

The complaint

Mr D complains that he was mis-sold a mortgage by a broker working for BDS Mortgage Group. Advance Mortgage Funding Ltd (AMF) is responding to this complaint as the successor firm. Mr D's complaint is brought by his sister, Ms D, on his behalf.

Ms D says that the mortgage sold by the broker was unsuitable for Mr D's needs, and that the application made to the lender contained fabricated information about Mr D's situation. This included incorrect information overstating Mr D's earnings.

Ms D says her brother has suffered financial hardship for many years as a result of the mortgage being sold. Ms D suspects that the broker conspired with the vendor of the property to exploit Mr D, who has (and, at all material times, had) learning difficulties. Ms D says her brother is also concerned about what will happen when the interest only mortgage term ends and she worries about his future.

Ms D wants fair compensation for the broker mis-selling the mortgage to her brother. She estimates this to be around £100,000.

What happened

In 2006 Mr D took out an interest only mortgage for around £150,000, having received advice from a broker working for BDS Mortgage Group. AMF has said that under a historic agreement it would respond and accept responsibility for complaints which arose before they were appointed representatives of the network. AMF has responded to and accepts responsibility for this complaint.

Mr D was sold an interest only mortgage over a 20 year term. The mortgage is due to expire in 2026. The mortgage was provided on a self-certification basis. The mortgage was taken out on a two year fixed rate of 5.19% until 31 March 2008, after which time it reverted onto a standard reversionary rate (SVR).

Since taking out the mortgage Mr D has struggled at times to meet the monthly interest payments. Ms D has said in 2007 Mr D was seriously injured and needed major surgery. This meant that Mr D was unable to work for a long period of time due to chronic ill health. The mortgage fell into arrears at times although Mr D did manage to get support from the Department of Work and Pensions to pay mortgage interest from November 2007. In recent years Mr D has become well enough to work again. He's been making mortgage payments without needing benefit payments.

In 2019 Ms D complained to AMF that Mr D had been mis-sold the mortgage. There were a variety of reasons why Ms D questioned the sale and advice given. Ms D said Mr D was a vulnerable adult with learning difficulties. Ms D said she believed Mr D had been exploited by the broker and the person selling the property. She said the broker had sold Mr D a mortgage that was unaffordable during the term, that would leave him in 2026 with no way to repay the balance other than selling his home.

AMF gave its final response to this complaint on 20 September 2019. It upheld the complaint and said that its investigation had shown that *'it is likely that your brother should not have been recommended to take out the mortgage given the size of the loan and the required monthly repayments.'*

AMF set out what it considered would be fair compensation to put things right for Mr D. It offered Mr D around £37,000 for financial losses he'd experienced as a result of taking out the mortgage. AMF also offered a further £2,500 for the trouble and upset caused by the broker's actions. It acknowledged that Mr D had experienced suffering while struggling to afford the mortgage payments and property maintenance costs over the years. And it recognised that Mr D would be upset by having to bring this complaint and reorganise his financial affairs now.

Ms D didn't think that the offer of compensation was adequate. She referred the complaint to us. Our investigator looked into things but AMF wouldn't give its consent for us to look into the complaint. It said the matter had been brought to us too late according to our rules.

I issued a jurisdiction decision on 15 June 2021 setting out why I considered we were able to look at this complaint now, in accordance with the FCA's time rules.

Our investigator went on to consider the merits of the complaint, and whether she thought AMF's offer of compensation was fair and reasonable to settle the matter.

Our investigator thought that AMF needed to do more to resolve the complaint. She recommended that AMF and the mortgage lender (which is itself the subject of a separate complaint brought by Mr D) should both make payments to reduce Mr D's mortgage balance down to a level where he'd be able to afford to repay the remaining capital balance over an extended term (at an interest rate of 1.99%) before his chosen retirement date. The investigator thought that AMF should pay more compensation to Mr D to reduce the mortgage balance so he could afford to repay the mortgage by the time he reached 67.

Neither Ms D nor AMF agreed with the redress as set out by our investigator.

