

The complaint

Mr and Mrs W's complaint is about the advice they received from The Personal Finance Centre Ltd (PFC) when they wanted additional secured borrowing. They believe the loan was mis-sold because they wanted a loan that was fully flexible allowing over payments (reducing the amount of interest charged and the term) and early settlement. However, they have since discovered that their overpayments were not deducted from the capital balance and so didn't save them interest.

What happened

Mr and Mrs W contacted PFC in the spring of 2019 for advice to consolidate some unsecured debts into a second charge loan. The purpose of this was to make the payment of these debts more manageable. At that time Mr and Mrs W had approximately £59,000 of credit in the form of personal loans and credit cards, which cost them over £1,600 each month.

The fact find detailed that it was important to Mr and Mrs W that there was no early repayment charge linked to the borrowing, speed of completion and the ability to add fees to the loan. They initially wanted to borrow £50,000. It was also discussed that Mr and Mrs W were expecting their income to increase in the future, but they weren't sure about the amount or when. As such, it was decided to put the application through on the basis of the existing income, and PFC said that they could always amend the loan if they wanted to increase the monthly payment.

PFC recommended a loan of £46,500 over a term of 15 years with an initial three-year fixed interest rate of 9.2%. This would pay off all but one of their unsecured debts; a car finance arrangement. The term of the recommendation was longer than Mr and Mrs W had asked for, but was selected due to an affordability assessment. Mr and Mrs W were provided with an illustration that set out the details of the mortgage. It was detailed that Lender N was recommended because it would take all of Mrs W's income into account, whereas other lenders wouldn't due to its nature.

However, a missed mortgage payment subsequently came to light, thereby making Mr and Mrs W ineligible for the recommended rate, it was changed to a three-year fixed rate of 9.7%, which meant a monthly payment of £541.54. They were provided with an amended illustration for the new recommendation.

Both of the illustrations provided, and the subsequent mortgage offer, detailed that Mr and Mrs W could make overpayments:

'Overpayments can be made which will first be applied to reducing arrears and the balance held on account, non interest bearing, until final settlement. Your loan will continue unchanged with the accrued overpayments deducted from the final settlement figure.'

Overpayments were also mentioned in the reasons why letter:

'You expressed an interest in being able to overpay on your monthly mortgage payments. This product allows you to overpay, however, please check the ESIS for details on how much you can overpay in each calendar year.'

Mr and Mrs W accepted the recommendation, and the application was accepted by Lender N.

In 2020 Mr and Mrs W contacted the lender to increase their monthly payments with a view to repay the loan before the end of the term. At that time the lender confirmed, mistakenly, that the overpayment would reduce the interest paid and term of the loan. However, when they called back in 2021, to increase the overpayment amount, the lender explained that the overpayments wouldn't reduce the term of the loan. Rather the overpayments weren't paid off the capital balance, but into a holding account, the balance of which would be deducted when Mr and Mrs W asked to pay off the loan. They complained to both the lender and PFC.

PFC responded to the complaint in its letter of 29 July 2021. It explained its process and what it took into consideration when it made its recommendation to Mr and Mrs W. It confirmed that they had asked for a loan that would allow them to make overpayments to be able to clear the loan early, which the loan recommended allowed. PFC highlighted that the treatment of overpayments had been confirmed in the documentation Mr and Mrs W were given before the loan was advanced. The complaint was not upheld.

Mr and Mrs W remained unhappy and asked us to look into their complaint.

One of our investigators considered the complaint, but didn't recommend that it be upheld.

Mr and Mrs W didn't accept the investigator's opinion. They said that they had been told they could make overpayments at any time and of any amount, but they weren't informed that those payments would effectively lay dormant in a separate account for several years until the two balances equalled each other. In addition, Mr and Mrs W indicated that the information provided about the overpayments wasn't clear to a layperson and they feel that PFC should have made it clear how the overpayments worked.

Our investigator considered Mr and Mrs W's further comments, but they didn't change his opinion. As such, it was decided that the complaint should be referred to an ombudsman for review.

I requested recordings of the earlier calls between Mr W and PFC, which have now been provided and listened to.

I issued a provisional decision on 7 March 2023, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'I have listened to various conversations between Mr W and PFC about their needs and requirements about the loan. Initially, there was no discussion about Mr and Mrs W making overpayments. However, it was discussed that their income was likely to increase in the future and if they wanted to pay more on a monthly basis, they could reschedule the loan to do this. I understand that Lender N has confirmed that this can be done if Mr and Mrs W wish it.'

The first mention of overpayments was following Mr and Mrs W being told that Lender N would only lend over a longer period. It was then highlighted by PFC that there was the flexibility for them to clear the loan early by making overpayments. It was confirmed that there were no limits to the amount they could overpay. However, it was not explained how the overpayments would be handled by the lender.'

