

## **The complaint**

Ms C complains about mortgage advice she received from Alexander Hall Associates Limited.

## **What happened**

In 2022, Ms C received planning permission to demolish her property and build a new, larger, property on the same plot.

Ms C decided that she needed finance to support her project, and approached Alexander Hall. Alexander Hall recommended a standard residential mortgage, and Ms C decided to proceed with an application. A valuation was carried out. Ms C says that she was asked to confirm her intentions for the mortgage funds, and she sent a letter to Alexander Hall setting out that she intended to finance the demolition and re-building of the property. She says that Alexander Hall told her to revise the letter, and she followed its advice. The letter was sent to the lender and the lender made an offer. The mortgage funds were drawn down in September 2022.

Meanwhile, Ms C had begun her project. Following further discussions with the local authority and her architect, the local authority required Ms C to enter into a planning agreement.

In June 2023, Ms C sent the revised plans and planning agreement to the lender. The lender replied saying that it would not consent to Ms C demolishing the property over which its mortgage was secured.

Ms C complained to Alexander Hall. She said that she had always been clear about her intentions and Alexander Hall should have made that clear to the lender and not recommended this mortgage if the lender wouldn't accept her plans. She was now tied into the mortgage and couldn't go ahead with her project without breaching the mortgage terms. She'd incurred additional costs because the property wasn't currently suitable for her family and she hadn't been able to rebuild it as needed.

Alexander Hall accepted that Ms C had made her intentions clear to the adviser. It also accepted that it hadn't made the lender aware – if it had done, the lender wouldn't have agreed to the mortgage. It said that the adviser should not have recommended this mortgage, and should have explored alternative specialist finance. It agreed that the mortgage wasn't suitable for Ms C's needs and circumstances.

Alexander Hall said that it would be able to arrange appropriate finance for Ms C. It asked her for some further information, but said that it didn't expect any difficulties in finding lending.

To put matters right, Alexander Hall offered to pay Ms C:

- £750 compensation for the distress and inconvenience caused.

- Refunds of
  - The £499 broker fee
  - £48 fees paid to the solicitor which dealt with the mortgage
  - £995 product fee paid to the lender and added to the mortgage balance
  - Any early repayment charged paid to the lender on repaying the mortgage.
- The interest Ms C had paid on the mortgage lending between 21 September 2022, when the mortgage was drawn down, and 2 August 2023 when it sent its final response. It said that it would not pay interest after that date because that was when it had made Ms C aware that the mortgage was unsuitable. And it said it would need to know about, and would offset, any gain Ms C had made from holding the funds in the meantime.
- If alternative finance could not be arranged, it would also pay any costs Ms C had incurred on her planning applications between 22 July 2022 and 7 June 2023 – the date the mortgage was offered and the date the lender told her it would not consent to her plans.
- If alternative finance could be arranged, Ms C completes her project and then takes out a new residential mortgage at a higher interest rate to repay the development finance, the difference (if any) between the interest rates on the two residential mortgages.

Alexander Hall said it had made clear that the lender would require Ms C to live in the property before she took it out. So it wouldn't refund the costs incurred in living elsewhere pending the works. Alexander Hall said that it would withdraw this offer if Ms C didn't accept it by 31 October 2023.

Ms C didn't accept that offer and brought her complaint to us. She said that she didn't think £750 compensation fairly reflected the impact on her. She accepted the refund of fees paid, but said Alexander Hall should refund any extra interest she has to pay if she re-finance, or pay the cost of her project if she is unable to re-finance. She said it should pay her alternative accommodation costs because the property was unsuitable for her family until re-built and she would never have been able to live in it once it had been demolished. And she didn't think it was fair that Alexander Hall put a short deadline on the offer, not giving her enough time to consider her options or seek advice. She also said that she risked losing out on the benefit of the increased value of the property – she estimated it would be worth £1.8million after the works compared to £900,000 before.

Alexander Hall said that as Ms C had not accepted its offer by the deadline, and instead referred her complaint to the Financial Ombudsman Service, its offer had been withdrawn and was no longer available.

