DRN-4019327

The complaint

Mrs C complains about advice she received from Morton Fraser LLP (at the time Skene Edwards). She complains that she was advised to release more equity from her property than she needed, and as a result, this has significantly eroded the value of her home for no real benefit. Furthermore, she believes the additional money was used to pay fees and commission – and was never invested for her. She feels that the advice she received wasn't suitable and has now caused her a financial loss.

What happened

In 2005 Mrs C completed a fact find with her adviser from Skene Edwards and a need for some borrowing was identified. The evidence on file indicates that:

- Mrs C was receiving an income from an existing investment worth around £50,000 and some other sources. At the time, that income was sufficient to meet her needs. But it was also clear that she was depleting her existing investment bond by virtue of the level of income she was taking from it.

- The fact find revealed that she was not financially sophisticated or experienced, and she only had one existing investment.

- She said that she wanted to raise enough money 'to cover a small amount of expenditure and perhaps the odd luxury', as well as small gifts to family and a holiday.

As a result of these needs, Skene Edwards recommended that Mrs C take out a lifetime mortgage with Scottish Widows. In her recommendation letter, the adviser from Skene Edwards said that Mrs C wanted a cash reserve to provide her with some form of 'security blanket' in times of need in the future. She said that Mrs C had the option of withdrawing further sums from the bond or taking money out of the house – and whilst the latter option was more expensive, it would leave Mrs C with cash deposits in the future that would be available to her. In addition, the adviser said that in the future, Mrs C may have care costs that she'd be unable to afford – she explained that there was a 'possibility that should [Mrs C] need a reasonable amount of care in the future and [was] unable to pay for this [Mrs C] may well have to sell [her] house to pay for those costs'.

The adviser said that Mrs C had identified approximately £18,500 worth of borrowing that she needed for various works on her home. However, she concluded that 'it might be advantageous to maximise the borrowing on the equity release scheme to provide peace of mind and perhaps a little security in the future'.

She said that 'cash does create a maximum flexibility for whatever may happen in the future' and furthermore could let Mrs C 'stay in [her] home for longer'.

The adviser explained that 'it was not always possible to return to the lender to obtain further monies from the property at a later date' and therefore she recommended Mrs C 'maximise the borrowing' she could at the time. As Mrs C's home was valued at around £200,000 at the

time, this amounted to £54,000. The adviser explained that whilst she wasn't expecting Mrs C to 'spend the money that can be released from the property', she thought Mrs C could 'transfer some of the assets from bricks and mortar into cash to assist you'.

The adviser recommended Scottish Widows because, although it wasn't 'necessarily the cheapest product on the market', the adviser 'felt' that it led 'the market in terms of service and clarity'. She also explained that the loan had a specific guarantee by the lender that her home would never be sold while she was still able to live in it. Among other things, the adviser explained that she thought it would be 'hard to visualise how most of the house price could be lost to the lender in the first 15 years'. However, she said that this might not be the case if Mrs C survived for longer than 15 years. Ultimately though, the adviser said that 'hopefully' the increase in the value of the house would pay for the interest accrued no matter how long Mrs C lived. She said that the net value of the house 'should always remain the same' – although no guarantees could be made.

Finally, the adviser explained that with the approximately £54,000 released, around £52,000 would be left after payment of fees. The adviser recommended that they set up 'sufficient funds to cover various costs anticipated in the next 12 months', and 'sufficient funds to cover any emergency funding over the longer period'. She then recommended any additional monies be lodged into ISA accounts or ISA investments.

Mrs C completed the necessary paperwork, and the equity was released from her property. She initially received £18,500 and the remaining monies (around £34,400) remained in Skene Edwards's client account. Further money was deposited in Mrs C's accounts in October 2008 and November 2008, totalling £15,000. In the meantime, Skene Edwards continued levying fees on this money ,and the balance of around £14,000 was transferred to another firm when Mrs C's adviser moved in 2010. Between 2010 and 2019 this new firm also continued levying fees ,and eventually the balance of around £7,700 was paid to Mrs C in 2019.

I issued a provisional decision in February 2023. I firstly confirmed that in my view the complaint had been raised in time and I could consider it. I then gave my provisional conclusions on the merits of Mrs C's complaint. I said:

Having considered the evidence carefully, I'm not minded to change my preliminary conclusions which I shared with both parties in September 2022.