Ms D thought the investigator's proposed way forward wasn't fair for Mr D. Ms D said, in summary:

- What happened to her brother goes beyond typical mis-selling. This was a conspiracy between the vendor of the property and the mortgage broker to take advantage of a vulnerable adult for their own financial gain;
- It's unclear exactly how the investigator's calculations have been made and whether the redress calculation continues after the date of the broker's final response;
- Mr D recalls that his rent at the time the mortgage was sold may have only been around £40-50 per week, or around £200 per month which is half the figure used by the broker for compensation purposes. This would make a big difference to the calculation for redress;
- She also believes that the broker has overestimated the value of Mr D's property when calculating the capital gain he has made since owning the property;
- AMF had previously made a verbal offer to reduce Mr D's mortgage to a level more like £30-50,000 but had then gone back on this offer, and now Mr D faces an ongoing mortgage of around £100,000 to repay and a debt commitment that will extend into his old age.
- What had happened to Mr D was a criminal offence against a vulnerable individual, and the payment for trouble and upset when compared to other types of insurance claim for injury this seemed too low.

AMF replied to say, in summary, it thought the redress set out by the investigator was unusual. It agreed that Mr D should not have been sold this mortgage, and that it follows that Mr D should be put back in the position he would have been in but for the mortgage having been sold. AMF considered it highly probable that Mr D would have continued to live in shared rental accommodation and that redress should purely be the additional costs that having the mortgage has led to. AMF argued that the investigator's proposed redress improves Mr D's position as a result of the broker's mistake. Rather the redress should only look to put Mr D back in the position that he would have been in had the mortgage not been sold.

AMF agreed to review assumptions made in its compensation calculation that Ms D had queried. For example, Ms D had queried the market value of Mr D's property today, and she questioned whether fair rental figures have been used in the redress calculation. However, AMF said that Mr D had enjoyed the benefit of living in a two bedroom house for 15 years rather than renting a single room in a shared house. And that it considered it fair that the current value of Mr D's property was taken into account as part of the wider consideration of Mr D's position.

Because neither party agreed with our investigator's findings, this case has been passed to me so that I can make a final decision on the matter.

My provisional decision

I issued a provisional decision dated 21 September 2021, which said:

"When Ms D made this complaint to AMF on behalf of her brother, it investigated the matter and upheld the complaint. AMF offered compensation totalling around £40,000. It's said that it's likely the advice and sale of the mortgage in 2006 *should not* have been given. And it has recognised that the mortgage entered into in 2006 may not have been in Mr D's interests.

I've considered whether this mortgage should have been recommended by the broker. And, what the resulting impact of this advice and mortgage has been to Mr D, and how AMF should now look to put things right.

I've looked at the mortgage documentation completed at the time the mortgage was sold, including the application and offer from the lender. I can see why Ms D is concerned about how the mortgage came about and the role the broker played in the situation that's caused this complaint.

There are inconsistencies in the application concerning fundamental details of Mr D's position at the time the mortgage was sold. It seems, from the wider situation as presented by Ms D and the evidence provided about Mr D's learning difficulties, that his employment and income was incorrect in the application. The mortgage application presents Mr D's employment as a senior management role and declares his earnings as being materially greater than Ms D says that they were at the time, or ever have been.

I'm also mindful that in Mr D's specific situation, and taking into account his learning difficulties, it is likely that Mr D didn't understand the full implications of the mortgage he was entering into. I consider Mr D would have been heavily reliant on not just the mortgage broker's advice and recommendation- but the broker's help completing all the mortgage paperwork including the application and accepting the lender's offer.

I'm persuaded that Mr D entered into a long-term financial commitment that appears to be unaffordable for his true financial position as a direct result of the broker's advice and role in

the application process. Due to the broker's actions in 2006, Mr D has been committed to make payments to service this debt as best he can ever since.