Our investigator agreed that the mortgage Alexander Hall had arranged wasn't suitable. He noted that Ms C said she hadn't been able to raise alternative finance due to a change in her circumstances, but that she hoped to do so later in 2024. He said that Alexander Hall should pay Ms C:

- £400 compensation.
- The broker, legal and product fees incurred to arrange the mortgage, as well as the

early repayment charge to repay it (if Ms C does so).

- Interest charged on the mortgage between 21 September 2022 and 25 October 2023. He said that by then it was clear to Ms C that this was an inappropriate mortgage for her and that she couldn't use the funds, or complete her project while the mortgage was in place. If she hadn't mitigated her losses by repaying the mortgage by that point, Alexander Hall wouldn't be liable for future interest. Any interest received by Ms C while she held the funds should be offset from the refund.
- All costs associated with the building project that Ms C incurred between 22 July 2022 and 7 June 2023, the date of the offer and when she became aware the lender would not consent. Ms C incurred these costs relying on being able to fund the rest of the project using the mortgage – but after 7 June 2023 knew that was no longer the case.
- Because Ms C hadn't been able to find development finance, it's likely she would never have been able to find the right finance to complete her project in 2022 either. So she has not incurred any loss in the project not going ahead, and won't incur any loss in taking out a post-completion residential mortgage.
- Because Ms C wasn't living in the property at the time of the application, and that continued to be the case, she hadn't incurred any additional living expenses that she wouldn't have incurred but for the unsuitable advice. So he didn't think he could fairly require Alexander Hall to repay these costs.

Alexander Hall agreed to pay £400 compensation. But it didn't agree to refund the loan fees, because Ms C didn't accept its offer by the deadline it set and in not doing so had failed to mitigate her losses. She hadn't explained why she was unable to comply with the deadline.

It also said that it wouldn't refund mortgage interest past 2 August 2023, as that was when it had told Ms C that the mortgage was unsuitable for her, and therefore that was when she ought to have mitigated her losses by repaying it. It said that it wouldn't refund the planning costs because Ms C would benefit from them when she did complete her project – unless she could evidence that, for example, permissions had now expired.

Ms C also didn't accept what the investigator had said. She explained some more about her circumstances:

- The purpose of building a larger property was to create space for her parents to move in with Ms C and her family. Because that hadn't happened, her parents were still living abroad and waiting to move to the UK.
- Ms C wasn't living in the property because she knew she wouldn't be able to during the works – the delay in the works being carried out because Alexander Hall arranged the wrong mortgage increased her costs.
- She had tried to re-finance but because she'd given up work temporarily wasn't able to obtain it – her husband's income alone wasn't sufficient. But she's about to return to work and doesn't expect there to be any difficulty once she's done that. In 2022 she was in work and had Alexander Hall made an appropriate recommendation at the time she'd have been able to obtain the right finance.
- She hadn't repaid the mortgage because she thought it prudent to retain the capital in case there was any issues in raising alternative finance. She could repay the mortgage on re-financing, or alternatively use the mortgage funds to extend but not

demolish and re-build the property. If she repaid the mortgage before knowing alternative funds were in place she'd lose the chance to do any works at all, putting her in a worse situation. Or she'd have to apply for another mortgage – which would be at a higher interest rate. So it's not reasonable to have expected her to repay immediately, or to make the payment of redress conditional on her doing so.

- The planning costs she has incurred are not refundable, so would be wasted if she ends up switching to an extension rather than a rebuild.

As no agreement could be reached, the complaint came to me for a decision to be made. I reached a different outcome, and therefore issued a provisional decision inviting the parties to provide any further evidence or arguments that they might want me to take into account before making a final decision.

### **My first provisional decision**

I said:

"It's not in dispute that Alexander Hall made a serious mistake here. It arranged a standard residential mortgage for Ms C, when it ought to have known that was wholly unsuitable for her needs. I'm satisfied that it was clearly aware of what her plans were – not least because Ms C set them out in a letter for the lender, a letter Alexander Hall advised her to re-write to remove that section. The key issue for me to decide is therefore what steps it needs to take to put matters right.

