

**Ombudsman response to comments on provisional determination**

**CIFO Reference Number: 16-000198**

**Complainants: [Complainant 1] and [Complainant 2]**

**Respondent: [Financial Services Provider]**

Following the issuance of my provisional determination on this matter dated 4 May 2018, both parties have sent me detailed responses and additional evidence on points which they would like me to reconsider. These responses have been carefully considered prior to reaching my final determination.

**Response from [the Complainants]**

*Compensation for distress and inconvenience*

[The Complainants] accepted the provisional determination for the most part but asked me to reconsider the award of £5,000 for their distress and inconvenience. In their view, the award does not sufficiently reflect the impact of [Financial Services Provider's] actions on their personal, professional, and financial situation.

In particular, [they] say that the financial strain caused by the loans arranged by [the Financial Services Provider] were to blame for [Complainant 1's] actions [which led to a conviction for offences of dishonesty]. This has made it difficult for [Complainant 1] to secure further employment.

[The Complainants] have also asked me to take into consideration the stress and inconvenience of the CIFO investigation itself, which has been lengthy and complex.

When considering awards for distress and inconvenience, I am mindful that CIFO's primary function is to compensate for financial loss and place complainants back in the position they would have been in but for the actions of the financial services provider.

CIFO does not award damages in the legal sense but will award compensation for distress and inconvenience where appropriate. Such awards are not punitive. They recognise and compensate non-financial impact on the complainant, taking into account the individual circumstances of the complaint.

The award of £5,000 is within the highest range CIFO would normally award for non-financial loss. This reflects what I consider to be the extreme impact of [Financial Services Provider's] actions on [the Complainants].

I do not consider that this award should be increased, as I do not agree that [Financial Services Provider] can fairly be held responsible for the aggravating factors [the Complainants] have raised in support of their claim for further compensation.

In particular, I do not consider that the [Financial Services Provider] can fairly be held responsible for [Complainant 1's] actions [which led to the conviction] and subsequent difficulties in gaining employment. It follows, therefore, that the [Financial Services Provider] cannot be held responsible for the subsequent financial difficulties caused as a result of this.

I do agree that the [Financial Services Provider] caused [the Complainants] an extreme level of distress and inconvenience outside of these particular instances but consider that the award of £5,000, as it represents the highest range of our awards for non-financial loss, sufficiently reflects this.

### **Response from the [Financial Services Provider]**

The [Financial Services Provider] wholly disagreed with my provisional determination and asked me to reconsider my determination based on the following points:

#### *[The Complainants'] previous mortgage provider*

The [Financial Services Provider] have disputed [the Complainants'] account that their previous mortgage provider withdrew from the local market which is why they approached the [Financial Services Provider] to assist in finding a new lender. Upon review, it does appear that the mortgage provider in question is still offering residential mortgages in [the Jurisdiction].

However, regardless of the reason for the switch, there is no indication that [the Complainants] were forced to exit from their previous mortgage provider or departed on bad terms. Although there is evidence that one payment was deferred, [the Complainants] have shown that this deferral was agreed with their mortgage provider in advance.

The move away from their previous lender does not appear to have been questioned by [Financial Services Provider] at the time, and it has not been raised as an issue until this point in the review of the complaint. I do not consider this point to be relevant to the determination of this complaint.

#### *Alleged rejection by conventional lender*

The [Financial Services Provider] have alleged that [the Complainants'] requirement for a private mortgage facility arose after their application to a conventional mortgage provider was rejected.

However, having viewed the email correspondence, it does not appear that [the Complainants] progressed further than receiving an initial indication of how much the mortgage provider may have been willing to lend.

In my view, this does not constitute a formal mortgage application and [the Complainants'] dissatisfaction with the indicated maximum lending cannot be considered a rejection. In addition, and irrespective of this, I do not consider that a single approach to a conventional mortgage provider absolves the [Financial Services Provider] from the

reasonable expectation that they would make further enquiries before concluding that a more expensive private mortgage arrangement was the only remaining option.

*Alleged mis-representation of [Complainant 2's] salary*

The [Financial Services Provider] say that [the Complainants] originally represented themselves as having salaries of approximately £48,000 and £41,000 respectively, but that [Complainant 2's] salary was mis-represented and was later confirmed to be £37,958.40.

The [Financial Services Provider] consider that this significantly lower salary would have disqualified [the Complainants] from obtaining conventional financing for their planned house purchase.