In the specific circumstances of this case, I should also clarify that I'm satisfied that the responsibility for the mortgage advice given in 2006, and the mortgage sold to Mr D, lies with the mortgage broker rather than the lender. At the time the mortgage was sold, it was the broker's responsibility to check that the mortgage was affordable for Mr D. In this instance, as AMF has said, the advice and application shouldn't have gone ahead. My provisional decision is that it's appropriate that the broker should remedy the position Mr D finds himself in as a result of the mis-sale of this mortgage rather than sharing this responsibility with the lender.

And so, I agree with AMF's conclusion that this complaint should succeed. What remains is for me to decide whether AMF's offer of compensation is fair and reasonable to put things right.

What do I think AMF should do now to try to put things right?

AMF has provided a detailed calculation which, in summary, attempts to set out the costs of the mortgage for Mr D less any benefits of home ownership (such as capital appreciation) and less other costs that Mr D would always have needed to make anyway (such as rental payments) since the mortgage was taken out in 2006. I've looked in detail at AMF's calculation and the series of assumptions that have been made to create the compensation it offered to Mr D.

Where a mistake has been made by a financial business, we typically look to put a complainant back in the position they would have been in but for the error. In cases such as this, where many years have passed and Mr D's situation cannot be simply unwound, that can be a very difficult thing to achieve. Not least because it is impossible to say what situation Mr D would now be in if he hadn't bought his own property in 2006, funded by this mortgage. And, now Mr D has taken on this mortgage and property, and this has become his home, it isn't straightforward for him to sell the property and repay the mortgage to 'undo' his position.

I appreciate the thrust of the arguments made by AMF as to why its calculation is fair compensation and any further reduction in the mortgage balance could be considered an improvement to Mr D's position. AMF says that Mr D's had the 'benefit' of living in the mortgaged property for around 15 years. And this property, compared to the position that Mr D was in before, in shared rental accommodation, does appear preferable on the face of it. From the estimated valuation completed in recent years it also appears that the mortgaged property may have increased in value over the mortgage term.

However, I've also thought carefully about Ms D's arguments that Mr D's home ownership has not been without drawbacks for him. Mr D has had a long-time financial commitment to meet despite it being unaffordable for him (from a mortgage lending perspective) from the outset. This will have become even more of a struggle for Mr D after he became seriously injured and found himself too unwell to work. He's needed to rely on family and benefits to help him keep his home. He's also had to pay for all the other costs of home ownership including maintaining a property and paying for utilities on a much lower income than that set out in the mortgage application.

I've also considered that due to Mr D's learning difficulties, he's not a consumer who's equipped with an average level of knowledge of financial services or products. Complex products and advice are inaccessible to him and this has been reflected in the way the mortgage has been managed. Mr D hasn't tried to remortgage or get access to lower rates

of interest on this mortgage until more recently when Ms D asked for this. From information shared about the nature of his learning difficulties, Mr D wouldn't have been in a position to understand how he could 'shop around' to pay less interest on the mortgage or mitigate his costs- and this could have been replicated across all the costs of home ownership.

Ms D has also highlighted that the redress set out by our investigator still left Mr D with a mortgage to repay into his sixties. She felt it was unfair that Mr D would now continue to struggle to pay the mortgage over a prolonged period despite his history of ill health and that his continued employment into his sixties was questionable.

Ms D's said that this mortgage has caused Mr D distress as he's struggled to maintain mortgage payments and he's been worried about losing his home over the years. Ms D has said that due to Mr D's condition, he'd find moving house and potentially downsizing his property disorientating, confusing and upsetting.

I have carefully considered Mr D's situation when exploring how AMF might look to put things right in this complaint. In particular, I've thought about his complex vulnerabilities and his specific set of personal circumstances when determining the fair way to put things right in this complaint.

AMF's formula for compensating Mr D doesn't take into account Mr D's complex needs and his particular situation. I can see that a formulaic approach might be considered fair for some complainants. But in this instance, it leaves Mr D with a mortgage of around £100,000 to be repaid into his retirement.

Having taken into account all the arguments made by both parties, my provisional decision is that it would be unfair to ask Mr D to sell the property and repay the mortgage to resolve this complaint. Mr D is a vulnerable consumer who would be adversely affected by this course of action. My intention is to minimise any further disruption or upset for Mr D that has resulted from the actions of the broker in 2006.

