

The complaint

Mr and Mrs R's complaint is about the service they received when they asked Everyday Financial Services Ltd (EFS) for assistance to re-mortgage their home. Over almost two years they received advice and communications from EFS's adviser, and believed that mortgage applications had been made, but subsequently discovered they weren't.

Mr and Mrs R are represented in their complaint, but for ease, I will reference all comments and actions as being theirs.

What happened

When the complaint was referred to this service, EFS set out why it didn't think it was liable to answer it. I looked into the circumstances of the events complained about, and I concluded that the acts and omissions Mr and Mrs R complained about were undertaken on behalf of EFS and so it was liable for the complaint made.

Mr and Mrs R have told us that in late 2019 they approached a mortgage adviser (H), who had arranged their then existing mortgage, for assistance in releasing equity. The equity being released was to be used for home improvements.

In December 2019 communications started regarding a mortgage application and Mr and Mrs R were told what evidence was needed to support an application, such as bank statements. They were also asked to pay an 'upfront fee' for the service that would be provided. They have evidenced that they paid £495 on 23 December 2019. Mr and Mrs R believed a mortgage application was submitted around that time.

In March 2020 Mr and Mrs R have told us they were told the lender they had applied to had put everything on hold due to the Covid-19 pandemic. Following this, they've said they were told the lender had 'pulled out' and they needed to apply to a different lender. New documentation was sent to Mr and Mrs R for signatures in July 2020. They were told that the application had been accepted and from early September 2020 Mr and Mrs R were being given confirmation that the advance had been paid out, but then issues had arisen to explain why the advance hadn't actually been made and the funds hadn't arrived in their account. At times, emails were forwarded to Mr and Mrs R to support the delays and problems.

By the start of March 2021, Mr and Mrs R had been told the money had been advanced four times. However, it was not until this point that there is any evidence that an application process was started. The application was declined at decision in principle stage and EFS was informed that was the case. However, Mr and Mrs R were told the following day that the mortgage would be advanced the next day. By the end of June 2021 Mr and Mrs R had been told at least six further times that the mortgage advance had been released and they would receive funds in their account within a few days.

On 5 July 2021 Mr and Mrs R sold their existing car and put a deposit down on a new one. They've told us that this was in reliance of the money from the re-mortgage coming through to pay for the purchase. They had last been told on 30 June 2021 the money was on its way.

However, there was a problem with the car at its final inspection, which caused the purchase to fall through and the deposit to be refunded.

On 26 July 2021 Mr and Mrs R found another car they wanted to buy and put down a deposit on it. However, they've said that they were unable to buy the car as the money from the re-mortgage didn't arrive and they lost their deposit. The car dealership confirmed in late 2022 that no contract to purchase the car was entered into by Mr and Mrs R. It also said that a few days after the deposit was paid, Mrs R called and cancelled the purchase as there had been a sudden change in their circumstances. It went on to say that Mrs R didn't ask for the deposit to be refunded, and the owner of the dealership now understood that this was because her and Mr R's understanding was that the deposit was non-refundable. It is not clear whether the deposit would have been refunded if it had been requested in 2021, but it was confirmed it was not refundable at the time of the statement in 2022.

Mrs R hired a car between 7 August and 11 August 2021. Mr and Mrs R have requested that these costs be refunded as the car was only hired because they had been unable to complete the purchase of the above car.

By the middle of August 2021 H had offered to lend Mr and Mrs R money himself – they declined to accept it. They in turn asked for information about who H was talking to at both the new and existing lenders and a copy of their case file. Information was provided on 16 August 2021, along with an apology for the mistakes and the stress Mr and Mrs R had been caused.

In the meantime, on 12 August 2021 Mrs R emailed H using Mr R's email address. She explained that Mr R was in hospital. She chased the information that had been promised and told H that all communication going forward should be made by email. There were further emails exchanged between H, Mrs R and their representative over the next week.

Mr R was discharged from hospital on 16 August 2021. Two days later he has told us he had to make the journey to collect another car he had been able to source. Mr and Mrs R have told us they took out a car loan to pay for the car. Mr R has evidenced that H tried to call him that day, despite having been told communication should only be by email due to his health situation.

In August 2021 Mr and Mrs R asked us to look into their complaint. When they did so, they explained that due to the delays in obtaining a re-mortgage, the quotes for the home improvements had expired, and so they would need to pay more for those works when they were done. In addition, they had put down a deposit on a car based on the promises of money coming through, and had lost the deposit and the car when they couldn't complete the purchase. Also, they told us that Mr R had become seriously ill and been hospitalised due to the stress the situation with the re-mortgage caused him. Mr and Mrs R have also told us that despite asking that all correspondence from this point be by email, H continued to call and text Mr R. We forwarded details of the complaint to EFS.

During our investigation Mr and Mrs R confirmed that, while they knew the home improvements had cost them around £1,800 more than they had originally been quoted, they weren't able to provide evidence of this.

EFS denied responsibility for the events being complained about. As such we looked into the matter and I issued a decision on 30 June 2022 confirming that EFS was responsible for the complaint. Our investigator then went on to look into the merits of the complaint. She upheld it. In settlement she recommended that EFS reimburse Mr and Mrs R the lost car deposit, if it was evidenced that it was indeed lost, and pay them £900 for the upset and inconvenience they had suffered.

In relation to the merits of the complaint, EFS highlighted that it hadn't known what H had been doing and the only things produced by it were decisions in principle, which didn't guarantee funds. It repeated its comments about it not being responsible for H's actions and that the regulator had decided that, as it had severed ties with H, no further action was required.