I acknowledge that there's a great deal of evidence which is missing or incomplete – and in those circumstances, I'm required to decide matters based on what I consider is most likely to have happened.

In this case, I'm satisfied that the recommendation letter gives an accurate description of the basis of the advice Mrs C was given, and the reasons why she was recommended to take out the maximum available loan.

I acknowledge that Mrs C has indicated that in 2005 she had another investment that she could've used to pay for the works to her property. I agree that this might also have been a suitable alternative. And I also agree that this option should've been explored in detail with Mrs C.

For example, the letter simply makes reference to not encashing the bond on the basis that Mrs C would have 'cash deposits' available to her at a later date – without any discussion of the costs of this benefit compared to encashing her bond. The adviser then appears to confuse matters, by discussing the possibility of Mrs C being required to sell her home in order to pay for future care home fees, but not encash the bond – even though the very

recommendation she was making was likely to erode the value of her home for this purpose. So I'm not persuaded the adviser did consider this option thoroughly enough – nor did she consider or explore the possibility of combining some encashment from the bond with some borrowing, in order to reduce the cost to Mrs C as much as possible.

However, when considering what probably would've happened at the time, even if the adviser had properly explored this option, I need to take into account Mrs C's circumstances as they were, and the contemporaneous evidence I have available. This shows that Mrs C was heavily reliant on the bond for a large proportion of her income – so much so that she was in fact drawing down more income than the bond was producing.

I therefore don't consider it likely that Mrs C would've agreed to encash a portion of this investment for the work she required doing to the property – and I'm not persuaded the adviser treated her unfairly by not recommending she do this.

Given what I've said above, I'm satisfied the evidence shows, on balance, that in 2005 Mrs C expressed a need to raise capital for work she needed to do to her property. Given Mrs C's financial circumstances, I'm not persuaded an equity release product such as the one she took out was inherently unsuitable for her – particularly given that her home was unencumbered at the time. I'm satisfied it allowed her to raise the capital she said she needed for the important work she needed to do to her home, while at the same time not increasing her monthly expenses, given her low income.

However, it's clear to me that Mrs C didn't need all of the equity that was released. Her stated need was around £18,500 and I've seen no persuasive evidence for why the adviser considered it suitable to recommend she take out an additional £35,500.

The recommendation letter suggests that this was in order to provide Mrs C with 'peace of mind and perhaps a little security in the future', as well as giving Mrs C 'maximum flexibility' – including allowing Mrs C to 'stay in her home for longer'. But there was no analysis in the recommendation letter about how these aims were going to be achieved through releasing more equity than Mrs C actually needed – for example, there's no particular mention of how the adviser proposed this cash would give Mrs C more flexibility.

And there's no discussion about why this would allow Mrs C to stay in her home for longer – other than a guarantee, from the provider, that her home would not be forcibly sold while she was still in it.

Furthermore, Mrs C was also told that it wasn't always possible to return to the lender for future cash – and so it would be 'sensible to maximise the borrowing you can make at present'. But here too there was no apparent discussion with Mrs C about this – for example, there's no evidence the adviser contacted other providers to determine the likelihood of Mrs C being able to borrow in future, or how long she might have to do so. And there was no weighing up over the obvious downside – the rolling up of interest, which was compounding on a yearly basis.

Another reason the adviser gave for taking out the maximum amount was to do with property valuations being, according to the adviser, high at the time. The adviser's opinion was that Mrs C should 'take advantage of market conditions'.

In my view this was not a reason to borrow more money than Mrs C actually needed – and also undermined the adviser's view that property prices would continue to rise thereby offsetting the interest shew as being charged. If this was true, there was no particular reason for Mrs C to take advantage of market conditions at that moment in time. Either way, I've seen no evidence that any of this was properly considered or discussed with Mrs C in a way

that she could fully appreciate the risks to the adviser's recommendations.

Finally, the adviser also said that she recommended that 'additional monies be logged into ISA accounts or perhaps ISA investments'. And here too, the adviser simply covers this aspect off in a cursory manner – there was no actual discussion here about how Mrs C's money might be invested, when or what the aim of such an investment would be.