My provisional decision is that it would be appropriate for AMF to reduce the balance of Mr D's mortgage to a level at which he is able to repay the mortgage on a capital repayment basis until the end of the current mortgage term (in 2026). I don't think extending the term further than 2026 is reasonable- this gives Mr D a liability to repay beyond the mortgage term. And in light of Mr D's fragile long term state of health, and the fact that he's struggled to pay the mortgage in the past, I think to extend the term of the debt commitment may only result in extending the financial losses caused by him (and may potentially extend the future suffering caused to him). I also bear in mind that in any case neither I nor the broker can extend the term of the loan in resolution of this complaint, as that is a matter for the lender.

Mr D's mortgage lender has agreed to retrospectively apply a lower interest rate to the borrowing and this reduces the loan balance by around £18,000. It has also said it will agree to fix the interest rate applied to this mortgage for the rest of the loan term, to 2026. My provisional decision is that it would be fair that AMF and the lender work with Ms D to see what level of monthly payment Mr D can reasonably afford, at the rate of interest the lender has recently offered (1.99%). This calculation should be made following this provisional decision and without delay so all parties are clear about the size of the payment to be made by AMF and the size of the mortgage that Mr D will be left to repay.

It is my intention that AMF should then make a capital payment towards the loan balance such that by making this monthly payment Mr D is able to afford to repay the balance in full by the end of the current mortgage term.

The aim of this direction is to create a situation where Mr D can make affordable monthly repayments of capital and interest to this mortgage over the existing loan term repaying the mortgage entirely by 2026. This leaves Mr D without the ongoing burden of this financial commitment into his future, and without extending the costs of this loan into his sixties. To extend the loan term would require Mr D, who's struggled with severe ill health, to continue to work to service this loan commitment and that seems unreasonable in the circumstances."

I also considered that a payment should be made for the trouble and upset caused to Mr D. AMF had already offered £2,500 in recognition of the upset caused by the sale of this mortgage since the mortgage was taken out. Ms D had said she considered this payment to be too low- but overall, in light of the wider award being made for financial loss, I thought this seemed payment seemed reasonable.

Responses to my provisional decision

Ms D responded. In summary she accepted my provisional decision.

AMF disagreed with my provisional findings. In summary, it accepted Mr D was vulnerable and that moving house might be disturbing for him. It also said it sympathised with Mr D's position and says it's made every effort to take steps to reasonably put things right.

However, AMF said it considered my proposed redress to be unclear, too ambiguous to follow, 'disproportionate and unfair'. AMF said it had used a standard industry approach to calculate redress and that this was consistent with the 'published Ombudsman's framework'. It also said I had ignored the fact that if Mr D hadn't taken out the mortgage, he'd have continued to rent a property. And it said that if Mr D's rental payments would have continued into retirement, why shouldn't his mortgage payments do the same now.

AMF also said it believed Mr D would probably have had to move several times over the years if he hadn't purchased this property, and yet I was ignoring this fact and awarding an amount of around £100,000 so that any upset may be avoided now by requiring him to move house. AMF doesn't believe the responsibility and burden of home ownership outweighs the benefits and considers that my provisional decision proposes 'compensation for distress and inconvenience of £100,000.'

AMF suggested that other solutions may be available such as for it to purchase Mr D's property and rent it to him for the rest of his life, or that Mr D could take out a retirement interest only or lifetime mortgage now and accept the one off payment of around £40,000 that it has already offered.

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.

I've thought carefully about the additional remarks made by AMF in response to my provisional findings and why it considers that my proposed redress is unclear and unfair.

As I explained in my provisional findings, putting things right in this case isn't straightforward. This isn't simply a matter of putting Mr D back in the position he would have been in but for the advice and mortgage application. Many years have passed since that event, and there is a range of variables that mean that it simply isn't possible to come up with a precise 'calculation' that offsets the benefits of the mortgage against the burdens arising from it. In addition, the ongoing nature of the rights and obligations under the mortgage make this even more difficult, and selling the property at this point or remortgaging for life will have the sorts

of consequences for Mr D which are impossible to quantify through 'simple' monetary compensation.

