

## **The complaint**

Miss B told us that after she had an exploratory conversation about fixing her mortgage with a broker from Knott Another Mortgage Adviser Limited trading as AK Partnership (“AK”) the broker then generated and accepted a mortgage offer on her behalf, without her agreement.

## **What happened**

Miss B told us that a mortgage broker from AK rang her on 3 May. He wanted to talk to her about her existing mortgage, which was on her lender’s Standard Variable Rate (“SVR”) at the time, and had been for a little while. She told us she discussed a two year fixed interest rate deal with the broker. Miss B said she specifically asked for details of this deal in writing, so she could consider whether to take up the offer.

Miss B said she hadn’t agreed to change her mortgage, and subsequently didn’t receive any documentation to review. In July, returning from some time away from home, she realised that her mortgage had been switched to a two year fixed rate. Miss B said she later located documents sent by her lender, but she hadn’t opened them, because she had understood that AK would send her all the details by email, and wouldn’t go ahead until she gave clear, written approval.

Miss B complained. She felt the response from AK didn’t show she had been sent details of the mortgage deal to review, or that she’d agreed to this change. She showed us messages she’d exchanged on a messaging app, with a different mortgage advisor, which suggested she was going to stay on the SVR a little longer, in the hope interest rates would drop.

Miss B said she had also been considering selling the property, and felt she’d been prevented from either taking advantage of falling interest rates, or selling her property.

Additionally, Miss B said that the stress of this complaint, and the time involved in pursuing it, had affected her health and work.

Miss B wanted us to formally reprimand AK. She said it should pay her compensation, and revert the mortgage fixing at its cost. And it should formally apologise to her.

AK strongly disagreed. It said Miss B had agreed to the change to her mortgage, and it didn’t think it had done anything wrong.

Our investigator thought this complaint should be upheld. He said AK doesn’t record its calls, so he had to look at the other evidence available. He said AK hadn’t been able to show that it sent Miss B information on this mortgage offer before it was accepted on 3 May. And once it was accepted, it didn’t appear as if Miss B then had any right to withdraw. It also looked from the later messages Miss B sent to a different broker, as if she hadn’t realised she had been committed to a mortgage deal on 3 May 2024.

Our investigator said he wasn’t persuaded Miss B had given her consent to submit an application and to complete on the mortgage offer after being provided with all relevant information.

Our investigator said we couldn't formally reprimand AK, and it doesn't control her mortgage, so the existing deal could only be reversed if the Early Repayment Charge ("ERC") on the existing fixed rate deal was paid. Our investigator said he'd expect AK to pay that ERC. But our investigator said that Miss B was paying substantially less per month on this deal than she had previously been paying on the SVR. So AK could deduct from any payments the amount Miss B had saved on her monthly payments since she's been on this product, from any ERC charged, before covering the amount.

Our investigator said if Miss B had already redeemed the mortgage, she should let our service know what she had been charged. Otherwise, she would have three months from the resolution of the case to do so.

Our investigator said the evidence Miss B had shown us, suggested she was intending to re-fix this mortgage on a two year fixed rate. Although Miss B said she'd been considering selling, there was unfortunately no written evidence to support that. On balance, our investigator said he didn't think Miss B was intending to sell when this mortgage was fixed.

Both sides replied to our investigator to disagree.

AK said it didn't think Miss B had any grounds to complain. It said it had followed the same business process here that it followed in thousands of other similar transactions, without any complaints. It said Miss B had extensive discussions with it about her chosen deal, and it ensured that all the necessary documentation was provided, including the mortgage offer, Key Facts, and other required paperwork. AK said Miss B had ample time to review, change her mind, or cancel the application, and at no point did she choose to do so.

AK asserted that Miss B had simply changed her mind after the application was completed.

Miss B said she didn't think the proposed redress fully reflected the severity of AK's actions and their impact on her. She said AK had received £742.53 in commission for this mortgage, so she thought AK would still be in profit after paying her compensation, which she said was no incentive to adhere to proper regulatory standards in future. She said as a minimum, that commissions should be paid over to her.

Miss B also said if she'd been on the SVR, she could have sold her property by now, and then wouldn't be paying a mortgage at all. She said she didn't know that she could claim the ERC back from AK, if she sold, and she said she was advised to take no action until this complaint was resolved.

Miss B acknowledged she had made some savings on her monthly payments, but didn't think that benefit to her should be used to reduce the level of redress. She said this wasn't about whether she had saved money, it was about whether a decision had been taken without her consent. And she said rates had come down since this deal was taken out.

Miss B said we'd raised doubts about whether she was really considering selling her property. She said she was, and sent us emails from November 2024 enquiring about its likely sale value. She said she wanted to keep her options open at the time, either to sell or to fix her mortgage once rates had fallen.

Miss B said she was very unhappy with how AK had conducted itself after the complaint was made. She said we should be taking this matter very seriously. She referred to sizeable fines issued by the Financial Conduct Authority, and said her request for increased compensation was proportionate in light of the regulatory consequences AK could otherwise face.

Miss B said that because she was in a fixed rate, all her options were removed. And the longer the complaint has taken to resolve, the more AK benefitted. She said if this had been resolved earlier, she would have asked AK to pay the ERC, and retained the flexibility to decide how to proceed. But she said she'd now saved more on her monthly mortgage payments than the ERC would cost, and would be stuck with this mortgage for another year.

Miss B said we should be ignoring savings made as a result of AK's misconduct. She thought those savings should be viewed as a trade-off for the inconvenience caused, and AK should still have to pay her ERC.