Having viewed the relevant email correspondence dated 22<sup>nd</sup> October 2012, I note that [Complainant 2's] basic pay is confirmed to be £37,958.40.

However, the email continues and explains that [Complainant 2] also receives a monthly car allowance of £3,498.24, guaranteed annual back pay of £3,000, an additional £4,365.24 due to an opt-out from the company pension scheme, and a yearly bonus, equating to an approximate annual salary of £49,066.

On this basis, I do not consider that [Complainant 2's] salary was mis-represented.

*Requirement for private financing*

The [Financial Services Provider] have described the private financing arrangement as an urgent requirement, arranged at [the Complainants'] request in order to secure the purchase of their property once conventional lenders had rejected them.

I do not agree with this version of events. [The Complainants] had approached one lender and had received an indication of their lending appetite, after which [Financial Services Provider] claims to have approached two more, albeit there is no evidence that this was done.

[The Complainants] were then advised that no conventional lender would lend to them because of missed payments on their previous mortgage. As explained in my provisional determination, I do not accept, on a balance of probabilities, that this advice was accurate or well-founded.

It is clear from the email correspondence that [the Complainants] were not originally considering a private mortgage. It appears to have been a new concept to them, and one they were not overly familiar with.

I therefore do not agree that the private mortgage recommended by [Financial Services Provider] satisfied [the Complainants'] requirements or was suitable for them.

*CIFO's preference for [the Complainants'] version of events*

The [Financial Services Provider] have questioned why I have accepted [the Complainants'] account that their current mortgage provider indicated that they would have lent to them in 2012 but rejected their own account that their employee made reasonable efforts to contact conventional mortgage providers before arranging the private mortgage.

This argument assumes that the statements made by the conventional mortgage providers were the sole basis on which I decided that, on a balance of probabilities, [the Complainants] could have secured a conventional mortgage in 2012.

However, I also had regard to [the Complainants'] joint salaries, considerable cash deposit, payment history, credit reports, and the fact that they managed to secure a conventional mortgage in 2015 despite being in a considerably worse financial position at that time than they were when the events complained of took place.

All of these factors were taken into account and, on a balance of probabilities, I could not conclude that [the Complainants] were unable to secure a conventional mortgage in 2012. I have therefore awarded compensation to place [the Complainants] back in the position they would have been in had a conventional mortgage been arranged for them at the time.

*The [Financial Services Provider's] new submission to lending partner*

The [Financial Services Provider] state that they have resubmitted [the Complainants'] application to their conventional lending partner for an opinion and have been advised that it would not have been accepted. [Financial Services Provider] have provided an email from the mortgage provider as evidence for this claim.

Having read this email, I note the representative states that the application has been assessed against current lending criteria, and not the lending criteria which would have been applicable in 2012.

The application is also something which, in my view, should have been made by the [Financial Services Provider] in 2012. No evidence was provided that such an application was ever made. The fact that it has been made at this late stage in our review supports the view that the [Financial Services Provider] did not make reasonable efforts to secure a conventional mortgage for [the Complainants] at the time, and so I am not persuaded to rely upon it.

*Stamp Duty*

The [Financial Services Provider] did not agree that they should refund the stamp duty which was applicable on the mortgage, arguing that this would have been payable on any mortgage and to refund this would unjustly enrich [the Complainants].

However, as explained in the provisional determination, [the Complainants] paid stamp duty twice: once on the private arrangement with [Lending Company A] and again when they secured a conventional mortgage in 2015.

If [the Complainants] had been placed into a suitable mortgage from the outset, then they would have only paid stamp duty once. Therefore, I consider that it is fair and reasonable for [Financial Services Provider] to compensate [the Complainants] for the second, and as we have concluded based on the points above, unnecessary payment.

#### *Deprivation of funds*

The [Financial Services Provider] have asked for an explanation for the 8% interest which has been applied to certain aspects of the award in compensation for deprivation of funds.

As explained in the provisional determination, CIFO applies interest to reflect the opportunity cost on the amounts paid to and retained by [Financial Services Provider] up until the date of this determination.

8% simple interest per annum is a standard court rate and is also used by our counterpart office in the UK, the Financial Ombudsman Service (“FOS”) to reflect the complainants’ reasonable cost of funds or “opportunity cost” of the amount withheld during the relevant time period.

#### *Financial sophistication of [the Complainants]*

[Financial Services Provider] have alleged that [the Complainants] were financially sophisticated, informed, ‘*very well versed with the lending industry*’.