While AMF does accept Mr D is vulnerable, it continues to question the extent of this vulnerability. I am persuaded by all the evidence provided that Mr D has vulnerabilities that merit careful consideration.

I'm also aware that discussions about what might constitute fair compensation to resolve this complaint have gone on for years. The protracted nature of the dispute continues to cause upset for Mr D and his representative. And that's why this matter was been referred to our service in the first instance. It's clear that putting things right in this case isn't a simple thing to achieve.

AMF has said that it would be irregular to proceed with redress as I've set out. However, I think something similar to what I'm proposing now was also considered by AMF at an earlier stage. The contact history on the complaint brought against the lender showed there had been contact made by AMF to find out more about the loan before an offer of compensation was made to Mr D. AMF appears to have been thinking about a considerable one-off payment, reducing Mr D's mortgage balance to a level he'd be able to repay in light of his complex needs.

This supports Ms D's comments that there had been an earlier time in this dispute when more compensation was discussed - but then the methodology changed and the offer was greatly reduced. AMF hasn't explained to us why it initially explored a higher compensation figure and then switched to the calculation then proposed to Mr D as fair settlement of his complaint. Whatever its reasons for this, I think this shows that my proposed redress is similar to what it had previously considered making available to Mr D, and that therefore what I'm proposing is rational, even if it might be open to me to direct compensation using a different method.

One of the issues with the calculation behind the offer made by AMF was the series of underlying assumptions that needed to be made. These assumptions led to disputes about the value of Mr D's property, what would have happened if he hadn't taken out this mortgage, what rent he paid at the time and what he might have paid over the years, what else Mr D might have spent money on if he hadn't been making higher mortgage payments, and other key factors. For example, even to establish the rent Mr D was paying at the point he entered into the mortgage is difficult. Mr D's learning difficulties cause him severe problems with his memory, so I think it's unreasonable to rely on Mr D's recollection as to his position at the time. And the application completed by the broker contains information that's alleged to have been fabricated and is unrelated to Mr D's circumstances at the time. This creates a very difficult position from which to calculate fair redress.

AMF has said that it considers the rewards of home ownership outweigh the risks of the mortgage. I have taken the benefits of home ownership into account, including the fact that Mr D seems likely to have benefitted from some increase in property value (although the exact amount is disputed). However, I acknowledge that while there may have been benefits, for the purposes of redress these are intangible when compared to the burden of having a long-term financial commitment Mr D couldn't afford, that required the support of friends and family to pay, and that leaves him with a financial commitment into his future.

I've reached the conclusion that what AMF might consider is the standard industry approach isn't possible to apply in this case as there is too much uncertainty about the assumptions that are needed. In addition, the overlapping nature of these factors mean that there is no way of reaching a satisfactory finding on them, so that if I tried to do so there is a risk that my conclusions would be arbitrary.

My direction of a single payment to reduce Mr D's mortgage to a level at which he can repay the loan within the term, removes further debate and discussion about the elements that make up a calculation to make a payment to Mr D. And I'm also looking to put things right in this complaint in a way that gives Mr D certainty about what he must do for the rest of the mortgage term - knowing that if he does this his debt will be repaid, his financial losses as a result of the advice will stop and his situation in retirement is simplified.

AMF has said it is concerned that I'm making this award based solely on distress and inconvenience caused to Mr D. To be clear, this money award is being made in respect of losses suffered by Mr D in the past and those that might reasonably be suffered in the future as a result of the sale of this mortgage. A separate payment of £2,500 in relation to trouble and upset has been proposed as explained.

AMF has now mentioned other alternatives such as purchasing the property from Mr D and renting it back to him for the rest of his life. It's also suggested Mr D could take a retirement interest only mortgage, for a smaller balance having used the payment offered by AMF to reduce the size of his secured borrowing.

