

The complaint

Ms D complains that she paid Mortgage and Financial Consultancy Limited (“MFCL”) a fee of £995 for advice, but she says when her plans changed and she realised she wouldn’t need a mortgage after all, MFCL refused to return her payment.

What happened

Ms D said in March 2023 she approached MFCL to discuss a future mortgage request. She paid a fee of £995. Ms D said she’d seen MFCL’s terms of business, and it doesn’t charge for mortgage advice, it only charges if the case becomes complex. Ms D said the advice she received wasn’t complex.

Ms D’s personal circumstances then changed, so she wouldn’t need to secure a new mortgage through MFCL. She asked for the fee back. But MFCL wouldn’t pay. Ms D wanted her fee back, and she said she also thought we should consider a payment of compensation, for the time she’d spent on this.

MFCL didn’t think it had done anything wrong. It said Ms D had been provided with advice, and it had charged a fee for that. It said it would offer a payment of £100, but this was done solely as a gesture of goodwill, not because MFCL thought it had made a mistake.

Our investigator thought this complaint should be upheld. She didn’t think MFCL had charged entirely in line with its terms of business. She didn’t think that Ms D was seeking mortgage advice when she first approached MFCL, so our investigator said she didn’t think any complex or time consuming work had been carried out. But Ms D had asked for advice on insurance, and work was carried out on this, so our investigator thought the broker should retain a quarter of the fee, refund the rest, and make a payment of £100 in compensation.

Ms D said that, although she thought the broker really ought to pay all the fee back, if the brokerage accepted this, she would too. But the brokerage didn’t accept. It said Ms D had agreed to pay, and was aware her case wasn’t straightforward. MFCL maintained that her case was both complex and time consuming. MFCL said the fee was charged in line with its terms of business, but confirmed that it would also act as a lifetime retainer.

Our investigator didn’t change her mind. She didn’t think evidence had been provided to demonstrate the fee was charged in line with the terms of business. But MFCL continued to disagree, and said Ms D had sought mortgage advice from it. MFCL sent our service correspondence which it said supported what it said about advice having been given.

MFCL said it had dealt with Ms D previously, and so was aware there would be significant work and time demands, and it said this had turned out to be the case. MFCL said charging a fee was based on its understanding of how much time a particular case may demand. It charged Ms D both on the basis of its previous experience of working with her, and the information it had gathered regarding her most recent enquiry.

MFCL said it would still pay £100 as a gesture of goodwill, but it wouldn’t offer any more.

Because no agreement was reached, this case then came to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did not propose to ask MFCL to do more than it had already offered. This is what I said then:

Ms D has pointed to the terms of business, which set out when MFCL will charge. The key provision reads as follows –

Fees

We do not charge a fee for mortgage or protection advice. However, if you proceed we have the right to review this to cover complex/time consuming cases. This will never be more than £995.

Ms D reads this to say that MFCL will never charge for anything which is made up solely of mortgage or protection advice, and MFCL will only charge on some of the occasions when it goes ahead with arranging a financial product. But I don't think that's quite right. I think that this provision needs to be read as a whole, and in the context of this case. I think the provision indicates MFCL will not generally charge for its initial advice, but I don't think this provision precludes MFCL from asking for a fee, where advice requests continue and it considers the case to be either complex or time consuming.

When Ms D approached M, she was considering turning her existing home, which had a residential mortgage, into a rental property to provide her with an income, and purchasing a different property as her home. Ms D hadn't identified any such property yet, and so she wanted to cover off quite a number of possibilities, to decide how she might want to proceed.

Ms D's second email to M, after she had established contact with the broker who had advised her some years before, said this –

"I should tell you now that I have quite a few questions that I'm hoping you will be able to help with."

The broker had a discussion with Ms D on 14 March (which I think is likely to have included advice to Ms D, answering some of her questions) then provided some initial written advice on her circumstances by email on 15 March. In that same email, the broker asked for payment of a £995 fee.

Ms D's reply was as follows –

"I did some calculations last night, and it seems that I might need to wait a little bit longer than I thought before I can purchase a new house. ... In any case I need to wait until end of April when we will know more about the future of our company. In the meantime, I can fill in and return the Fact Find sheet and I'm more than happy to pay your £995 fee now in order to retain you as my advisor but realistically it might be a year or even a bit longer before I can proceed with the purchase."