I cannot support this view. I note that [Complainant 2] does not work in the financial services industry, and that [Complainant 1’s] background is in the [non-bank] sector – not lending. I do not agree that either can be considered ‘very well versed with the lending industry’ as [Financial Services Provider] claims.

This is supported by the fact that [the Complainants] specifically approached [Financial Services Provider] for assistance in securing a mortgage and were subsequently assured by [Financial Services Provider] that they would find the best deal for them.

[The Complainants] were clearly relying upon [Financial Services Provider’s] expertise in the lending industry, and not their own or that of their legal representatives.

#### *Conclusion*

On the basis of the above I am satisfied that there was no additional information from either party which prompts me to vary my provisional determination, which is now repeated below as a final determination with the interest calculations updated to reflect the current date.

**Ombudsman determination**

**CIFO Reference Number: 16-000198**

**Complainants: [Complainant 1] and [Complainant 2]**

**Respondent: [Financial Services Provider]**

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.<sup>1</sup>

The complaint relates to personal loans and a private mortgage which was arranged for [the Complainants] by the [Financial Services Provider].

**Background**

In early 2012, [the Complainants] say that their mortgage provider advised them of their intention to withdraw from the residential lending market.

[The Complainants] had recently increased their joint income and held a cash deposit of £207,000. They decided to use the opportunity to find a new mortgage and purchase a larger property.

[The Complainants] approached [Financial Services Provider] for assistance in finding a suitable mortgage and were advised that they could expect to be approved for a mortgage of between £450,000 and £490,000, giving them a home purchase budget of between £657,000 and £697,000. [The Complainants] found a suitable property and made an offer of £683,250, which was accepted.

[Financial Services Provider] subsequently advised that [the Complainants] had been declined by all of the conventional 'high-street' lenders, because they had missed a mortgage payment in the previous year.

Instead, the [Financial Services Provider] had found a private lender, [Lending Company A], who were willing to provide a 12-month interest-only loan of £478,275 at a rate of 7%.

This left a shortfall of £24,875.88 in order to purchase the property, but the [Financial Services Provider] offered to lend [the Complainants] this amount for 12-months, interest-only, at a rate of 15.5%.

[The Complainants] accepted the terms for both loans and the property purchase was completed on 29 November 2012.

Shortly after the purchase, [Complainant 1] became unemployed. With a reduced joint income, [the Complainants] were unable to refinance their mortgage with a conventional

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<sup>1</sup> Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

lender in 2013 after the 12-month facility had expired. The [Financial Services Provider] therefore arranged for the [Lending Company A] loan to be rolled over for a further 24 months and secured a private investor to refinance the [Financial Services Provider] loan for the same period.

In 2015, [The Complainants] secured enough funds to pay off the majority of their debts and started approaching conventional lenders to refinance their mortgage. One lender agreed and offered a capital and interest repayment mortgage on a fixed rate of 2.57% for 5 years which [the Complainants] accepted.

[The Complainants] subsequently complained to [Financial Services Provider], claiming that the previous private lending arrangements had caused them serious financial difficulty and were neither affordable nor suitable for their needs at the time. The [Financial Services Provider] did not uphold the complaint, and so the matter was ultimately referred to CIFO for review.

### ***CIFO's Initial View***

The [Financial Services Provider] could not supply evidence of any approaches to conventional lenders on behalf of [the Complainants] but claimed to have spoken to two lenders verbally. The [Financial Services Provider] stated that these two lenders refused outright to consider a mortgage application because [the Complainants] had missed a mortgage payment in the previous year.

However, [the Complainants] stated that their current lender, a local high-street bank, had expressed surprise at their situation and considered that it was probable their application would have been approved had it been presented to them back in 2012.

The case handler contacted another high-street bank and was advised that all the applications would go through a full review by their mortgage team. Therefore, it would be highly unlikely that a negative indication could be given over the phone without further information about the applicant's background and financial circumstances.

[The Complainants] showed CIFO a letter from their previous lender which confirmed that the missed payment had been agreed in advance. [The Complainants] also provided an opinion from their financial advisor, which stated that lenders would not treat this type of arrangement as a default.

The case handler noted that the [Financial Services Provider] had not viewed a credit report on [the Complainants] but decided to obtain a report from one of the 'big three' credit reference agencies to ensure that there were no issues with respect to the [Complainants'] credit worthiness that may have been identified by a conventional lender. The case handler viewed the report and confirmed that there were no issues that would have been evident at the time of the original mortgage application.

