

The complaint

Mr T and Mrs T complain they've paid Commitments Protection Ltd (CPL) to pursue a mis-sold mortgage claim that they say CPL would have known wouldn't be successful.

What happened

In June 2017 Mr T and Mrs T said they spoke to CPL and said they were told they'd a strong case to make a claim for the mis-selling of their mortgage product. They said they were persuaded to undergo a Full Personal Review. Mr T and Mrs T made clear that theirs was a split mortgage, part repayment part interest only. They said they made several payments to CPL for their claim. In July 2020 Mr T and Mrs T asked CPL for an update as they hadn't heard anything. And they were told that their claim couldn't go ahead as it wasn't suitable for litigation because it was a split mortgage. Mr T and Mrs T complained to CPL.

CPL said that the claim didn't go ahead not only because it wasn't an interest only mortgage but because only Mr T had signed the letter of authority (LoA). CPL asked Mrs T to sign a LoA. They also said they'd told Mr T and Mrs T when they offered their services that there wasn't a guarantee that their claim would be accepted by the solicitors.

Mr T and Mrs T weren't happy with the response from CPL and referred their complaint to us.

Our investigator said Mr T and Mrs T wouldn't have purchased the Full Personal Review if they'd been made aware that it was likely the claim wouldn't have been successful. He said CPL should refund Mr T and Mrs T all the fees they'd paid with 8% simple interest for the time they've been out of pocket. And to pay Mr T and Mrs T £200 in compensation for leading them to believe they'd receive compensation.

CPL haven't responded to our investigator's outcome so Mr T and Mrs T's complaint has been referred to an ombudsman to decide.

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 done so, I'm upholding this complaint. I'll explain why.

Mr T and Mrs T have shown that they made several payments to CPL. In September 2017, a payment of £714, in October 2018 a payment of £354, in January 2019 a payment of £474, in March 2019 a payment of £804 and in May 2020 a payment of £357.60, in total £2,703.60.

What I need to determine is what Mr T and Mrs T understood these payments to be for and whether CPL had been fair and reasonable in their actions with them.

CPL has said that their initial agreement is for a "*Full Financial Review*" to be done. Following which there is a "*Mortgage Review assessment*", with a report that provides an opinion of the likely success of a claim. . And their customers then have the choice whether to pursue a claim. And if they do, an agreement for a solicitor to consider the likely success of such a claim is based on a "No Win No Fee".

I can see that CPL's agent told Mr T and Mrs T in August 2017 that they had a strong case, and the receipt for the first payment Mr T and Mrs T made was for £714 and noted "*mortgage review*".

I've seen the Mortgage Review Assessment Report produced for Mr T and Mrs T. The report gives them a B/C status. Further in the report I can see that the requirements under B/C for a claim is that it's an "interest only" mortgage. I'm persuaded by Mr T and Mrs T's testimony that they'd made clear in their initial discussions with CPL that theirs was a split mortgage. And I would also have expected this to have been checked before CPL offered their services. CMCOB general principles 2.1.7 say:

"A firm must not make or pursue a claim on behalf of a customer or advise a customer to make or pursue a claim, if the firm knows or has reasonable grounds to suspect that the claim... (1) does not have a good arguable basis."

I can see from the receipts the payments in October 2018 for £354, January 2019 for £474 and March 2019 for £804 were made for the "*Full Financial Review*". In total £1,632.

Again, I'm persuaded by Mr T and Mrs T's testimony that they understood all the elements they were paying for formed part of the mis-sold mortgage claim. And if they'd been told that the claim had little to no likelihood of success, I don't think they would have made these payments.

So, I think CPL should refund all the fees paid by Mr T and Mrs T totalling £2,703.60, as I don't think they would have paid these fees if they'd known their claim was unlikely to succeed as it wasn't an "*interest only*" mortgage.

It isn't our role to punish a business, but where we think something has gone wrong, as is the case here, we would look to put the consumer back into the position they would have been. And for Mr T and Mrs T the money they'd paid in fees wasn't available to them to use or invest. So, I agree with our investigator that 8% simple interest should be added to this amount – from the date it was paid to the date of CPL's settlement. And I'd expect this payment to be made within a reasonable amount of time from my decision – I'd consider this to be within 28 days.

Mr T and Mrs T said they hadn't been updated about what CPL were doing for them. And I think given the expectation that they'd receive compensation for their claim, to only find out that their claim had no likelihood of success some years later must have been distressing for them.

My final decision

I uphold this complaint. And ask Commitment Protection Limited to:

- refund Mr T and Mrs T £2,703.60 for the fees they paid;
- add *8% simple interest from the date they paid the fees to the date Commitment Protection Limited refund their payments and;
- pay £200 for the distress and inconvenience caused.

*If Commitments Protection Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr T and Mrs T how much it's taken off. It should also give Mr T and Mrs T a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 16 September 2022.

Anne Scarr
Ombudsman