

The complaint

Mr A and Mr P complain that The Loan Partnership Ltd (TLP) recommended a mortgage that was unsuitable for them.

What happened

In October 2018, Mr A and Mr P approached TLP for mortgage advice. They wanted to raise between £160,000 and £180,000 to repay a second charge bridging loan and to repay some unsecured credit. Further bridging loans were explored for a number of months, but ultimately declined by the lenders.

In May 2019, TLP recommended that Mr A and Mr P should take a second charge mortgage with E for £156,250 to repay the bridging loan. Mr A made a separate lump sum payment to the bridging loan. TLP said *"I have reviewed your income and expenditure in line with lender affordability criteria and I am satisfied that, based on those criteria, my recommendation is affordable now and in the future."* TLP's broker fee of £2,245 and a lender fee of £1,295 were added to the mortgage.

Mr A and Mr P fell into arrears on the mortgage and are subject to legal action by the lender to take possession of the property. They complain that TLP recommended a mortgage that was unsuitable for them, including that it:

- Ignored Mr P's deteriorating financial position.
- Misrepresented their expenditure.
- Pressured Mr A and Mr P to take the mortgage and exploited their circumstances.
- Didn't treat them fairly, despite knowing they were vulnerable.

I issued a provisional decision, proposing to uphold the complaint in part subject to any further submissions. My provisional findings, which form part of this decision, were:

TLP was giving Mr A and Mr P mortgage advice. It was required to recommend a mortgage that was suitable for their needs and circumstances. The lender had the primary responsibility for assessing whether the mortgage was affordable – but TLP was required to consider the lender's eligibility criteria for the mortgage, including its expected affordability criteria as part of the advice it was giving.

I am satisfied that Mr A and Mr P had a need to borrow as much as they did to repay the bridging loan. I understand the term of the bridging loan had ended and it was due for repayment. So on the face of it the recommended mortgage met that need.

I do not consider that TLP assessed affordability fairly or that it provided the lender with all of the information it needed to properly assess affordability. I say that because in an email dated 1 May 2019 from Mr A to TLP he said: "Since 2012 I have an apartment [abroad] which used to be a holiday home and also a rental property yielding quite a good return. I

remortgaged it at a great rate in 2016 at 1.4% (see enclosed mortgage letter).” Mr A goes on to explain that his mother had been living in the property and it “...stopped the property being lettable denying me an income of up to 600pw during high season or about 1500pcm as a long-term letting. Either way the net cost to me was approximately 2000 month best case, or far higher if you count potential income of it as a full time holiday let”.

It is clear there was a relatively significant outgoing that was relevant to both TLP’s assessment of whether the mortgage met the lender’s affordability criteria and the lender’s affordability assessment.

TLP’s response to this matter is confusing. We have an email from the time in question from TLP to the lender. In the email TLP tells the lender that Mr A’s mother was going to pay the mortgage on the property. But I can’t see it had evidence to support that – that is not what Mr A told TLP. And based on what it said in its final response that is a misleading impression to give the lender.

In its final response, TLP said that by its calculations Mr A and Mr P had disposable income of £1,297.06 after committed expenditure. It said it was aware of the foreign mortgage of CHF 238,000 at an interest rate of 1.4%, but thought that the disposable income was enough to cover the costs. It said it was also assured by the fact that Mr A was going to let the property.

But there is no evidence that TLP passed that information on to the lender. This is not a case where there was clear evidence that the proposed mortgage was affordable and sustainable – the broker knew that other lenders had declined applications it had made for Mr A and Mr P. While the figures on their own might show affordability (although I note the lender’s own assessment of disposable income was lower than TLP’s) the information on Mr A and Mr P’s credit file and bank statements clearly showed financial difficulty and for Mr P in particular a deteriorating financial position.

That also ignores that the foreign mortgage would also be subject to its own stress test.

I don’t see how it was fair and reasonable for TLP not to pass the information about the foreign mortgage to the lender. The information I have does not support that the lender was made suitably aware of Mr A’s ongoing commitment in respect of the foreign mortgage. There was not only the cost of making the mortgage payments but also maintaining the property and potentially local taxes.

So I don’t consider that TLP acted fairly and reasonably in giving advice.

