final decision if they choose this option.

If the re-mortgage is agreed by the lender, OPF should do the following:

- Cover all ERCs charged by the lender for redeeming the existing mortgage sub-accounts whilst the products are still within their terms.
- Cover all fees payable to the lender for setting up the new mortgage, including any product fees.
- Calculate and pay Mr and Mrs B an amount equal to the interest they've been charged on the additional funds they borrowed in 2022, excluding what they've been charged on the funds they have withdrawn from the savings account (£160,000).
- Subtract from the above amount the interest Mr and Mrs B could have earned if they transferred the additional funds they had borrowed into an easy access savings account that would have been available to them with the same lender (or another lender within the same banking group if there wouldn't have been anything available) at the time they received the funds.
- Pay Mr and Mrs B for the additional product fee they paid in 2022 for taking out two separate products when they ought to have only taken one. It should also pay 8% simple annual interest on that amount calculated from the date the fee was paid to the date of settlement.
- The documents from the sale state that Mr and Mrs B did not pay OPF for its services in 2022, but if I'm wrong about that it should refund any fees Mr and Mrs B paid OPF directly, again adding simple annual interest of 8% from the date the fee was paid to date of settlement.

If the lender doesn't approve the re-mortgage application, or Mr and Mrs B would prefer not to go ahead with it, then OPF should do the following:

Option two

If Mr and Mrs B decide to redeem the further advance sub-account early instead of re-mortgaging, or partially redeem it by repaying the remaining £380,000 to reduce the balance, then as long as they do so within one month of accepting this decision, OPF should:

- Refund the ERC charged by the lender for redeeming the existing mortgage whilst the product is still within its term.
- Pay Mr and Mrs B an amount equal to the interest they've been charged on the additional funds they borrowed in 2022, excluding what they've been charged on the funds they have withdrawn from the savings account (£160,000), up to the point the rest of the sub-account is redeemed.
- Subtract from the above amount the interest Mr and Mrs B could have earned if they transferred the additional funds they had borrowed into an easy access savings account that would have been available to them with the same (or similar) lender at the time they received the funds.
- Pay Mr and Mrs B for the additional product fee they paid in 2022 for taking out two separate products when they ought to have only taken one. It should also pay 8% simple annual interest on that amount calculated from the date the fee was paid to the date of settlement.
- The documents from the sale state that Mr and Mrs B did not pay OPF for its services in 2022, but if I'm wrong about that it should refund any fees Mr and Mrs B paid OPF directly, again adding simple annual interest of 8% from the date the fee was paid to the date of settlement.

I also consider this issue has caused Mr and Mrs B significant distress and inconvenience. They experienced distress when they discovered they couldn't use their accounts in the way they thought, and had been advised by OPF, they'd be able to. This has also taken a considerable amount of time to sort out. Other than assisting them with a complaint against the lender, I haven't seen any evidence that OPF has tried to assist Mr and Mrs B by offering alternative solutions or advice to mitigate the impact of what's happened. As a result, I'm currently persuaded OPF should also pay Mr and Mrs B £500 in recognition of the distress and inconvenience caused."

OPF sent a detailed response. It didn't provide any new information, but made clear that it still felt there is a complaint for the lender to answer in this case. In summary, it explained that it relied on the mortgage offer, which stated the accounts were offset-able, and only understood they weren't after completion and the complaint had been made to the lender.

It said the adviser was told by the bank that the application for the further advance had to be completed in stages, and would first need to be applied for on the SVR before applying to switch the product. The adviser followed the process he had been told to complete. It also said that if it had waited for the further advance to complete before switching the product on Mr and Mrs B's main mortgage account, the existing account would have reverted to the SVR in the meantime which had to be avoided.

It said up to the time Mr B alerted it to what had happened, the adviser believed he was acting in Mr and Mrs B's best interests, and did not know the accounts wouldn't be offset unless they were on the same rate and needed to be merged. Once that was known, he was unable to make the required changes to the account.

It said it was reasonable to assume that the lender should have warned the adviser that the changes he was making would not create a situation where the customer could enjoy the

offsetting feature before the changes were made. He was not advised that the accounts must be merged before the rates were secured, and if this information was contained in the product booklets after offers were issued, by that time it was too late.

It said at the time of the original complaint, none of the lender's staff that the adviser spoke to, including the management team, knew what had gone wrong. And he discovered that there was a way of offsetting both mortgage accounts but only on a system that the adviser didn't have access to. It said that despite everyone knowing Mr and Mrs B's objectives, the adviser was still allowed to submit a mortgage application that was not in keeping with the product objectives. The adviser deeply regrets the outcome of the situation and wishes to offer Mr and Mrs B his sincere apologies.