Finally, the case handler noted that [the Complainants] were ultimately accepted for a capital and interest repayment mortgage with a high-street bank in 2015, despite their significantly worse financial situation at that time compared to 2012.

Based on these factors, the case handler did not accept that [Financial Services Provider] had made reasonable efforts in 2012 to arrange a suitable mortgage for [the Complainants]. The case handler considered that, on a balance of probabilities, [the Complainants] could have obtained a conventional capital and interest repayment mortgage instead of an expensive interest-only private mortgage.

On this basis, the case handler concluded that, contrary to their assurances, the [Financial Services Provider] had not found the best mortgage for [the Complainants] and had breached the consumer lending code of practice which they subscribe to.

To resolve the complaint, the case handler considered that, as far as was practicable, [the Complainants] should be placed back in the position they would have been in had [Financial Services Provider] arranged a suitable mortgage for them back in 2012.

As there was no way of knowing precisely what mortgage product [the Complainants] would have been offered and accepted at the time, the case handler obtained a number of high-street bank mortgage rate sheets from 2012 in order to determine a reasonable estimate of available products and rates at that time for loss calculation purposes.

The case handler considered that [the Complainants] were most likely to have opted for a 5-year fixed rate capital and interest repayment mortgage, because this was the product they held with their previous lender before their dealings with [Financial Services Provider] and is the product they obtained from their current lender. Taking into account all of the rates offered at the time in the local market, the case handler selected 4.02% as a reasonable fixed rate for the period.

By comparing this theoretical conventional mortgage with the one arranged by the [Financial Services Provider], the case handler calculated that [the Complainants] had suffered losses of £44,398.49.

The case handler also considered that the [Financial Services Provider] should refund £6,378.50 of fees including the [Financial Services Provider's] arrangement fee of £5,750, £2,622.70 in interest payable since that time on these amounts at a rate of 8% and pay an additional £5,000 in compensation for distress and inconvenience, for a total of £58,399.69 in compensation.

Neither party agreed with the case handler's conclusions. [The Complainants] considered that additional compensation was warranted, while the [Financial Services Provider] denied liability for any of the losses claimed.

## **Findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, including subsequent submissions made by both parties.

In line with my statutory duty to disclose evidence, I have provided copies of the documents which I have relied upon in reaching this provisional determination.

Both parties submitted detailed responses to the case handler's initial findings and [Financial Services Provider] also requested clarification of CIFO's remit and jurisdiction over the complaint.

For the sake of clarity, the jurisdictional question will be dealt with first, followed by the response from [the Complainants], and then the response from the [Financial Services Provider].

### **CIFO's jurisdiction over the complaint**

The [Financial Services Provider] have stated that, contrary to the case handler's assertions, they are not a lender and do not subscribe to the consumer lending code of practice. Furthermore, they say that they are not supervised by the [Financial Regulator]. The [Financial Services Provider] have therefore challenged CIFO's jurisdiction over the case and asked for clarification as to how the complaint falls within CIFO's remit.

Firstly, I note that this complaint partly relates to the provision of an interest-only loan of £24,875.88 to [the Complainants]. This loan was arranged in favour of [Financial Services Provider]. [Financial Services Provider's] website also confirms that they offer a range of lending services including personal loans, business loans, mortgages, vehicle financing, and debt consolidation. I therefore cannot accept [Financial Services Provider's] claim that it is not a lender.

It would also appear that the [Financial Services Provider's Parent] organisation, which includes the [Financial Services Provider], [Subsidiary A], [Subsidiary B] and [Subsidiary C], is in fact a voluntary subscriber to the Consumer Lending Code of Practice in [the Jurisdiction] and can be found listed amongst the current subscribers on page 8 of the Code.

Finally, I note that the information provided at the foot of the letters sent by the [Financial Services Provider] to [the Complainants] generally contain the statement '*Supervised by the [Financial Regulator]*'.

[The Complainants'] complaint primarily concerns two services which were provided to them by [Financial Services Provider]: mortgage brokerage and the provision of a cash loan.

CIFO's remit is defined by Article 2 of [the relevant legislation] (the Exempt Business Order), which lists the relevant financial services business which CIFO is able to review. All other business is exempt and CIFO is unable to review complaints relating to exempt business.

