

The complaint

Miss B and Mr M complain that they were given unsuitable advice by Lancashire Financial Services Limited (“LFSL”) in relation to a re-mortgage, which has led to them incurring additional costs.

What happened

Miss B and Mr M obtained a self-build mortgage in around July 2021 to enable them to construct a self-build property, intending to move to live in the property once completed – though remaining in their existing property in the meantime. However, they required further funds to complete the self-build, so they approached LFSL in around October 2021 to seek advice about raising additional funds by re-mortgaging their existing home – and for a new interest rate product, as their existing one was ending.

LFSL recommended a mortgage of £330,995 (inclusive of the £995 product fee) to be repaid over a term of 24 years, with a five-year fixed interest rate of 1.18%. This was to repay Miss B and Mr M’s existing mortgage on their home of around £270,000, and to provide them with additional lending of around £60,000. This new mortgage with a lender I’ll refer to as “Lender N” completed in February 2022.

Once the work was completed, Miss B and Mr M wanted to sell their existing home and move into their self-build property. So, they contacted Lender N in October 2022 and asked about porting their mortgage to the self-build property. However, Lender N said they couldn’t port their mortgage to a property they already owned.

Miss B and Mr M went on to sell their existing home, repaid their existing mortgage with Lender N in June 2023, and took out a new mortgage on their self-build property. Following this, Miss B and Mr M made a complaint to LFSL. They felt the mortgage LFSL had recommended to them wasn’t suitable for their needs and circumstances, which they said they’d discussed with LFSL. They’ve said they’d requested a product which was portable and would be moved to their self-build property once it was complete and they’d sold their existing home. However, they later found this wasn’t possible and meant they had to repay the mortgage with Lender N, incurring financial losses as a result – including, an early repayment charge (ERC), legal fees, financial advice fees, mortgage product fees, and a higher interest rate. They felt the mortgage with Lender N had been mis-sold to them as a result.

LFSL didn’t accept it had acted unfairly. It said that a formal mortgage offer was sent to Miss B and Mr M on 10 December 2021 which included, on page 10, an explanation that the product couldn’t be ported to a property Miss B and Mr M already owned. LFSL said it was Miss B and Mr M’s responsibility to read the mortgage offer to check it suited their needs, and that they should have either not proceeded with the mortgage or should have contacted LFSL to find an alternative provider. LFSL also referred to Miss B and Mr M requiring attention to detail in their jobs and so, it was surprised they hadn’t read the mortgage offer in detail.

Miss B and Mr M asked the Financial Ombudsman Service to look into their complaint. Our

Investigator didn't think LFSL had acted fairly. He concluded that LFSL was aware of Miss B and Mr M's intention to port their mortgage to the self-build property they already owned. And, that LFSL had overlooked this when making its recommendation – it ought to have known this wouldn't be possible, and taken that into account when deciding whether this was a suitable mortgage to recommend. He also felt that LFSL had further opportunities to put things right before the mortgage with Lender N completed. He said that Miss B and Mr M would have always needed to make a new application for borrowing on their self-build property, once the build was complete. But that LFSL should have sourced an alternative product without an ERC. He recommended that LFSL should refund the full ERC Miss B and Mr M incurred when repaying the mortgage with Lender N. And, he also said LFSL should pay £500 in compensation to recognise the distress and inconvenience this matter had caused.

LFSL didn't agree. It said, in summary:

- It cannot think of a mortgage adviser that would review the mortgage offer prior to completion, as they would expect the client would have fully reviewed it considering it's a large commitment. The mortgage offer made it clear an ERC would be applicable if the mortgage was repaid before the fixed period ended and the onus was on Miss B and Mr M to read it.
- Miss B and Mr M shouldn't have asked for a five-year deal if their intention was to sell their existing property in the short term.
- Miss B and Mr M asked LFSL for a five-year fixed rate and nothing else was discussed at the time.
- It questions how it was to know of Miss B and Mr M's intentions in November 2021, if correspondence about life cover – in which Miss B and Mr M discussed their intentions – was not until February 2022.
- LFSL feels it gave the right advice in November 2021 as Miss B and Mr M were concerned about interest rates rising and they asked for the cheapest five-year fixed rate, which is what was arranged.
- However, LFSL looked at a tracker rate which it said would have been available to Miss B and Mr M at the time and calculated the difference in cost to Miss B and Mr M based on that rate, compared to the fixed rate. LFSL concluded that being on the fixed rate and paying an ERC, compared to the tracker rate, saved them around £2,700. And so, it said they were better off with the five-year fixed rate than the tracker alternative.
- Finally, it said that as it's not possible to obtain shorter term mortgages, the only other option for Miss B and Mr M would have been bridging finance, the cost of which would have been considerably more than what they incurred by taking the mortgage with Lender N.

Because LFSL didn't agree with his findings, the Investigator arranged for the case to be referred for an Ombudsman to make a decision. So, the case was passed to me to decide.

My provisional decision

I didn't think LFSL had acted fairly, and I wasn't persuaded the advice it had provided was suitable for Miss B and Mr M's needs. But I reached a different view to the Investigator on how things should be put right, so I issued a provisional decision. I proposed that LFSL

should compensate Miss B and Mr M for the financial loss they'd incurred as a result, and that it should compensate them for the distress and inconvenience caused. I said:

Miss B and Mr M already had a mortgage on their existing property with a lender I'll refer to as "Lender S". They approached LFSL to increase the mortgage on that property to raise funds to complete their self-build property. LFSL discussed their requirements and the fact find completed by LFSL, in the section "Detail here the client(s) objectives and priorities", says "To borrow extra money to finish the new build". So, I'm satisfied LFSL was aware of this at the time. It's also noted that Miss B and Mr M would like a five-year fixed rate "as cheap as possible".