For example, it isn't clear to me how the adviser would've gone about doing this. Given the interest on the loan was 6.44%, any investment would've needed to match or exceed this, after fees. It's possible that existing ISAs at the time may have enabled her to achieve this – I'm aware that the base rate was 4.5%-5% at the time.

However, this would not have lasted for the duration of the loan, at some point further discussions would've been needed to decide whether to extinguish a part of the loan with the balance of money available or take other action.

It is not my role to speculate in this way – and I don't think it would be fair on either party. Instead, my role is to take the evidence I have before me and decide, based on that, what would've been the suitable option for Mrs C at the time – taking it all into account. And my current thinking is that even if the adviser had properly looked into investing the balance of the loan for Mrs C, taking out more equity from her property than she needed would still not have been suitable for her. It's clear that Mrs C would've been unable to take much risk with this money, and base rates were only at around 5% for three years after the advice. This means that in a short period of time, I think Mrs C would still have been in a position of deciding to immediately repay some of the loan in order to lessen the impact of the compounding interest.

Finally, I'm also unclear about why the particular provider was chosen. The recommendation acknowledges that this was 'not necessarily the cheapest' product available, but makes a vague claim about the provider leading the market 'in terms of service and clarity'. But it's not clear to me how this would benefit Mrs C – the service she was after was a straightforward equity release, for which she was being advised. I can see no reason why a more expensive product needed to be chosen for her at the time – and in my view, given the future implications of this loan, this needed to be discussed in far more detail with Mrs C.

For all these reasons I'm satisfied that recommending Mrs C take out over £35,000 more than she needed was not suitable for her nor was it in her best interests. At that moment in time Mrs C only needed a specific amount of capital for a very defined need. The additional money that was released to her was clearly not needed – the majority of it was left on account, first with one firm, and then passed over to another firm where it remained in cash until 2019. This means that Mrs C is now left with a significant debt – and the majority of this debt she had no need for, nor did she derive any benefit from.

Ultimately, I consider it was for the adviser to cautiously and thoroughly explain to Mrs C that borrowing in this way to pay for the 'odd luxury' or for more 'flexibility' had a cost that was not suitable for Mrs C, and was not in her interests. In my view, had the adviser done this, Mrs C would not have wanted to borrow more than she needed.

So taking all this into account, I'm satisfied Mrs C has not been treated fairly and this means Morton Fraser LLP needs to put things right for Mrs C.

I've given some additional thought to how to put things right since my email to the parties in September. I've decided that in order for Morton Fraser LLP to fairly take into account the benefit of the capital which Mrs C has had, it needs to pay the compensation to Mrs C. It will then be for Mrs C to decide how she wishes proceed – whether by paying off a substantial

portion of the loan on her property or not. Therefore, in my view, Morton Fraser LLP needs to:

- *Work out what Mrs C's outstanding balance on her equity release loan would be if she had only taken out £18,500 – this being the sum she had indicated to her adviser she needed.*

- *Pay the difference directly to her, deducting any capital sums paid to Mrs C, but no interest or fees. The end date for this calculation will be the date when Morton Fraser LLP anticipates the payment being made to Mrs C.*

- *It's clear that all fees were deducted from this money and therefore will be compensated as above. For the avoidance of doubt, I'm satisfied it would not be fair for Mrs C's compensation to be reduced by the fees that were deducted during this period.*

- *Pay Mrs C £1,000 compensation for the distress and inconvenience this matter has caused her. I've increased the amount of compensation because, on reflection, Mrs C was not only let down by the unsuitable advice she received in 2005 – she has been let down and taken advantage of during the course of a number of years, when money she had borrowed was being used to pay fees for services there's no evidence she received, wanted or benefited from. Had the adviser suitably advised her at the time, all this unnecessary upset and stress would've been avoided.*

By compensating Mrs C in the way I've described above, I'm satisfied she will be put back as close as possible to the position she would've been in had she not been given unsuitable advice.

Morton Fraser didn't agree with my provisional decision. It said:

- It noted that valuations it undertook online for house prices in the same areas as Mrs C's had increased in value, showing that the equity release mortgage had 'functioned as intended'.

- It said that the 'details of the complaint' as set out did not correspond with the 'basis upon which the Provisional Decision is made'.