I am afraid the evidence I have does not support the other complaints Mr A and Mr P have made. I agree that is difficult to look at the information about Mr A and Mr P’s financial position and to conclude that the loan was sustainable. But TLP was only required to consider the lender’s eligibility criteria and – putting aside the failure to pass on all relevant information to the lender – Mr A and Mr P’s wider financial circumstances appear to have met the lender’s criteria. Ultimately it is for the lender to decide whether to lend or not and it retains responsibility for that decision.

With hindsight it is clear that the new mortgage was not the right thing for Mr A and Mr P. But there is no persuasive evidence that they could have done anything else to repay the bridging loan. That meant without the mortgage it was more likely than not that the bridging lender would have taken action to take possession of the property.

Putting aside the affordability and sustainability of the mortgage, while the mortgage in its own right might not have been suitable for Mr A and Mr P it was more suitable than the

arrangement it replaced. That is not to justify the decision to lend to them, but rather to highlight that Mr A and Mr P were in a very difficult position.

I do not agree that the evidence I have supports there was any real pressure exercised by TLP on Mr A and Mr P to take the mortgage. I agree that Mr A and Mr P were under some pressure from the bridging loan lender – and it is apparent from the email exchanges that Mr A in particular was very keen to arrange to refinance the loan.

I note what Mr A has said about the circumstances where the loan documents were signed. But the evidence I have suggests there was some urgency to get the mortgage in place. I don't consider it would mean that TLP treated them unfairly by arranging for the documents to be signed in the way they were.

Mr A and Mr P were vulnerable. Their overall financial positions were unstable and they had a secured bridging loan that was due to be repaid – with the risk of losing their home if it wasn't. But they had very few if any other options available to them. The evidence I have is that TLP had explored whether around 16 lenders would lend to Mr A and Mr P, but the lender chosen was the only one prepared to do so. The alternative would be that Mr A and Mr P were left unable to repay the bridging loan and subject to legal action. I don't consider any vulnerability would necessarily have prevented TLP recommending the mortgage it did.

I also don't see that any vulnerability would have required TLP to adjust the way it dealt with Mr A and Mr P.

I've found that TLP did not treat Mr A and Mr P fairly or reasonably. In view of that I consider it would be fair for it to refund the broker fee it applied. I am also considering a complaint against the lender, where I have proposed that interest on the fee is refunded. I may ask TLP to pay the interest on the fee if the outcome on the linked complaint changes.

There is no basis on which I could say that TLP should refund the commission it received from the lender to Mr A and Mr P. That is not a financial loss they have suffered. So I have no power to award that to them.

I note the impact Mr A and Mr P have said this matter has had on them. Under our rules I can make an award of compensation, for distress, inconvenience, pain, suffering and damage to reputation. But I consider the impact of this matter – and any financial losses – are primarily due to the lending decision made by the lender. So I do not consider it would be reasonable as things stand for me to say that TLP should compensate Mr A and Mr P for the losses they are claiming or for most of the impact of the unaffordable lending had on them.

In saying that, I accept that TLP has contributed to some of the distress and inconvenience Mr A and Mr P experienced. It has caused Mr A and Mr P worry that their circumstances were not properly considered and evaluated before the loan was agreed and the worry that things would have turned out better had they been given better advice in the first place. But I consider that the real cause of their problems was the decision by the lender to approve the mortgage. And TLP was not responsible for that.

Overall, looking at what Mr A and Mr P have told us, in all the circumstances, I consider TLP should pay Mr A £300 and Mr P £300.

I proposed that TLP should refund the broker fee of £2,245 directly to Mr A and Mr P and pay each of them £300 directly.