It also sought confirmation that any redress awarded in this decision relates to the further advance in isolation and not the main account that was already in place at the time.

Mr and Mrs B said they would now prefer to repay the further advance sub-account using the funds in the offset savings account. They also said that whilst they agree they should have re-invested the funds that were advanced to them when they realised they weren't being offset against the mortgage interest, the deduction to the redress I awarded should include the fact that they would have had to pay 50% tax on any interest earned as Mr B is a top rate tax payer. He said he looked at buying gilts, but they all had long terms and wouldn't have enabled him to agree to the collapse of the facility.

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.

Having thought carefully about the further submissions made by the parties in response to my provisional decision, I remain satisfied that the outcome I reached is a fair way to put things right.

For clarity I have no doubt that the adviser at OPF had Mr and Mrs B's best interests in mind when he was providing his advice and submitting the mortgage applications on their behalf. And I don't doubt that he didn't know Mr and Mrs B wouldn't be able to offset their savings against the interest charged on the further advance whilst it remained in a separate sub-account. But that doesn't mean OPF isn't responsible for putting right something that clearly has gone wrong and left Mr and Mrs B with an unsuitable mortgage product that's caused them a loss.

I've taken on board the points OPF has made about how strongly it feels the lender is to blame for what's happened here, but as I explained in my provisional decision, I am not considering a complaint against the lender. I am looking at what OPF has done and the direct loss I feel that's been caused by OPF's actions in its own right, bearing in mind the obligations it had as Mr and Mrs B's mortgage adviser at the time.

I remain satisfied that the product literature that was available to OPF before the advice was given and before the applications were submitted made clear that Mr and Mrs B would not be able to offset funds in a savings account against the interest charged on more than one sub-account with different products. Yet that is how the application was made. So whilst the lender may not pro-actively have warned OPF about the way the applications were being submitted at the time, the correct information was accessible to OPF for it to consider when giving its advice. Ultimately OPF is responsible for giving suitable advice, the correct information was available to it, and I would expect it to have made sure it was familiar with how the product would interact with Mr and Mrs B's situation before recommending it as

suitable for them.

I appreciate OPF says that if it had waited for the further advance to complete before switching products on the existing mortgage account then it likely would have reverted to the SVR in the meantime. But that was a decision for Mr and Mrs B to make, had OPF provided them with all the relevant information and facts. I consider it more likely than not that if Mr and Mrs B had been made aware that the only way to achieve their objective would mean they had to risk paying interest at the SVR on their main mortgage for a month or so, they would have accepted that.

Overall, considering all the information and evidence available to me, I'm satisfied OPF has provided unsuitable mortgage advice that has resulted in Mr and Mrs B suffering a financial loss.

Putting things right

Mr and Mrs B have said they would like to go ahead with 'Option two' as set out in my provisional decision. They are satisfied they have sufficient funds in their offset savings account to repay the further advance sub-account.

As such, OPF should do the following to put things right as long as the further advance is redeemed within one month of the date Mr and Mrs B accept this final decision (if they do):

- Refund the ERC charged by the lender for redeeming the mortgage whilst the product is still within its term. Mr and Mrs B will need to provide proof to OPF of how much they paid.
- Pay Mr and Mrs B an amount equal to the interest they've been charged on the additional funds they borrowed in 2022, excluding what they've been charged on the funds they have withdrawn from the savings account (£160,000), up to the point the rest of the sub-account is redeemed. Mr and Mrs B should be able to obtain this information from the mortgage lender.
- Subtract from the above amount the interest Mr and Mrs B could have earned if they transferred the additional funds they had borrowed into an easy access savings account that would have been available to them with the same (or similar) lender at the time they received the funds. I agree with Mr and Mrs B that it's likely they would have paid 45% income tax on any interest earned, so OPF should account for that in its calculations.
- Refund Mr and Mrs B the additional product fee they paid in 2022 for taking out two separate products when they ought to have only taken one. It should also pay 8% simple annual interest* on that amount calculated from the date the fee was paid to the date of settlement.
- The documents from the sale state that Mr and Mrs B did not pay OPF for its services in 2022, but if I'm wrong about that it should refund any fees Mr and Mrs B paid OPF directly, again adding simple annual interest of 8%* from the date the fee was paid to the date of settlement.

I remain satisfied that OPF has caused Mr and Mrs B significant distress and inconvenience for the reasons set out in my provisional decision. So it should also pay Mr and Mrs B £500 to recognise that.

*Interest is at the rate of 8% a year simple. If OPF considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr and Mrs B how much it's taken off. It should also give them a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold this complaint and instruct O'Neill Private Finance Ltd trading as The Independent Mortgage and Loan Company to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 14 April 2025.

Kathryn Billings
Ombudsman