I'll turn to that shortly. But before I do so, I'll observe that I don't think Alexander Hall's approach to resolving Ms C's complaint has been fair and reasonable. In particular, Ms C is entitled to refer her complaint to the Financial Ombudsman Service for an independent opinion on what went wrong. I don't think it was fair to place a short deadline for acceptance, and I don't think it was reasonable to penalise Ms C for bringing her complaint to the Financial Ombudsman Service by withdrawing the offer once the deadline passed.

#### Putting things right

I'll deal with the issue of financial loss first, and then turn to the impact of what happened on Ms C and the fair compensation Alexander Hall should pay for that.

Alexander Hall should refund all the set-up costs of the mortgage – its own fee, the legal fees, and the lender's product fee, as well as the £30 CHAPS fee charged by the lender, and the costs (if any) of the valuation. These fees were charged to arrange a mortgage Ms C should not have been advised to take and that should not have been arranged for her, and therefore it's fair and reasonable that she should not have to pay them. And Alexander Hall's own fee was charged for a poor service that did not achieve her objectives. I don't think it's reasonable to say that because Ms C didn't accept the offer of refund by the deadline in the final response that Alexander Hall is no longer liable for those costs. I don't think it can fairly seek to limit its liability in that way.

Alexander Hall should therefore refund all those costs, adding compound interest at the mortgage rate in respect of amounts added to the mortgage balance, and simple interest of 8% annual otherwise. In each case interest should run from the date Ms C paid the fee (or the date of mortgage completion, in the case of fees added to the balance) to date of refund.

I'll turn now to the consequential loss. Both parties have made arguments about mitigation of loss, and this is something I've considered carefully. Having done so, I broadly (though not completely) agree with Ms C.

The ultimate fault here lay with Alexander Hall. Had it understood what Ms C needed in 2022, I'm satisfied it would have been able to arrange appropriate development finance. It says as much itself, in its final response letter. It was because Ms C's circumstances changed – in that she was temporarily not working – that she was unable to obtain finance in 2023. Once she's returned to work, it's likely she will be able to obtain the appropriate finance. I don't therefore think that Ms C's failure to obtain alternative finance in 2023 was a failure to mitigate her losses, or evidence that it would never have been available to her. It was a result of later changed circumstances which didn't exist and so wouldn't have prevented her taking the finance she needed at the time Alexander Hall should have arranged it.

And in the circumstances, I think her decision to retain the mortgage funds until she can obtain alternative finance (or definitively discovers she can't) is reasonable and sensible. It means she retains the option of doing more limited work to the property (such as an extension rather than a complete re-build), using the mortgage finance, if necessary – while not ideal, that would be enough to improve her family situation. Looked at more broadly, in the context of the impact of Alexander Hall's mistake on her wider plans, this is mitigation of loss – not failure to mitigate.

However, it wouldn't be appropriate to require Alexander Hall to refund the early repayment charge if Ms C doesn't actually end up incurring it.

I think it's reasonable to allow Ms C further time, following her return to work, to explore again the option of obtaining appropriate development finance. That can take time, especially since she's likely to need to obtain updated quotes from contractors first, and may also need to update her planning application.

I therefore propose to allow Ms C until 31 March 2025 to obtain further finance. If she does, and as a result repays this mortgage and incurs the early repayment charge, Alexander Hall should repay the early repayment charge within 28 days of being provided with evidence that she has done so. Depending on the time taken for responses to my provisional decision, I may extend this deadline accordingly. But if Ms C does not obtain alternative finance by the deadline, Alexander Hall will not be required to pay her the amount of the early repayment charge.

In respect of the mortgage interest Ms C has incurred, I'm satisfied it's fair that Alexander Hall refunds that too. I don't think it's fair that Ms C should have to pay interest on a mortgage that shouldn't have been arranged for her. I don't think it's reasonable for Alexander Hall to have expected her to repay it the moment it told her that the mortgage wasn't unsuitable for her after all, as it said in its final response. Once she learned that, Ms C had to explore alternative arrangements for raising the finance for her project – which, because of her change of circumstances, wasn't possible in 2023 but should now be something she can take forward.

As I've said, I think it's reasonable for Ms C to have retained the mortgage funds in the meantime as back-up, allowing her to fund more limited works if she's unable to obtain alternative finance. But I don't think it's fair that she should be responsible for the interest in the meantime. If she is able to obtain alternative finance and redeems this mortgage, she will have to pay interest on that finance and also on this mortgage until redemption – but if Alexander Hall had made a suitable recommendation in the first place she wouldn't have had to pay both.