- It disagreed with my conclusion that Mrs C's income, in 2005, was 'sufficient to meet her needs'. It said that the October 2005 report from Skene Edwards showed that Mrs C was looking to fund expenditure that could not be met from her income.

- The letter said that Mrs C would discuss matters with family members and stressed that it was important Mrs C's children were aware of what was being done. It explained that Mrs C wanted expenses to be paid our of the released money, and she was also given a warning that if the property was not in the most sought after area, there was a risk that 'the expected annual rise in your house valuation might not equate to the cost of the interest charged'.

- The balance of around £34,400 was held for Mrs C in accordance with Law Society of Scotland regulations in Skene Edwards client accounts until the transfer in 2010.

- Morton Fraser said that the transfer appeared to have happened after a meeting with Mrs C herself.

- It provided copies of invoices that were available, showing that each firm 'was

providing a range or services to the Claimant (including in relation to the ERM but also on a range of other matters) and it is clear from the correspondence that the arrangement with the Claimant [was that she] would have expected those fees and outlays to have been met from the funds held on account'. It said that to 'the extent that those fees and outlays are not ultimately met by the Claimant we would suggest the Claimant enjoys unjust enrichment'.

- Morton Fraser said that in December 2005 Mrs C was made aware of the monies held – but it wasn't clear why 'no arrangements were made by the Claimant to take forward any such investment'. But what it did know was that two payments were made to Mrs C in October and November 2008. It also said that Mrs C was aware in 2010 that there was money remaining from the ERM. It said that from 2010 onwards the money was held by a different firm and Morton Fraser was not responsible for the lack of any investment of that money from that point onwards.

- Morton Fraser said that Mrs C was aware that the balance of the funds were being held for her by Skene Edwards. It said that it 'assumed' any fees and any outlays met from the funds would 'only have been with client approval'. It said that a complaint about this aspect would be time-barred given how long ago it occurred.

- It disagreed with the points I made about the suitability letter of October 2005, in particular around the adviser's statements about it being the right time to borrow, that she may not be able to borrow in future, and that taking out the ERM might allow Mrs C to stay in her home for longer.

- It disagreed that Mrs C didn't need to the full amount, and repeated the reasons given in the suitability letter for why Mrs C was advised to maximise her borrowing – in particular, that the additional borrowing would allow Mrs C to create a cash reserve.

- It said that no lender would be bound in perpetuity to provide further lending, and so it wasn't wrong for the adviser to have said that it might not have been possible in future for Mrs C to take out further borrowing. It also said that it 'assumed' drawdown wasn't taken forward 'on account of the adviser's investigations indicating that would be more costly'.

- It said that it wasn't clear why the money was not invested or discussed in January 2006. It also said that the rate being offered by Scottish Widows at the time was competitive.

- It disagreed with my conclusion that the advice was unsuitable and said that Mrs C had benefited from this additional borrowing.

- It also disagreed with my method of compensation – it said that the deduction from the difference ought to include the interest on such capital sums that Mrs C benefited from. It also said that Mrs C benefited from services offered by Skene Edwards, and therefore the deduction from the difference referred to should include rather than exclude those fees.

- Mrs C has also benefited from the increase in value of her property, and therefore 'that increase in value should be deducted from the difference to the extent that it reflect increase in value referable to the period prior to the point at which those capital sums were available for payment to the Claimant'.

- Any losses from not investing the money should be borne by Mrs C as she had

'control of that investment process'.

- Finally, it said that 'any award for distress and inconvenience in this matter should reflect the above and that Skene Edwards / Morton Fraser had no involvement with matters after transferring the remaining balance of funds' in 2010.

Mrs C agreed with my provisional decision and made some additional submissions as well:

- She said she didn't think Morton Fraser had made new arguments about the suitability of the advice she had received.

- The valuations of Mrs C's house provided by Morton Fraser were not reliable, because there were a number of different properties on that same road of various styles. She said that her property was valued in 2019 at £250,000 and it wasn't accurate to suggest that it was almost worth double that now.

- She said that her intention in October 2005, and the wording of that letter, indicates it was 'little' gifts she intended to make, not large ones.

- There was no meeting with her in 2010 when the balance of the ERM was transferred to another firm. It was only in 2018 that she discovered that this money had never been invested.