The following sub-paragraphs of Article 2 are relevant to this complaint:

*(k) subject to Articles 4, 5 and 6, relevant credit business, within the meaning of Schedule 4 to the Law;*

*(l) subject to Article 6, relevant ancillary business, within the meaning of Article 9(2) of the Law, in respect of which the main business falls within any one or more of sub-paragraphs (a) to (k).*

Schedule 4 of [the relevant legislation] (“the Law”) establishes the following forms of credit which fall within CIFO’s remit:

*2 Credit*

*Credit includes –*

*(a) a cash loan;*

*(b) a loan secured against immoveable property, whether by hypothecation or by mortgage or in any other manner;*

*(c) the financial accommodation provided in the letting of goods (as defined in [the relevant legislation]) under a hire-purchase agreement (as so defined), or in the selling of goods under a conditional sale agreement (as so defined); and*

*(d) any other form of financial accommodation.*

I consider that the cash loan of £24,875.88 clearly falls under paragraph 2(a) of Schedule 4 of the Law, and so there is no need to clarify this point further.

In respect of the mortgage brokerage, I consider that this is relevant ancillary business for the purposes of sub-paragraph (l) of the Exempt Business Order.

Article 9(2) of [the relevant legislation] defines relevant ancillary business as follows:

*(2) Relevant ancillary business is business ancillary to any other business falling within any of paragraphs (1)(a) to (i) (the “main business”), if –*

*(a) the main business is carried on in relation to the complainant by the same person as the ancillary business; or*

*(b) the ancillary business consists of –*

*(i) introducing, directly or by one or more intermediaries, persons who seek services, the provision of which constitutes the main business, to other persons who carry on that business, or*

*(ii) giving advice with a view to making such introductions.*

In summary, ancillary business is any activity which supports or contributes to the main business of a financial services provider. A firm will generally conduct ancillary business in relation to their own main business. Alternatively, the ancillary business of one firm may relate to the main business of another firm.

Following sub-paragraph (i) of the above, it must be shown that [Financial Services Provider] introduced persons who seek services, the provision of which constitutes the main business, to other persons who carry on that business.

[The Complainants] sought the provision of credit, specifically a loan secured against immoveable property. The [Financial Services Provider] introduced [the Complainants] to [Lending Company A], for whom the provision of credit appears to constitute their main business as a private lender.

On this basis, the [Financial Services Provider] was conducting relevant ancillary business by acting as a mortgage broker. I therefore conclude that this aspect of the complaint also falls within CIFO's jurisdiction.

There is an exemption to ancillary brokerage business which is contained within Article 6 of the Law, which is as follows:

*6 Exempt ancillary brokerage business*

*(1) Business is exempt business if –*

*(a) it does not fall within any of sub-paragraphs (a) to (i) of Article 2(2); and*

*(b) it is relevant brokerage business.*

*(2) Business is relevant brokerage business if it –*

*(a) is carried on, by a person whose principal business does not fall within any sub-paragraph of Article 2(2), as wholly incidental to that principal business; and*

*(b) is relevant ancillary business, by virtue of Article 9(2)(b) of the Law, in respect of which the main business –*

*(i) is carried on by another person, and*

*(ii) falls within any one or more of sub-paragraphs (a) to (k) of Article 2(2).*

*(3) Nothing in this Article is to be read, without more, as exempting the business that is the main business in relation to the exempt ancillary business.*

However, I do not consider that this exemption applies in this case. Contrary to sub-paragraphs (1)(a) and (2)(a), I consider that [Financial Services Provider's] principal business is relevant credit business and therefore falls within Article 2(2) of the Exempt Business Order.

## **[The Complainants'] response to the case handler's initial view**

### *Affordability*

[The Complainants] have objected to what they consider to be the case handler's agreement with [Financial Services Provider] that the private mortgage arranged for them was affordable.

It appears that [the Complainants] may have misconstrued the case handler's conclusion. The case handler's view was that, if the [Financial Services Provider] considered that the higher cost private arrangements were affordable, then they could not credibly dispute that the lower cost theoretical mortgage would have been affordable as well.

While I note [the Complainants'] objections to the affordability calculations conducted by the [Financial Services Provider], I do not consider it necessary to comment on these further if the mortgage has been deemed unsuitable for other reasons.

### *Interest Payments*

The mortgage calculations provided by the case handler show the position [the Complainants] would likely have been in had they obtained a conventional capital and interest repayment mortgage back in 2012.