However, if Ms C is unable to obtain alternative finance and decides to use the mortgage funds instead, it wouldn't then be fair for Alexander Hall to cover the interest incurred once she makes use of the funds. Therefore I think Alexander Hall should refund the interest to date now. And in April 2025, it should refund any further interest charged from the date of the first refund to the date the mortgage is redeemed or 31 March 2025, whichever comes first. I agree it's reasonable to offset interest Ms C has earned on the funds since drawdown.

As regards the costs Ms C incurred between July 2022 and June 2023, this is less straightforward. Whether the costs are wasted will depend on the extent to which Ms C is able to carry out work and whether she has to pay the same costs again. In response to this provisional decision, I would like her to itemise which costs she considers should be refunded, and explain why they have been wasted, as well as providing invoices or other evidence. I'll consider what she says about this. But as things stand, I'm minded to say that architect and planning application fees shouldn't be refunded as Ms C will be able to benefit from these when she re-applies for finance and starts her project. But if, for example, she has paid and lost deposits to contractors those should be refunded, subject to evidence.

I don't think it would be fair to require Alexander Hall to refund Ms C's alternative accommodation costs. I appreciate the property is currently unsuitable for her wider family – but that's on the basis that her parents intend to come to live with her, which has not yet happened. And while I appreciate she couldn't live there while the property was being demolished and rebuilt, with that in mind I don't see there was any need for her to incur the costs of living elsewhere until work actually started. So I'm not persuaded that in living in alternative accommodation before necessary, Ms C has mitigated her losses.

Finally, I deal with compensation for non-financial loss – to recognise the distress and inconvenience caused. Alexander Hall offered £750, but our investigator thought £400 was fair. I don't think either figure goes far enough. I think its error has had a substantial impact on Ms C. It's delayed her building project by up to two years, resulting in her being separated from her elderly parents abroad for that time. She's been caused substantial upset and worry, including the worry that because of her changed circumstances she would no longer be able to go ahead. And I think that the way Alexander Hall handled her complaint compounded her upset by putting unreasonable pressure on her to accept a limited offer without having time for it to be reviewed by the Financial Ombudsman Service. In all the circumstances I think £1,250 is fair."

### **The responses to my first provisional decision**

Ms C accepted my provisional decision. She said that my provisional decision didn't go as far as she would have liked, but she would be willing to accept what I had said to bring the complaint to an end.

Alexander Hall didn't accept my provisional decision. It said:

- Ms C has had 11 months since Alexander Hall told her that the initial advice wasn't suitable to arrange alternative finance but hadn't done so. She had also chosen to retain and not repay the mortgage funds.
- It was Ms C's choice to give up work temporarily, which has led to her being unable to obtain alternative finance. It's not fair and reasonable to regard that as a mitigating circumstance and allow her more time to do so as a result.

- Ms C has already had a more than reasonable time to arrange alternatives and so it would not be fair to allow her more time until 31 March 2025, or require Alexander Hall to cover interest costs until then.
- As an alternative, Alexander Hall offered to
  - Refund the set up costs, plus interest
  - Refund interest on the mortgage – but only to the date of my final decision, less any interest Ms C has earned on those funds in the meantime
  - If Ms C redeems the mortgage within 28 days of the date of my final decision, refund any ERC and interest from the date of the decision to date of redemption
  - Pay £1250 compensation.

Ms C rejected that offer.

As no agreement could be reached, I issued a second provisional decision in which I dealt with the responses to the first, and set out my thoughts on redress in more detail.

### **My second provisional decision**

I said:

“Following my provisional decision, the issues have narrowed further. Alexander Hall offered to pay the redress I said I was minded to direct in full – with the exception of mortgage interest after the date of my final decision. It said it didn’t think it was fair to allow Ms C until 31 March 2025 to find alternative finance. She should have done so by now, or at least mitigated her loss by repaying the mortgage, and it wouldn’t be fair to extend her time for doing so.