- The invoice provided from December 2005 was for the arrangement of the ERM – and she disagreed that it was clear from any other correspondence what the arrangement was or what other fees and outlays had been agreed with Mrs C at the time. As no invoices were issued to her at the time, she had no opportunity to challenge the fees. She disagreed there was any unjust enrichment.

- There was no evidence that she was aware in 2010 that the money was transferred over to another firm, and there was no evidence she requested such a transfer. She disagreed that there was any discussion with the adviser about future borrowing and said that the October 2005 letter extolled the benefits of maximising the ERM, and there was only one sentence about 'no guarantees' being given.

- She said that just as there were no instructions to invest the money, there were also no instructions to the adviser to retain the balance. If the adviser is saying that it was Mrs C's decision not to invest the money, why was the balance of over £34,000 not returned to her? The adviser deciding to retain the balance in the client account showed that there needed to be further discussion regarding what was to happen with the money.

- Mrs C said there was no discussion at the time about needing to access the money urgently or that she'd be unable to pay any fees upfront. She also said that if the product had indeed been the cheapest on the market, the suitability letter would have said so.

- The fact that Mrs C lent to a family member wasn't relevant for the purposes of establishing whether it was suitable, years prior, to recommend that she maximise the amount of borrowing.

- Finally she disagreed that she had received any benefit of any services in respect of which fees and outlays were paid. No invoices were issued and therefore it was impossible to justify what services were provided.

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.

Both parties have provided submissions, which I've summarised in some detail above. I want to make clear that this final decision will not address every submission or point that has been raised unless I consider it relevant to my findings.

I also want to make clear that I don't agree the basis for my provisional decision was different to the basis for the complaint – although even if that were the case, the service has a well established inquisitorial remit. Mrs C complained to this service about the advice she received, including that she was advised to borrow more money than she needed, that she was never told the money was not invested and that it was merely used to pay her adviser's fees. I provisionally concluded that she was in fact given unsuitable advice – and furthermore found that the adviser did not invest the money as she had indicated, and that it was kept in a client account paying fees, and therefore not providing a benefit for her. So I'm satisfied that my provisional findings address the core of the complaint that Mrs C brought to the service.

The suitability of the advice

In terms of the advice itself, I'm not persuaded Morton Fraser has engaged with the key reason why I don't consider it was fair and reasonable to have concluded that borrowing much more than Mrs C had indicated she needed was suitable for her.

When advising Mrs C, the adviser needed to ensure that her recommendations were suitable for her and overall in her best interests. In other words, she needed to weigh up what Mrs C was explaining she wanted the money for, versus the risks and expense of the various options available to Mrs C.

As I explained in my provisional decision, it's more likely than not that given Mrs C's financial circumstances, she had limited if any alternatives to releasing equity from her property. But given the cost of borrowing money in this way, and the impact this could have on Mrs C's future stake in her own home, the adviser needed to ensure that Mrs C was only borrowing the money she said she needed at that moment in time. I don't agree that uncertainty over whether Mrs C could borrow in future was a relevant consideration. I say this because the adviser couldn't have known what Mrs C's future options might be - Mrs C did have liquid assets she could call upon in the event of an emergency.

Although Morton Fraser disagrees with what I've said about Mrs C's income in 2005 meeting her needs, it's clear to me that at no point did Mrs C indicate she needed to borrow money from her home in order to supplement a shortfall in her income. And indeed, there's no assessment by the adviser of what cash reserves Mrs C thought she needed or how many months of outgoings or expenditure that would amount to.

Instead, what's clear from the limited paperwork is that Mrs C felt that she needed a lump sum for a very specific purpose.

But it was the adviser that recommended Mrs C take out more than she needed:

'Although initially you were thinking of just borrowing sufficient to cover a small amount of expenditure and perhaps the odd luxury for yourself, I think it might be advantageous to

maximise the borrowing on the equity release scheme to provide peace of mind and perhaps a little security in the future'.

In my view, it was not fair and reasonable for the adviser to have encouraged Mrs C to borrow more in this way – and I'm not persuaded it was fair and reasonable for her to have concluded that this was a suitable recommendation for Mrs C, given her overall financial circumstances and what she had explained she needed the money for. I also think it was misleading for the adviser to have gone on to say that this 'could also let you stay in your home for longer' – there was no specific reason to talk about the chances of Mrs C staying in her home and there's no evidence that this was something Mrs C had indicated she was afraid of or needed help with.