Mr A and Mr P did not accept my provisional findings. They made a number of points,

including:

- It was not correct that they would have lost their house but for this loan. They were prepared to take legal action against the lender.
- They could have raised funds against Mr A's property abroad by refinancing it or sale.
- TLP had failed to act in line with the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) by not making sure the product it recommended was suitable and affordable.
- TLP misrepresented their financial information to the lender. This was done knowingly and was fraudulent.
- Compensation should be based on financial losses including the "cascading effect" the loan had on Mr A's ability to maintain payments and the impact on his mental health.
- TLP's negligence contributed to financial instability that led to the risk of his property abroad being repossessed. They want "damages" equivalent to the equity lost in the property or the additional financial burden incurred to prevent its loss.
- Because of the poor advice, Mr A had become financially unstable and it had impacted his credit file. That meant he'd lost out on earnings from professional opportunities and it had damaged his reputation.
- TLP should pay compensation for the emotional distress, including anxiety and psychological trauma caused by its actions – and compensation for distress and inconvenience.
- There should be "regulatory scrutiny" and "sanctions" against TLP to prevent future "malpractice".
- TLP should compensate Mr A for all financial losses, including his legal costs in fighting the possession action taken by the lender.
- TLP should make a formal apology for its mis-selling and the hardship caused. It should also acknowledge if it had acted correctly the loan would not have been taken.
- There is no evidence that Mr A would have lost his home – he had other options available – and that is not relevant to the complaint about the broker. There is no way of knowing what other options would have come Mr A's way had he been able to pursue professional opportunities that he was prevented from doing because of the lender's actions.

TLP did not accept my provisional decision either. It said, in summary, that it accepted that it did not disclose the mortgage on the foreign property to the lender. That was because Mr A had told it that it was being prepared for rental and that his mother, who had been living in the property, had moved out. It understood that Mr A would be receiving net income rather than outgoings. TLP was comfortable given the size of the foreign mortgage and the interest, along with the "cushion" of its calculated disposable income, that there was enough to cover the mortgage payment and associated costs.

TLP said that both Mr A and Mr P signed its income and expenditure form as being true and accurate – and that did not include the foreign mortgage. They also accepted that they were

not aware of any impending changes that would impact the affordability of the loan. If the information regarding the foreign property was not correct then Mr A and Mrs P had ample opportunity to tell TLP and ultimately not sign the income and expenditure form.

TLP accepted my view on affordability. But it did not put any pressure on Mr A and Mr P to go ahead with the loan if they felt it was unaffordable.

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.

It is not my role to punish TLP or look more widely at how it does business. My decision is limited to considering the individual complaint that Mr A and Mr P have brought and deciding what, in my opinion, is fair and reasonable in all the circumstances of the case.

In considering what is fair and reasonable in all the circumstances of this case I take into account a number of things, including the regulators' rules. In this case that is MCOB – and in particular MCOB 4.7A on advised sales.

TLP was giving Mr A and Mr P mortgage advice. It was required to take reasonable steps to ensure the mortgage it recommended was suitable for them. That included considering whether their requirements appear to be within the lender's eligibility criteria. That would include an element of considering whether the lender would regard the mortgage as affordable. But under MCOB, it was for the lender to lend responsibly and to undertake an assessment of affordability.

It follows, that if the loan was unaffordable, the lender is responsible for that – not TLP. Mr A and Mr P's response to the provisional decision is based on the premise that TLP has breached regulations in giving advice and they would not have had that loan but for the negligent advice. So they consider they should therefore be compensated by TLP for the impact the unaffordable loan has had on them and the financial losses they believe it has caused.

I do not agree. I accept that TLP gave Mr A and Mr P mortgage advice. Without that they would not have been introduced to the lender. But TLP was not responsible for granting the loan or deciding if it was affordable. That was the lender. So it is the lender that is responsible for the impact of the loan on them and any financial losses incurred as a result. The lender was the cause of their problems – and it would not be fair for me to say that TLP should compensate Mr A and Mr P for anything that flows from the decision to give them a loan. And Mr A and Mr P have a separate complaint about the lender.

I am considering the advice given by TLP. It is not in dispute that it knew that Mr A had other outgoings that were not included on the income and expenditure form or declared to the lender. I accept that Mr A set out that he planned to rent the foreign property. But he had not done so at that point. There is also little detail about the ongoing costs and no evidence to support what those costs might be. I don't consider a mortgage broker acting reasonably could have accepted what Mr A told it at face value without exploring it further. So I don't consider TLP had valid reasons to omit the information about the foreign property in what it told the lender. That was clearly material to its affordability assessment.

I accept that Mr A and Mr P signed a declaration that the income and expenditure form was true and accurate – and that did not include any costs relating to the foreign property. On one hand, I agree that if there were other costs not shown on the form, I can see that argument that Mr A and Mr P should not have signed the form. But on the other hand, they

had told TLP about the foreign property and they might have assumed that TLP – as the expert here – did not consider it necessary to declare that information.