I’ve considered what Alexander Hall has to say about this. But I don’t agree. As I said in my provisional decision, I’m not persuaded that Ms C has acted unreasonably and failed to mitigate her losses. It didn’t become clear to her that she wouldn’t be able to use the mortgage funds until the lender told her that in 2023. By that time she had already changed her circumstances – not knowing that she would need to obtain alternative finance. So I don’t think it’s fair to say that Ms C knowingly put herself in a position where she wouldn’t be able to obtain that finance.

Once Ms C did learn of the problem, she immediately took steps to put it right by complaining to Alexander Hall. Alexander Hall’s approach to her complaint was very forceful, putting pressure on Ms C to accept an offer by a very short deadline or lose out on any redress – an approach it continued when she chose to refer her complaint to the Financial Ombudsman Service instead.

I’m satisfied that Ms C has acted reasonably throughout. She hasn’t deliberately put herself in a position where she couldn’t obtain alternative finance. She hasn’t delayed in trying to resolve matters. I’m not persuaded she’s failed to mitigate her losses.

I don’t think it would be fair to require Ms C to repay the mortgage funds immediately, either. She can now seek alternative finance, but as I said in my provisional decision that process is likely to take some time – especially if she has to update her planning consents and seek updated quotes from contractors. And I think it’s reasonable that she retains the mortgage finance in the meantime in case she can’t obtain finance and instead has to use the mortgage funds to carry out a more limited extension.

Doing so is mitigating her losses. But I think it's reasonable to impose a cut-off point, giving Ms C reasonable time to explore obtaining alternative finance. She'll then know either that she can – and so can repay the mortgage – or that she can't, in which case it's fair that she pays interest on the mortgage from the point at which it becomes the source of her development finance rather than a debt she shouldn't have had but has retained as insurance.

I explained in detail in my provisional decision my reasons for awarding the redress I set out. As I've explained, nothing in the responses has led me to change my mind, and so for all those reasons I still intend to uphold this complaint.

The next matter still at issue is the question of what compensation Alexander Hall should pay Ms C in respect of costs spent and wasted on the project between the taking out of the mortgage in 2022 and when the lender told her she couldn't go ahead in 2023.

Ms C has provided full details of the costs she incurred in that period, and an explanation of what they were for. The costs come under three main headings: architect fees; other consultancy fees and expenses (largely for reports required to support the planning application); and local authority planning fees. These costs total £31,778.34, and I have itemised them below.

<b><u>Type</u></b>	<b><u>Invoice date</u></b>	<b><u>Amount</u></b>
Architect	27/06/2022	£100
Architect	20/07/2022	£493
Architect	20/09/2022	£1,214.64
Architect	18/10/2022	£2,500
Architect	17/11/2022	£2,150
Architect	02/01/2023	£1,000
Architect	18/01/2023	£2,400
Architect	29/01/2023	£500
Report	27/10/2022	£1,050
Report	14/11/2022	£2,640
Report	22/11/2022	£1,290
Report	30/11/2022	£2,280
Report	30/11/2022	£1,818
Report	25/01/2023	£900
Report	02/02/2023	£2,220
Report	undated	£299
Local authority	18/01/2023	£494.20
Local authority	24/05/2023	£1,250
Local authority	26/05/2023	£950
Local authority	10/06/2023	£1,301.50
Local authority	13/06/2023	£4,928

I think that the question of whether these costs are wasted ultimately depends on whether Ms C is able to obtain alternative finance. If she is, and is able to proceed



with the original project as planned, then the original plans and reports, and local authority consent, will be valid and Ms C will be able to proceed as planned albeit with delay. However, if she is unable to obtain alternative finance, and instead has to use the mortgage funds to extend rather than demolish and re-build, then she will require new plans and reports and will have to re-apply for local authority permission on the new basis. In that situation, the costs incurred before she became aware of the issue with the lender will have been wasted.

I'm therefore satisfied that the fairest solution is to require Alexander Hall to refund those costs, but only if Ms C is unable to obtain alternative finance. Given the passage of time since my provisional decision, while we obtained evidence of the costs from Ms C, I'll extend the time for obtaining further finance to 30 June 2025."

### **The responses to my second provisional decision**

Again, both parties responded.