Furthermore, there's insufficient evidence to explain why drawdown of the ERM wasn't considered, given that it was clear Mrs C didn't have an immediate need for all the £54,000 the adviser recommended she borrow. Nor is there sufficient evidence to show what market research was carried out at the time to ensure that Mrs C did not take out the most expensive product available. Given that the majority of the money Mrs C took out remained in various client accounts throughout the years, it's clear to me that not only did she not need all the cash that was released, she also didn't need it all in one lump sum - so drawdown would very likely have been a better and less expensive option for her.

In relation to how the money was held, I make no finding on whether or not it was held 'in accordance with Law Society of Scotland regulations', because that's not the key issue. The mere fact that money which was borrowed on Mrs C's home, and which was supposedly released for her benefit, was not in fact held by her is the issue in dispute. In my view, holding the majority of this cash in a client account where it was depleting by virtue of the fees being taken, while interest on the loan was compounding, was not in Mrs C's best interests – and I've seen insufficient evidence from Morton Fraser to persuade me otherwise.

In terms of the transfer in 2010, Mrs C is adamant that she was not aware of what money was being held for her or where. I've seen insufficient evidence to persuade me that she was made aware. As I mentioned in my provisional decision, I've seen a statement of Mrs C's assets produced for Mrs C in August 2011 by the same advisor working for a different firm, which did not show the balance of the ERM which had been transferred over.

In terms of what was supposed to happen to this money once it was released by Scottish Widows, I'm not persuaded by Morton Fraser's submissions. It wasn't for Mrs C to 'make arrangements to take forward' the investment – primarily because she didn't have the money. Her adviser had specifically discussed investing the money with her and had used it as one of the reasons to recommend that Mrs C borrow more than she originally intended.

Given that it was the adviser that held the money, not Mrs C, I'm satisfied that it was not Mrs C's fault if that money remained uninvested. After all, the adviser's own fact find had identified that Mrs C was not sophisticated or experienced, and the adviser had an obligation to have regard to her interests and her information needs. The adviser ought to have explained in detail what would happen to the remaining £35,000 which she had recommended Mrs C borrow. I'm satisfied that the investment of this money was clearly something that the adviser needed to take forward. And she needed to do this either by providing additional advice to Mrs C about where the balance of the ERM needed to be invested, or by returning that money to Mrs C so that she could have the benefit of it.

Instead, neither of these two things happened – and I'm satisfied that wasn't fair and reasonable.

Summary

For the reasons I've given, I'm satisfied Mrs C had limited if any benefit from the additional borrowing – the very fact that it took 3 years for further payments out of this money to be made to her demonstrates this. During that 3 year period, however, the interest continued to compound month on month. It ought to have been clear to the adviser that Mrs C's property was her biggest and most important asset – and the biggest risk to the adviser's recommendation was the slow and gradual erosion of this asset for purposes which, as I've said above, were not in line with Mrs C's best interests.

In my view, the suitability letter simply did not properly assess this risk in light of Mrs C's objectives and circumstances, and I'm satisfied the adviser took insufficient steps at that time to ensure that Mrs C understood the implications of borrowing so much. I don't agree this was fair and reasonable, and I'm satisfied Mrs C should not have been in this position.

Furthermore, it's clear to me that while Skene Edwards did not continue to hold Mrs C's money after 2010, it made no attempts to return this money in 2010 to Mrs C as it should've done – and I've seen insufficient evidence, as I've explained in this final decision and my provisional decision, that Mrs C was made aware at the time of what money was held for her or how much. In my view, this means that Skene Edwards has caused Mrs C the loss she is now claiming by both giving her unsuitable advice and by holding on this money for no good reason – and so I consider it fair and reasonable that it be held responsible for compensating Mrs C.

Putting things right

In putting things right for Mrs C, my aim is to ensure that she is put as close as possible to the position she would've been in but for the unsuitable advice she received. In doing so, I've had to take into account the following relevant factors:

- Mrs C did need to borrow some money, and for the reasons I've given in my provisional decision and this final decision, I consider releasing some equity from her home by way of the ERM was suitable for her.