Where an important policy term is either unusual or onerous, we would expect it to be highlighted to a potential borrower. Most consumers would expect that a lender would either use overpayments to reduce the loan balance or be offset against it for interest purposes. That's not how lender N treats overpayments. While the illustrations include a statement about how Lender N would treat overpayments, I am not persuaded that a layperson would necessarily understand exactly what this meant. Given the importance of the overpayments in this case, because Mr and Mrs W wanted to ensure the loan was paid off before retirement, I consider that PFC should have provided a clear explanation of how the overpayments would be treated.

When a financial business has done something wrong, we have to consider what would have happened, but for the error or omission by the financial business. So in this situation, Mr and Mrs W should have been told that making overpayments would not reduce the amount of interest they paid, but they could formally change the payment amount to do that once the expected income increase happened.

At the time of the sale of this loan it is clear that there were potential issues regarding affordability. I say this as Lender N required the loan to be arranged over a longer term for affordability reasons. In addition, as was explained at an early stage of the process, due to the nature of most of Mr and Mrs W's income, many lenders would not take all of it into account. There was also the matter of a recent mortgage payment having been missed, which again would have ruled out many lenders. While I can't say definitively that Mr and Mrs W couldn't have sourced borrowing elsewhere, I think they would have struggled to do so, given this combination of facts.

I also note that until the term of the proposed borrowing was altered, making overpayments was not a priority for Mr and Mrs W. They didn't appear to have any issues with the concept of altering the loan arrangements if they wanted to increase their payments in the early discussion. On this basis, I am not persuaded that, if they had been given the explanation they should have been, they would have decided to reject the recommendation because of how the overpayments would be treated.'

Mr and Mrs W didn't accept my provisional decision. They consider my conclusion that they would have struggled to source an alternative loan elsewhere, given their circumstances, was subjective and in their opinion incorrect. They repeated that they would not have accepted the recommendation had they been clearly told how making overpayments worked because of how important making such payments was to them. They said the fact that they began making overpayments in 2020 supported their case that doing so was very important to them.

Mr and Mrs W said that both PFC and Lender N had made identifiable errors and they had suffered financial losses as a direct result of those errors. They said they rejected 'entirely' my conclusion that knowing the correct information about overpayments would not have made a difference to them taking out the loan. In addition, Mr and Mrs W said that they failed to understand how I could find that PFC had done something wrong, but then endorse what it had done and effectively reward its behaviour. They asked that I instruct PFC and Lender N to amend their processes to ensure that both existing and perspective customers do not suffer the same experience as they have. They also asked that I make a very significant financial award to them as the aggrieved party to go some way to cover the costs they incurred in rearranging their borrowing.

As Mr and Mrs W had commented in their response to the provisional decision that they were unable to verify my comments about the contents of the calls, we provided them with copies of the recordings. Following this Mr and Mrs W highlighted that they weren't told in

the calls how the overpayments were allocated by Lender N. They also made comments about Lender N, which I won't document here as I can't comment on anything about Lender N in this decision. In addition, Mr and Mrs W confirmed that they had re-financed in March 2022 with a mortgage company that specialises in lifetime mortgages.

PFC said that it was disappointed with my conclusions, as it felt that the advice provided and supporting documentation given was clear. It also confirmed that it had no further evidence to provide.

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 would firstly explain that in order for this service to be able to comment on a complaint, the business that was responsible for the act or omission complained about, has to first be given the opportunity to address the complaint. As such, if Mr and Mrs W have concerns about the term the loan was set up with, because it ends after their intended retirement ages, they would need to raise this issue as a new complaint with PFC and/or Lender N. I cannot comment on it in this decision.

I would also confirm that our remit does not include the authority to interfere with a financial business' processes. Nor are we able to punish businesses. Such actions, if appropriate, would fall to the industry regulator, the Financial Conduct Authority.

I would also comment that while I can understand Mr and Mrs W's request for an apology, I won't be asking PFC to do so. This is because I consider that for an apology to mean anything, it has to be given voluntarily by the party and so this service *ordering* a business to offer an apology would make it meaningless.

I have considered what Mr and Mrs W have said about my conclusions and how they have endorsed what PFC did and that I have rewarded it for its poor behaviour. As I explained in my provisional decision, when I conclude that a financial business has made an error or omission, as I did in this case, I need to consider what is likely to have happened if that act or omission hadn't happened. In this case I needed to assess what Mr and Mrs W would have done if they'd been told how overpayments would be handled by Lender N and that to save interest, they would have had to formally increase the monthly payment. The fact that I have concluded that the loan application would still have gone ahead because of Mr and Mrs W's particular circumstances does not mean that I have endorsed the error or rewarded PFC.

I note that Mr and Mrs W have said that they don't agree with my conclusion that given their circumstances, they would have found it difficult to find alternative financing. I can understand why they feel that way, but I would assure them that my conclusion was based on factual information from 2019 and my understanding and knowledge of the mortgage market. Having reconsidered the matter again, my conclusion hasn't changed.

My final decision

My decision is that I uphold this complaint in that Mr and Mrs W should have been provided with clearer information at the time of the sale. However, I am not making an award as I don't consider that the omission would have made a difference to the position Mr and Mrs W found themselves.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs W to

accept or reject my decision before 23 May 2023.

Derry Baxter
Ombudsman