The calculations take into account the financial implications of both the higher interest rate and the capital which was not being paid down on the interest-only mortgage between 2012 and 2015.

I cannot accept [the Complainants'] argument that all of the interest paid on the private loans was financial loss. Interest would have been payable on a capital and interest repayment mortgage regardless and, as [the Complainants] purchased and had use of their property between 2012 and 2015, it cannot be said that the interest-only mortgage provided no benefit whatsoever in return.

The most significant contribution to the loss is the capital which was not being paid down between 2012 and 2015. The loss calculations have taken this into account. Therefore, I do not consider that this aspect of the award should be increased.

### *Type of mortgage product*

[The Complainants] do not agree that they would have selected a 5-year fixed rate mortgage, and state that they were interested in tracker mortgages due to the low interest rates at the time.

While I appreciate that the base rate remained at a historic low of 0.5% between 2012 and 2015, I consider that, on a balance of probabilities, [the Complainants] would have been in the same type of mortgage they demonstrated a preference for both prior to and since the relevant 2012 – 2015 period.

It would not be fair and reasonable to use the benefit of hindsight to select the most optimal mortgage available at the time to determine the loss. Using the 5-year fixed rate

is the most plausible option in my view, as it matches both [the Complainants'] mortgage history and the mortgage they currently hold. On this basis, I consider it to be the most fair and reasonable product upon which to base the loss calculations.

#### *Deprivation of Funds*

[The Complainants] have provided reworked calculations for losses due to deprivation of funds, which appear to use the specific interest rate for each of the loans arranged by [Financial Services Provider].

However, this is not how CIFO calculates compensation for loss due to deprivation of funds. CIFO uses a standard rate of 8% simple interest, which is designed to reflect the opportunity cost on the amount retained by [Financial Services Provider] during the interim period and not yet paid to the complainant.

This is a standard court rate which is also used by our counterpart office in the UK, the Financial Ombudsman Service ("FOS"). I therefore see no basis to increase the rate as [the Complainants] have argued.

#### *Stamp duty and bond re-registration fees*

[The Complainants] have asked me to consider the stamp duty they paid on the private mortgage, and the cost of re-registering the bond in 2013 for a further 24-months, on the basis that they were required to pay stamp duty again when they obtained a conventional mortgage in 2015.

I agree that the re-registration costs would not have been incurred, and that the stamp would not have been paid twice, had [Financial Services Provider] arranged a suitable mortgage for [the Complainants] in 2012.

Therefore, to place [the Complainants] back in the position they could have been in, I consider that it would be fair and reasonable to include these losses, calculated to be £3,308.25, in the award made in this determination.

#### *Distress, inconvenience, and ongoing financial difficulty*

[The Complainants] do not consider that the case handler's recommendation of £5,000 additional compensation sufficiently reflects the distress and inconvenience caused in this matter. [The Complainants] say that they are still in financial difficulty, with [Complainant 1] having been unemployed without regular income since November 2012.

[The Complainants] are also seeking compensation for a loan of £12,000 which they used to pay off the last private facility before applying for a conventional mortgage in 2015.

It is important to note that CIFO is primarily concerned with financial loss, and awards made by this office for distress and inconvenience are usually nominal.

Compensation awards at the higher end of the scale are generally made in cases where the distress and inconvenience has been particularly damaging. I note that the case

handler's recommendation of £5,000 represents the highest level on our compensation scale, and that awards of this nature are reserved for the most extreme cases of distress and inconvenience.

While I agree that the distress and inconvenience caused in this matter has been extreme, I do not consider that [Financial Services Provider] can be held fully responsible for [the Complainants'] past financial difficulties and their current position.

In particular, I cannot reasonably conclude that [Financial Services Provider] is responsible in any way for [Complainant 1's] inability to secure employment since November 2012.

On this basis, I do not consider that compensation higher than award of £5,000 already recommended by the case handler is warranted.

**[Financial Services Provider's] response to the case handler's initial view**

[Financial Services Provider] described the private mortgage as a short-term bridging arrangement, which was expressly requested by [the Complainants] on or about 19 October 2012 in order to secure the imminent purchase of their property.

[Financial Services Provider] state that [the Complainants] had already been in touch with a conventional mortgage provider and suggest that their application may have already been unsuccessful.

However, this does not accord with the email correspondence showing [the Complainants'] first approach to [Financial Services Provider].