Ms C said that she wanted me to reconsider fair compensation, on the basis that she and her family had also suffered the loss of family life in the new home she had hoped to build, for several years at least. She said that in the event she could now only extend, rather than re-build as originally planned, Alexander Hall should compensate her for the difference in value between the property as extended and as it would have been following a full demolish and re-build. She said that wasn't hypothetical loss because her project was on track and only derailed by Alexander Hall's failure. She was reasonably entitled to expect Alexander Hall to arrange an appropriate mortgage for her and it should have done so.

Alexander Hall said that my proposed award should not include costs incurred before 21 September 2022, when the mortgage completed, or after 7 June 2023, when the lender wrote to Ms C telling her it wouldn't consent to demolition.

### **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'll deal with Alexander Hall's response first. I don't think it would be fair to limit the compensation in the way it suggests. Although the mortgage didn't complete until 21 September 2022, it gave the advice Ms C relied on in June and the mortgage offer was issued in July. I don't think it was unreasonable for her to have incurred costs in reliance on the advice she was given merely because the mortgage hadn't actually completed yet when there was no reason for her to think, at that time, that it wouldn't go ahead or that it wouldn't be suitable for her needs.

I also don't think it would be fair to limit the refund of expenditure to 7 June. There were a couple of items shortly after that date, but Ms C was committed to them, and it wasn't unreasonable for her to make those payments while she sought clarification from Alexander Hall and the lender on what her position actually was and what options might be open to her.

I'm also not persuaded to change my proposed award by what Ms C has said. I took into account the impact on her, including the disruption to her family life, in setting compensation for distress and inconvenience at £1,250. I'm not persuaded it would be fair to require Alexander Hall to compensate her for the difference between the value of her property as extended and as demolished and rebuilt. Firstly, that's not a loss she's actually incurred – and, if she's able to raise alternative finance, might never incur. Secondly, Ms C now has the chance to avoid that loss by raising alternative finance to complete the project. No

application was made in 2022 so I can't be certain that she would have been successful in raising the right finance at the time, but in any case I see no reason (once she's back at work) why there's less chance of such an application succeeding now than it would have done at the time. If Ms C is able to obtain alternative finance, she won't incur this loss. And if she isn't, that might show that she wouldn't have been able to do so in 2022, even with the right advice, either – in which case she would never have benefitted from the increased value of a demolition and rebuild.

### **My final decision**

My final decision is that I uphold this complaint and direct Alexander Hall Associates Limited to:

- Within 28 days of the date Ms C accepts my final decision, if she does, pay her:

- The mortgage set up costs

- £499 broker fee
- £48 legal fees
- £995 product fee
- £30 CHAPS fee
- Valuation cost if any

In each case, Alexander Hall should add interest as follows:

- Simple annual interest of 8% on any sum Ms C paid up front, running from the date she paid it to date of refund; or
- Compound interest at the mortgage rate on any sum added to the mortgage balance, running from the date the mortgage completed to date of refund
- Interest charged on the mortgage at the mortgage rate from inception to date of refund, less interest Ms C has earned on the mortgage funds over the same period
- Compensation of £1,250.
- Within 28 days of Ms C notifying Alexander Hall that she has repaid the mortgage and incurred an early repayment charge, or if she has not done so by 30 June 2025, by 28 July 2025 – whichever is later:
  - Refund any early repayment charge, if Ms C incurred it before 30 June 2025, adding simple annual interest of 8% from date of payment to date of refund; and
  - Pay Ms C interest charged on the mortgage at the mortgage rate running from the date of the previous refund to the earlier of the redemption date or 30 June 2025, less interest Ms C has earned on the mortgage funds over the same period.
- In the event that Ms C has been unable to obtain alternative finance by 30 June

2025, by 28 July 2025 pay her £31,778.34 wasted costs, adding simple annual interest of 8% running from the date Ms C paid each sum contributing to that total to the date of refund.

In respect of any element of my award to which 8% simple annual interest is to be added, Alexander Hall may deduct income tax from the 8% interest element, as required by HMRC, but should tell Ms C what it has deducted so that she can reclaim the tax from HMRC if she is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 30 October 2024.

Simon Pugh  
**Ombudsman**