- Mrs C has also received some capital payments throughout the years – and she will need to repay those capital sums to the lender, Scottish Widows.

- The majority of the debt Mrs C now owes she did not benefit from and stems directly from the unsuitable advice she received.

In response to my provisional findings around how to put things right, Morton Fraser made a number of comments. It said that any complaint about fees and outlays coming out of that cash held on account would be time-barred – but I've not made an award in respect of such fees. I provisionally concluded that, in my view, the deduction of those fees from the capital held on account should not be used to reduce the compensation payable to Mrs C. This complaint is not about the fees for services rendered which Mrs C paid during that time – and I've not made an award in respect of that.

What I have said, however, is that whatever compensation is due to Mrs C should not be reduced by those fees. I've not asked that Morton Fraser repay Mrs C the capital she had the benefit of – I've asked that it repay the interest over and above the sum she was intending to borrow.

I remain satisfied that it would be unfair to Mrs C that she now be liable for the interest that has accrued on capital balances she didn't need, and that were primarily used to pay fees.

I also want to make clear that I've not held Morton Fraser responsible for what other firms

did or failed to do after 2010. As I clarify below, Morton Fraser does not need to take into account what deductions for fees were made by other firms from the transferred sum after 2010. However, it's clear to me that the extent of Mrs C's losses stemmed from the unsuitable advice she was originally provided by Skene Edwards – and it's for that reason that I'm satisfied Morton Fraser is ultimately responsible for putting things right for her. My award for distress and inconvenience is for the considerable impact the unsuitable advice had on Mrs C and the distress this is now causing her.

Finally, I don't agree that Mrs C is in a position to enjoy any 'unjust enrichment'. Whatever the arrangement between Mrs C and the adviser, I'm satisfied that it was not in Mrs C's best interests to recommend that she borrow more money simply so that it could sit in a client account and be used to pay fees that were apparently being incurred. It's clear to me that the compounding nature of the interest meant that this was an unsuitable arrangement, and one that was clearly not in Mrs C's best interests. I'm therefore satisfied that I should take that into account when making my award.

For these reasons, I'm satisfied that the following is a fair and reasonable award.

In order for Morton Fraser LLP to fairly take into account the benefit of the capital which Mrs C has had, it needs to pay compensation to Mrs C. It will then be for Mrs C to decide how she wishes to proceed – whether by paying off a substantial portion of the loan on her property or not.

The purpose of the below is to ensure that Mrs C is not liable for the interest that has accrued on the additional money she was recommended she borrow (around £34,000). However, the balance currently payable to Scottish Widows also includes the original capital – I don't agree it would be fair to ask Morton Fraser LLP to repay that capital. Therefore Morton Fraser LLP needs to:

a) Work out what Mrs C's outstanding balance on her equity release loan would be if she had only taken out £18,500 – this being the sum she had indicated to her adviser she needed.

b) Contact Scottish Widows to obtain an up to date value of the equity release loan.

c) It's clear that b) will be greater than a), so Morton Fraser must pay the difference directly to Mrs C.

   As I've mentioned above, in doing so Morton Fraser LLP can deduct capital sums paid to Mrs C, but cannot consider the payment of fees as 'capital sums paid'. In 2010 the sum of around £14,000 was transferred to another firm. I understand that fees continued to be taken from this sum during the intervening years, and these were later refunded to Mrs C following her complaint to the other firm. For the avoidance of doubt, however, I'm persuaded that Morton Fraser can ignore what happened after 2010, and simply calculate compensation based on the figure transferred. This is because it wasn't responsible for what fees were later incurred by Mrs C and deducted from that balance.

   The end date for this calculation will be the date when Morton Fraser LLP anticipates the payment being made to Mrs C.

d) Pay Mrs C £1,000 compensation for the distress and inconvenience this matter has caused her. Had the adviser suitably advised Mrs C at the time, Mrs C would not have experienced the unnecessary upset and stress that she is now facing by the size of the debt that she is liable for.

My final decision

My final decision is that I uphold Mrs C's complaint against Morton Fraser LLP. It must pay the compensation I've outlined above within 28 days of when we tell it Mrs C has accepted this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 23 June 2023.

Alessandro Pulzone
Ombudsman