On 19 October 2012, [Complainant 1] contacted [Employee A], an employee of [Financial Services Provider], to ask whether they could assist in finding a new mortgage. [Complainant 1] indicates a joint salary of £89,000, and cash deposit of approximately £203,000.

[Employee A] responds positively, stating that *'Mortgages are our bread and butter.'* and that *'With so much equity it'll be no problem at all'*.

[Complainant 1] then asks for an indication of maximum borrowing, to which [Employee A] advises £450,000 or £490,000 depending on whether the mortgage provider offers 5 or 5.5 times their joint salary. [Employee A] closes the email with an assurance that *'I promise that when the time comes I'll find the best deal for you'*.

The [Financial Services Provider] subsequently advised [the Complainants] that no conventional mortgage provider will lend to them due to a missed mortgage payment in 2012, and that they had found a private lender who would be willing to lend to them instead.

The [Financial Services Provider] have described these private facilities as a short-term bridging arrangement which [the Complainants] willingly entered into on the basis that they could apply for a conventional mortgage at the end of the term.

While this may have been the case, I consider that [the Complainants'] agreement to this arrangement was based on their assumption that no conventional mortgage provider would lend to them at the time.

This assumption was based on advice given by the [Financial Services Provider] which was, in my view, misleading. There is no evidence that the [Financial Services Provider] made any reasonable effort to contact conventional mortgage providers to determine if loans would be available to [the Complainants].

[Financial Services Provider] subsequently received substantial benefit in the form of a high-rate interest-only loan payable to themselves in addition to various fees and charges.

I therefore find it fair and reasonable to award [the Complainants] compensation for the incremental costs associated with the private mortgage and the lost opportunity to obtain a conventional mortgage between 2012 and 2015.

[Financial Services Provider] do not agree that CIFO should retrospectively find [the Complainants] eligible for a conventional mortgage, based solely on a positive credit report from one agency.

However, this is only one factor which leads me to conclude that, on a balance of probabilities, [the Complainants] could have obtained a conventional mortgage in 2012. I have also taken into account their substantial cash deposit, combined salary, explanation for the missed mortgage payment, and the lack of any contrary written confirmation, or contiguous notes of a conversation, from the two conventional mortgage providers allegedly approached by the [Financial Services Provider].

On the basis of all the above, I conclude that [Financial Services Provider] arranged an unsuitable private mortgage for [the Complainants] which had significant financial consequences, and that it would fair and reasonable for [Financial Services Provider] to compensate [the Complainants] for these losses and those on the loan from [Financial Services Provider] as well.

## **Decision**

My final decision is that I uphold this complaint. The [Financial Services Provider] should pay [the Complainants] the following in compensation:

- Opportunity cost of unsuitable private mortgage - £44,398.49
- Fees in respect of the private mortgage - £6,378.50
- Stamp duty on the private mortgage - £2,677
- Re-registration costs for the private mortgage - £631.25
- Compensation for deprivation of funds to date at a rate of 8% interest - £4,254.82
- Compensation for distress and inconvenience - £5,000

Total compensation is therefore **£63,340.06**.

## **Next steps for the complainants, [the Complainants]**

You must confirm whether you accept this determination either by email to [ombudsman@ci-fo.org](mailto:ombudsman@ci-fo.org), or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **28 July 2018**. The determination will become binding on you and the [Financial Services Provider] if it is accepted by this date. If we do not receive your email or letter by the deadline, the determination is not binding. At this point you would be free to pursue your legal rights through other means.

If there are any particular circumstances which prevent you confirming your acceptance before the deadline of 28 July 2018, please contact me with details. I may be able to take these into account, after inviting views from [the Financial Services Provider], and in these circumstances the determination may become binding after the deadline. I will advise you and the [Financial Services Provider] of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville  
Principal Ombudsman & Chief Executive

28 June 2018

**Deprivation of funds  
(Fees and stamp duty)**

Interest Calculator (To Date)					
Date Should Have Been Paid	Amount	Daily Interest	Interest @ 8% p.a.	Days to Today	Interest Payable
29-Nov-12	£ 9,055.50	1.984767123	0.08	2029	£ 4,027.09

**Deprivation of funds  
(Re-registering bond)**

Interest Calculator (To Date)					
Date Should Have Been Paid	Amount	Daily Interest	Interest @ 8% p.a.	Days to Today	Interest Payable
17-Dec-13	£ 631.25	0.138356164	0.08	1646	£ 227.73