Ms D has pointed to this email as evidence that she wouldn't want to go ahead with any mortgage in the short term, and she says because of that, she shouldn't have been asked to pay at this point. But I note that her email continues, and adds further questions around whether it would be possible for her to convert her mortgage to buy to

let, but still live in the property herself for a short period until she finds somewhere else. Ms D also said she wanted to consider insurance options, given some uncertainty at her workplace.

I also note that there was no suggestion at all from Ms D that she might not want to pay initially, or that she would expect a refund if the mortgage didn't proceed. She said she was "...more than happy to pay".

Ms D then sent a further email, saying –

"It would be great to have another call or, if you agree, a meeting in your office? I'd like to go over a few questions that came to mind since we spoke yesterday (might have more by the time we speak next)."

So I think that, after she had agreed to make payment, she was then clearly continuing to seek advice. And she'd requested a meeting, about insurance.

MFCL did arrange insurance for Ms D, and Ms D then cancelled this, but requested another meeting, in June. Just under a week before that meeting, Ms D sent an email which said –

"I have secured a new job and my circumstances have now changed. Therefore, I will not be needing mortgage advice, so please cancel our meeting on Friday."

"Since we never got to do the more complicated mortgage transactions and I am aware that you do not charge for the type of advice I have been given, can you please arrange a refund of the fee I transferred?"

Ms D's arguments have focussed on the provision in the terms of business which say that MFCL charges for complex work. Ms D has been at pains to argue that the questions she asked weren't that. However, that's only part of the relevant provision. MFCL says it charges for complex or time consuming work.

MFCL is a business, run for profit. And as such, it has to make an assessment of whether any advice it gives is likely to generate sufficient income to cover the time it takes. Here, I think MFCL made that assessment, after it provided initial advice for which it did not charge. I do think that's in line with its terms of business.

Ms D decided to pay, and MFCL continued to provide advice, which I understand generated no other income for the firm, other than the charge that Ms D paid.

I think it's worth thinking about what may have happened if Ms D had expressed any reservations about making payment, at what she now says she considered to be a very early stage of her enquiries, and particularly as she did seem to be alive to possible upcoming changes to her personal situation in the coming weeks. I do not think MFCL is obliged by its terms of business to continue to provide free advice, beyond its initial response to Ms D's request. So if Ms D had not paid, then MFCL may well have declined to provide further free advice.

But Ms D said she was happy to pay, and MFCL continued to provide its advice. I think it's reasonable here for MFCL to have formed its own view on when a client's case might be time consuming, and to charge accordingly. MFCL has explained the reasons why it considered that Ms D's case was time consuming, and I don't think that conclusion is unfair or unreasonable.

My duty, in resolving this case, is to determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. That means fair for both sides. And I don't think it would be fair and reasonable now for me to say the bargain reached between Ms D and MFCL, that Ms D should pay a fee and in return MFCL would provide further advice (on a case which I do not consider was simple, and which MFCL clearly felt was time consuming) should be undermined after the fact, by Ms D's request now for a refund.

I understand that MFCL has offered £100 as a gesture of goodwill. I think that would provide a fair and reasonable outcome to this complaint. I know Ms D will be greatly disappointed by my decision, but I don't think MFCL has to do more than that.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

MFCL said that its offer wasn't compensation, it was a gesture of goodwill. And MFCL said this was withdrawn, once it was rejected by Ms D. So MFCL said Ms D shouldn't be offered any new compensation now.

When this case came to our service, MFCL hadn't made any offer of compensation. When our service contacted MFCL, it then said that it would be prepared to offer Ms D a payment of £100, as a gesture of goodwill. Our investigator referred to this payment, in her view, and although MFCL now says the offer had been withdrawn once it wasn't accepted, it does not appear to me to have clarified then that it wished to withdraw this offer.

I think it would have assisted if MFCL had been clear that it wanted to withdraw this offer. However, I'm happy to provide further detail now on why I consider that such a payment is part of providing a fair and reasonable outcome in this case.