After reviewing everything, I see no reason to depart from the conclusions I reached in my provisional decision. I don't see how it was fair and reasonable for TLP not to pass the information about the foreign mortgage to the lender. The information I have does not support that the lender was made suitably aware of Mr A's ongoing commitment in respect of the foreign mortgage. There was not only the cost of making the mortgage payments but also maintaining the property and potentially local taxes – and any mortgage payments towards that property would need to be stress tested. So I don't consider that TLP acted fairly and reasonably in giving advice.

I would note that even without the missing information the lender should not have lent to Mr A and Mr P. So the missing information was not the reason why the loan was granted when it otherwise would not have been.

The evidence we have does not support that Mr A and Mr P had other viable options rather than taking this loan. I say that for a number of reasons:

- Mr A and Mr P were introduced to TLP in October 2018. The loan did not complete until May 2019. So there was ample time for them to explore alternative options.
- If selling the foreign property or refinancing it at an interest rate of around 2% was genuinely viable, then it is not clear why Mr A and Mr P continued with their loan application, bearing in mind they knew it had a high interest rate of 10.75%.
- The notes from the time in question show that Mr A and Mr P were keen to pursue refinancing despite being aware that finding a lender that was prepared to lend to them was proving difficult. The evidence I have shows that it was far from straightforward for TLP to find a lender who was prepared to lend to Mr A and Mr P.
- The evidence shows that Mr A was prepared to accept a bridging loan even though the interest rate was higher than he wanted, the amount being lent was less than he needed and the exit strategy was not his preferred option. That loan ultimately did not proceed as the lender was not prepared to proceed after carrying out an up to date credit search. Despite that Mr A asked TLP to explore if the lender would be prepared to lend less than previously agreed. Those are not the actions of someone who had a range of different options available to them.
- If they had a reasonable prospect of success there was nothing to prevent Mr A and Mr P taking legal action against the bridging lender even if they had the refinanced that loan.

Overall, I am not persuaded that Mr A and Mr P genuinely had any better options available to them. They were in breach of the terms of the bridging loan and the existing lender was on the verge of taking legal action.

With hindsight it is clear that the new mortgage was not the right thing for Mr A and Mr P. But there is no persuasive evidence that they realistically could have done anything else to repay the bridging loan. That meant without the mortgage it was more likely than not that the bridging lender would have taken action to take possession of the property. Mr A and Mr P might have challenged that – but we do not know what the outcome of that would have been and there would have been costs in doing so. And it was Mr A and Mr P's decision not to take legal action. I don't see how it would be fair to award compensation based on the unknown potential outcome of legal action that Mr A and Mr P chose not to pursue.

Putting aside the affordability and sustainability of the mortgage, while the mortgage in its own right might not have been suitable for Mr A and Mr P it was more suitable than the arrangement it replaced. That is not to justify the decision to recommend this loan to them or the lender's decision to lend to them, but rather to highlight that Mr A and Mr P were in a very difficult position.

After very careful consideration I see no reason to depart from the conclusions I reached in my provisional decision as set out above.

Mr A has made a late submission. He said that he was unable to maintain payments to his foreign mortgage because of this matter. He said he was unable to let the property as he had been while pursuing this matter. As a result, the foreign lender was threatening to seize the property – so Mr A sold it for what he considers to be undervalue. Mr A considers that the unaffordable lending is the reason he lost that property – and that TLP is responsible for that because it did not disclose all of the information it should have to the lender.

I don't consider the sale of the foreign property and any losses Mr A incurred as a result flowed from TLP's advice. It was for Mr A to decide whether to let the property or not. And while TLP might not have passed on all of the information it should have to the lender regarding the cost of that property – neither the broker or lender had any reason to doubt that he would continue to let the property – and it was his decision whether to do so or not.

My final decision

My final decision is that The Loan Partnership Ltd should:

- Refund the broker fee of £2,245 directly to Mr A and Mr P.
- Pay Mr A £300 directly.
- Pay Mr P £300 directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mr P to accept or reject my decision before 20 August 2024.

Ken Rose
Ombudsman