As I've explained, I don't think it's fair or reasonable to leave Mr D with a mortgage to repay for the rest of his life or well into his planned retirement because of financial advice and a mortgage mis-sold to him in 2006. I think that would prolong the monthly financial commitment and extend the additional risks and costs to Mr D that a mortgage brings. To extend the term of this mortgage, or replace it with another financial commitment for Mr D to meet for life, seems wholly unacceptable to me especially in light of Mr D's specific complex situation and his vulnerability. And it opens the possibility of future financial costs for Mr D which continue to stem from the mis-sale in 2006. I appreciate that AMF suggest that an approach is either disproportionate or unfair, but I'm satisfied that it addresses the adverse consequences to Mr D of the mis-sale and it's more appropriate in this case than the alternatives that AMF has suggested.

AMF has said my proposed redress is unclear and ambiguous. I disagree because it should be relatively straightforward for AMF to calculate what they need to pay to arrive at what I consider to be a fair and reasonable outcome.

The lender has said that, according to a recent income and expenditure assessment it has made with Mr D's representative and his history of payments, it considers Mr D can afford to make monthly repayments towards a capital repayment mortgage of £650 per month. That means that the mortgage will need to be reduced to a balance of around £35,000 for Mr D to repay the mortgage in full by the end of its term (30 June 2026). The lender will reduce the mortgage balance by around £18,000 due to its offer to backdate a lower interest rate to the loan. And the lender has said it will agree to give an interest rate (with no product fee) of 1.99% for the remainder of the mortgage term. This fixes a monthly payment for Mr D and gives him certainty about what he must pay and when this loan will end.

That, in turn, means that AMF will need to make a payment of around £100,000 to Mr D to reduce the balance of this mortgage to a level at which he can repay it within the existing term. Our investigator can help Ms D, AMF and the lender to make sure that exact settlement figures are evident so all parties are clear about what needs to happen to resolve this complaint.

In conclusion, while I appreciate the arguments made by AMF, I remain of the view that it's reasonable to adopt a less formulaic approach to putting things right in Mr D's case than AMF's offer. I'm able to determine a complaint based on what I consider to be fair and reasonable in the unique set of circumstances in each complaint rather than being

constrained to a set formula or methodology that could lead to unintended unfairness for Mr D.

I don't agree that it can clearly be said that if Mr D hadn't taken out this mortgage, then he would be in rental accommodation now, and that we know what his current financial position would have been. There is uncertainty over what course of action Mr D may have taken over the years, and that's one of the reasons why it is so difficult to put things right in the case now. I cannot simply put Mr D back in the position he would have been in but for the broker's advice and sale of this mortgage all those years ago.

Despite the further arguments put forward at this stage, I consider the redress proposed in my provisional decision is the best course of action to sort out this dispute to prevent any future financial losses for Mr D and give him closure on the matter. And so, I think it fair and reasonable to settle this matter in line with my provisional findings.

Putting things right

I find that AMF should make a payment to Mr D of around £100,000 (to be confirmed by the lender) which will in turn be used to reduce Mr D's mortgage balance to around £35,000. This is a level that the lender has established Mr D can afford to repay in full through capital repayments within the existing mortgage term. To be clear, this compensation is intended to be used to repay the mortgage balance as Mr D's financial situation will only be improved by this course of action.

AMF should also pay £2,500 for the significant distress, worry and upset caused to Mr D by its action over a long period of time. The broker sold Mr D a mortgage without establishing that it was affordable for him, and that potentially he couldn't understand. The consequences of this action have been upsetting for Mr D over a long period of time which is regrettable.

My final decision

My final decision is that I uphold this complaint against Advance Mortgage Funding Ltd. I direct AMF to do the following to settle the matter:

- make a payment to Mr D's mortgage of around £100,000 sufficient to allow Mr D to make payments of £650 per month for the remaining term of the mortgage and repay the balance in full by the end of the existing term.

- pay Mr D a payment for the trouble and upset it has caused to him of £2,500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D, or Ms D on his behalf to accept or reject my decision before 12 April 2022.

Emma Peters
Ombudsman