Although I don't think MFCL has to return Ms D's fee, I do think it provided poor service to her at one point. MFCL took out life and critical illness insurance for Ms D, and cover was confirmed 13 April 2023. On Friday, 14 April, Ms D asked to cancel this. On the following Monday, she chased, and received an email telling her that the broker would like to speak to her, as *"Its just never that simple"*. Ms D then cancelled the insurance herself on the same date. She said she was able to cancel the policy with immediate effect, and it took just over three minutes to do so – and the timing of the emails she showed us is consistent with this.

I think this was an example of poor service, which caused Ms D a little more than the levels of frustration and annoyance one might reasonably expect from day-to-day life. That's why I think a payment of £100 is fair and reasonable in this case. Although MFCL has been clear that it will not pay this voluntarily, I do still think this ought to be included in my award.

Ms D replied to object. She said that my provisional decision wasn't in line with the view that our service had previously issued, and she sent our service very detailed comments on that provisional decision, as well as resubmitting a considerable amount of information and providing some new evidence.

I understand that Ms D would be disappointed that I have not proposed the same outcome as our investigator suggested. I should note here that when a case reaches an ombudsman at our service, we then carry out a full review of the complaint, so all the relevant evidence

and arguments are reconsidered at this stage. And my duty is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. That can mean a change to the proposed award.

Ms D said her position was that she hadn't been provided with any mortgage advice at all, and she said if MFCL said otherwise, she wanted to know what the advice was. She said she had received insurance advice, but this was routine. Ms D also said that she had decided she could not afford two mortgages, although the broker had advised her that she could. She said she did have high level principle questions, but ended up never asking them.

Ms D said she hadn't been asked to pay a fee in the past, and sent us emails of her previous discussions with MFCL some years ago. She said what went wrong then was that the broker didn't do a credit check on her first, otherwise he would have realised she couldn't secure a mortgage. And she asked how that had anything to do with the current case. (The paragraph in question simply notes that MFCL told our service it had decided to charge Ms D on the basis of its previous experience of working with her as well as the information it had gathered about her most recent enquiry.)

Ms D said that her question on converting her mortgage to a buy to let was the whole point of speaking to the broker, and she said that wasn't discussed further, beyond the emails she had shared with our service. She said she was "*more than happy to pay*" considering she was going to seek his advice in future, and he was keen to receive the payment right away.

Ms D said that although she then requested further advice, and another meeting, this never happened. She said the only work done was on insurance, and that not to a satisfactory standard. Ms D said she could accept a small fee being retained for the time on a call, and for arranging insurance, but she couldn't accept that this cost £995.

It does appear to me that Ms D's plans were at quite a high level, when she approached MFCL. She wanted to understand how she might use mortgage lending to support a possible second property purchase, whilst keeping her existing property and renting that out so it was self-financing. Ms D appears to have accepted that she did receive advice about what lending might be possible, and whether this was affordable for her, but at the same time, says that she received no mortgage advice at all.

I think that the reason Ms D and I have reached different views here, may be partly because I have taken a wider view of what it is to offer advice, or indeed, to do work. I don't think that the advice that MFCL provides, and for which it may decide to charge, is limited solely to specific mortgage or insurance product recommendations.

I explained in my provisional decision above how I thought that MFCL's terms of business applied in this case. And I still think that. I don't think it's unreasonable, when someone seeks to have detailed discussions about how the mortgage market operates, and what sort of lending it might be possible for them to obtain, for MFCL to decide to charge for that. That's part of what underpins my provisional decision.

And, although I understand Ms D's view is that this may not have been produced until much later, the invoice that MFCL supplied is consistent with this. It says Ms D was being charged a flat fee for "*Services - Mortgage, Life Insurance, Income Protection Research. As discussed, due to the nature of your enquiry the relevant time accrued to reach a positive outcome will be significant.*"

I also do still think it's important that Ms D decided to make a payment, in anticipation of future work. She has told us she didn't anticipate any difficulty with a refund, but I cannot see

that MFCL ever suggested that this money would be refundable, if she decided not to go ahead and take out a mortgage product with it in future.

Ms D has told us that her employment then changed, she has explained that this meant her personal circumstances changed too, and she has changed her future plans because of this. I don't think that means that the fair outcome here is to ask MFCL to refund Ms D's money because she paid at least partly in anticipation of requiring future services, but didn't then use these to the extent she had planned.

For the above reasons, I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Mortgage and Financial Consultancy Limited must pay Ms D the sum of £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 18 May 2024.

Esther Absalom-Gough
Ombudsman