Miss B wanted compensation at least equal to the commission AK had received. She wanted consideration of her financial losses from being unable to sell the property. And she wanted any benefit she'd gained from the fixed rate deal to be disregarded. She also still thought AK should acknowledge its wrongdoing and apologise, and our service should recommend AK is subject to stronger regulatory oversight.

Our investigator didn't change his mind. He said Miss B was within her rights to have complained, and he didn't accept AK's assertion that this complaint should not have been made.

In response to Miss B, our investigator said the commission paid by a lender to a broker had no impact on Miss B, and our service doesn't either police a business or make punitive awards. He said he couldn't make AK return the commission to the lender, and it wouldn't be fair to pay this to Miss B. Our investigator said he couldn't hold AK responsible for Miss B's decision not to market her property while this complaint was being considered, and he said we couldn't have known whether it would have sold, in any event.

Our investigator said if Miss B were back in the position she would have been in, if a mistake hadn't been made, she would have been paying the much higher monthly payment due under the SVR. So he said it is fair to take her savings into consideration. Our service would be double compensating her if we didn't.

Our investigator said Miss B's evidence that she was considering selling the property was dated around six months after she was fixed into her new mortgage deal. So that evidence didn't suggest she was considering selling in May 2024, when the mortgage was fixed.

Our investigator said that unfortunately there was no evidence in the form of call recordings to show how AK responded to her complaint.

AK didn't accept our investigator's further explanations, and asked for this case to be referred to an ombudsman.

Miss B also replied. She repeated that this application and acceptance of the deal were done without her consent, and said this merited more than £200 in compensation. She said she'd been considering whether to sell for some time, and was clearly consulting and engaging with the market. She repeated that if she'd been on the SVR, she might have sold the property, and that she was advised not to take any action while her complaint was being reviewed. So she said she was unable to explore other options without risking her ability to recover losses. She still thought AK should not have profited from what it had done, and that the payment we'd suggested to her was too low to take account of what had happened as well as its impact on her.

Because no agreement was reached, this case was 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:

Firstly, I should say that if, as AK suggests, it has done nothing whatsoever wrong in this case, then I would have expected it to be able to produce considerable evidence of its own communications with Miss B, including communications in writing showing her the offer that was made by her lender, which were dated before this offer was accepted. There has been no such evidence produced in this case. On balance, I think it's more likely that this is because this correspondence wasn't sent, and that Miss B didn't give informed consent to the changes which were made to her mortgage. So I do think this complaint should be upheld.

Miss B says she hasn't been able to do anything with her mortgage, or this property, since May 2024. But I don't think it's AK's fault that Miss B has apparently accepted advice not to sell this property or take any steps to come out of a mortgage deal she told us she didn't want, while this complaint was being considered by our service. I also don't think it's AK's fault that this complaint wasn't raised with our service until late October 2024. So I don't think AK has to compensate Miss B for any potential improvement in her financial position she might have achieved by selling her property, during this time.

Miss B wants our service to apply a punitive approach to AK's actions here. She's spoken of both the importance of ensuring that AK doesn't profit from what it has done, and of ensuring it's dissuaded from acting in the same way in future. But we are not a regulator, and those aren't issues that our service can consider when deciding on compensation. We have to confine ourselves to considering the impact on Miss B.

Here, it's clear Miss B did benefit somewhat, in the short term, from the changes to her mortgage. Her monthly payments reduced by about £500 per month. And although Miss B pointed out that rates had dropped since, she hasn't shown us that she would have been likely to fix at a different time, on a different rate, which would mean she'd then have been better off overall.

I do think our service has to take this benefit to Miss B into account when deciding on the appropriate outcome in her case. And as she herself says she has benefitted already by more than the ERC she would currently be charged, I don't think our investigator's suggestion that AK should pay her ERC remains appropriate here.

I don't think it would be appropriate for AK to simply pay the commission it received over to Miss B. I think compensation payable to her should reflect the impact this issue had on her, not the income AK may have received from her lender. But I also think that the impact Miss B described, wouldn't be properly reflected in a compensation payment of only £200. This has been a long running issue, which Miss B says has affected her work and health. I do think she has found this distressing. So I think AK should make a payment of £500 in this case. I think that would fairly reflect the impact this issue had on Miss B.

On the evidence and argument I've seen to date, that's what I consider would provide a fair and reasonable outcome in this case.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides 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.

Miss B replied to say she was happy with the provisional decision.

AK replied to object. It said the complaint lacked any valid basis, and I had misrepresented the facts of the case. AK said it had followed the same process here that it has followed for many years with no prior complaints. It said Miss B got all the necessary documentation and had ample time to review. The mortgage deal taken benefitted her, producing substantial savings. And it said Miss B had only complained because she had changed her mind after the fact, so it said there was no legitimate basis for financial redress here.

Unfortunately, AK has provided no detail as to which facts it considers have been misrepresented. It has also offered no additional evidence to support these assertions.

I understand AK's strength of feeling here, but I still think if AK had indeed provided Miss B with full details of the mortgage offer she was being asked to agree to, before this deal was put in place on her mortgage, then it would have emails to show this. And AK hasn't been able to provide that evidence. So I haven't changed my mind. I continue to think that my provisional decision fairly and reasonably resolves this case, and that the redress set out there is appropriate. I'll now make the decision I originally proposed.

## **My final decision**

My final decision is that Knott Another Mortgage Adviser Limited trading as AK Partnership must pay Miss B £500 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 23 July 2025.

Esther Absalom-Gough

**Ombudsman**