Mr and Mrs R accepted the investigator's conclusions.

Our investigator considered what EFS said, but it didn't change her conclusions. EFS asked that the complaint be referred to an ombudsman for consideration. It didn't make any further material comment on the merits of the complaint.

EFS wrote to Mr and Mrs R shortly thereafter and informed them that it had investigated their complaint and had concluded that, effectively, it was not responsible for the information and assurances H had sent to them from the email address linked to his previous company. It highlighted that H had never been an employee of EFS and he had undertaken the actions complained about outside of its offices. If any documents were produced by EFS they wouldn't constitute an assurance of funds and were produced without its knowledge.

Some further information was requested from Mr and Mrs R. It was also explained that if they wanted us to take account of Mr R's illness when deciding compensation, they would need to provide further evidence that linked the illness with EFS' acts and omissions. While they provided some further information about the actual illness, they confirmed that they wouldn't be providing anything further from Mr R's medical practitioner about a link between the two things.

I issued a provisional decision on 19 January 2023, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'At each stage of our process we review our jurisdiction to consider a complaint. Having done so, I remain satisfied that this is a complaint that falls within our jurisdiction and that it has rightly been set up against EFS.'

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

It is very clear that Mr and Mrs R were misled throughout in this case. Even to the point that emails from the purported lender were being fabricated to confirm the mortgage had been approved and was about to be paid out or had been paid out. Having read the email exchanges, I am satisfied that this caused Mr and Mrs R a lot of concerns and frustration, which they should be compensated for. They have also asked that various outgoings be reimbursed.

The first of these is the fee they paid for the service they had asked for. As I have said above, they have evidenced that this was requested, and they paid it on 23 December 2019. As the service Mr and Mrs R paid this money for was not provided, I am satisfied that this money should be reimbursed. As they have been deprived of the money for some time, interest should be added from the date of payment to the date EFS makes settlement.*

Mr and Mrs R have also asked that they be reimbursed for the car deposit they paid and lost at the end of July 2021. I have considered this matter carefully and I am not minded to make EFS reimburse them for this loss. Having considered the evidence that has been provided, it is not clear whether the deposit was non-refundable or whether it was not refunded because they didn't ask for it. Furthermore, I am also not persuaded that it was reasonable for

Mr and Mrs R to have made financial commitments in reliance of money from the re-mortgage, given how many times over the preceding year they'd been told the money would be deposited in their account imminently only to not materialise.

The hire car costs that Mr and Mrs R have claimed for come about as a direct result of their actions to sell their existing car and being unable to replace it when expected. Given my findings above regarding the car purchase, as this cost comes about from that issue, I again don't consider that EFS is responsible for it being incurred.

Mr and Mrs R have also said that the costs of the home improvements they wanted the equity release for increased over the period of the delay. If that were the case, then it is something that EFS should rightly pay. However, they have been unable to evidence this increase and so I can't make an award in this respect.

I now return to the matter of compensation. As I have detailed above, Mr and Mrs R have not provided evidence that Mr R's illness was linked to the events being complained about here. So I can't factor that illness into the compensation payment I award as our investigator did. In addition, while I accept there was one telephone call after EFS was asked to only communicate by email, there is no evidence that there were multiple calls and texts as has been suggested. I would also comment that it wasn't unreasonable for EFS to continue to use Mr R's email address for communication, as that was the email Mrs R was using to communicate with it. Overall, having carefully considered this matter, I think £750 is the appropriate amount to award in the circumstances.'

Mr and Mrs R accepted my provisional decision. They commented that they were unhappy with the attitude and continued denials of EFS.

EFS didn't accept my conclusions. It said the payment Mr and Mrs R made on 23 December 2019 was not received by it and it assumed that the payment had been made to H's previous company. As such, it didn't feel that it should have to refund that money. It said that, while it continued to refute the allegations it was willing to pay Mr and Mrs R £500 in full and final settlement if the part it played in the matter.

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.

EFS has said that it didn't receive the money Mr and Mrs R paid in December 2019 after H was representing it. It hasn't provided any evidence of this. It has also said that it assumes that the payment was made to H's previous company. Again there has been no evidence of this provided. However, given the things that happened in this case, I can believe it is possible that H took the money for services that EFS was to provide, and directed it elsewhere, effectively stealing the money from EFS.

As has been previously explained, the only business that H was allowed to provide regulated advice on behalf of at that time was EFS. As such, when accepting money for such services, he could only have been accepting it on behalf of EFS. If he did effectively steal the money from EFS, that is a matter for it to take up with H; Mr and Mrs R shouldn't be disadvantaged by the situation at EFS. As such, I remain satisfied that EFS should refund the money, with interest, that Mr and Mrs R paid on 23 December 2019.

I set out in my provisional decision that I considered that EFS should pay Mr and Mrs R £750 for the delays, upset and frustration they had suffered. Nothing EFS has said has altered my conclusions in this regard.

My final decision

My decision is that I uphold this complaint in part. In full and final settlement of the complaint I order Everyday Financial Services Ltd to refund the £495 fee to Mr and Mrs R along with interest* from 23 December 2019 to the date of settlement. In addition, it should pay them £750 compensation for the upset and inconvenience they were caused.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs R to accept or reject my decision before 9 March 2023.

*Interest is at a rate of 8% simple per year and paid on the amount specified and from/to the dates stated. If Everyday Financial Services Ltd considers that it's required by HM Revenue & Customs to deduct income tax from any interest due to Mr and Mrs R, it should tell them how much it's taken off. It should also give them documentation evidencing the amount for use with HM Revenue & Customs.

Derry Baxter
Ombudsman