Following this, LFSL recommended that Miss B and Mr M take out a new mortgage with Lender N to repay their mortgage with Lender S and to provide around £60,000 of additional funds, on a five-year fixed rate. LFSL has said this is what Miss B and Mr M asked for and it considers, therefore, that its advice was suitable at the time. But, like the Investigator, I disagree. I'll explain why.

It's clear LFSL knew Miss B and Mr M were constructing a self-build property – continuing to fund this was the basis of their need for additional borrowing. What isn't as clear is whether they directly told LFSL they intended to sell their existing property and port the mortgage to the self-build property once it'd been completed. Miss B and Mr M say they did and LFSL argues that they didn't.

Ultimately, though, I don't think it makes a difference. LFSL recommended a regulated mortgage contract to Miss B and Mr M, and it was required to do so in line with the Mortgage Conduct of Business rules – known as "MCOB". In summary, those rules required LFSL to take reasonable steps to ensure its recommendation was suitable for Miss B and Mr M. Included in the steps it should have taken are that it should base its recommendation not only on the facts disclosed by Miss B and Mr M, but also other relevant facts about them of which it is – or should reasonably be – aware, and take reasonable steps to obtain all information likely to be relevant to suitability. Having done so, it should recommend the most suitable mortgage available – suitable meaning appropriate to the customer's needs and circumstances.

Within email correspondence between Miss B and Mr M and LFSL in 2021, they made it aware of matters such as the title of their existing property needing to be split, to facilitate construction of the self-build. And, as I've shown above, LFSL was clearly aware the additional funds were to be used to complete the self-build property from the outset. This wasn't what I'd consider a common situation – it wasn't just additional borrowing and a rate switch and there were wider circumstances involved. At the very least I consider LFSL ought to have asked more questions about Miss B and Mr M's circumstances, so it could ensure its advice took the wider situation into account and met their individual needs. LFSL has been clear in its response to our service that it didn't do that, and instead it recommended a five-year fixed rate merely because that's what Miss B and Mr M asked for. I consider that is, at best, poor advice – if it can be regarded as advice at all. The purpose of advice is not merely to give a customer what they ask for, it is to understand their needs and circumstances and recommend the most appropriate mortgage for them. The mortgage adviser is the expert and it's not enough to just give a customer what they ask for without considering whether that is the best way of meeting their needs.

LFSL questions how it was to know about Miss B and Mr M's intentions when recommending this mortgage to them in November 2021. But I think the answer to that is simple – if LFSL had properly investigated their needs and circumstances before making its recommendation, as it ought to have done, it would have known

what Miss B and Mr M intended to do. And it would have been able to tailor its advice accordingly. LFSL would have been aware that Miss B and Mr M were on track to complete their build well within the five years, and having done so wouldn't be able to port their mortgage in the way they wanted to, and that would mean they'd incur an ERC. I can see no reason to conclude LFSL's advice to take out the five-year fixed rate with a new lender was suitable, when considering this – taking into account the fact that (as I'll explain below) alternative mortgages that didn't include an ERC were available.

I note LFSL has argued the mortgage offer Lender N sent to Miss B and Mr M set out that the mortgage product couldn't be ported to a property they already owned. LFSL feels the onus is on Miss B and Mr M to have read this and understood it. Miss B and Mr M approached LFSL for professional advice and they were entitled to expect any recommendation made to be suitable for them. It's evident that the porting restriction is a key part of Lender N's lending criteria, something that would have been available to LFSL through Lender N's intermediary website. So, it was known eligibility criteria for Lender N – and, in any case, something that's common in the regulated mortgage market – and I consider LFSL ought to have been aware of it when providing advice to Miss B and Mr M, in line with mortgage regulation. I think this further supports my finding that the advice LFSL provided was unsuitable. Essentially LFSL's argument amounts to saying that Miss B and Mr M ought to have realised that the mortgage it recommended didn't meet their needs – and it's their fault for not understanding that rather than LFSL's fault for putting them in that position in the first place. I don't think this is a persuasive argument.

As a final point, LFSL has said it wouldn't review a mortgage offer at a later stage. But it's clear LFSL was made aware of Miss B and Mr M's intentions to sell their existing property by 2 February 2022. Even if LFSL wasn't aware of a cause to question its advice before then – and for avoidance of doubt, I think it ought to have been for the reasons already explained – it was clear at this point a five-year fixed rate wouldn't be suitable. And I do not accept that LFSL had no responsibility before the mortgage completed to review its advice, where it was clear that advice was unsuitable.

Putting things right

It's difficult to know exactly what would have happened differently in 2021 had LFSL given suitable advice, due to the time that's passed since. So, I've considered what is most likely to have happened on the balance of probabilities, to decide on a fair way to put things right.

LFSL has said that there were no products available at the time which didn't include an ERC. But this wasn't correct. Miss B and Mr M's existing lender, Lender S, has told us it had a tracker product of 2.09% above base rate available at the time LFSL gave advice to Miss B and Mr M in November 2021, based on the same loan to value used by Lender N. This product didn't have a product fee, an ERC, or any completion fees. But the interest rate was higher than the fixed rate Miss B and Mr M had been advised to take. And, as it was a tracker product, the interest rate could increase or decrease in line with changes to the Bank of England Base Rate too. I'm aware from my knowledge of the mortgage market that other lenders also offered tracker rates without ERCs.

I think it's most likely that, had LFSL provided suitable advice, Miss B and Mr M would have ended up taking out this tracker rate for their existing and additional borrowing with Lender S. This would have allowed them to repay their mortgage

when they were ready to do so in 2023, without incurring additional costs. I've thought about other possibilities, such as a shorter fixed rate too. But I'm not persuaded that would have been the most suitable option given that the exact time Miss B and Mr M would complete their self-build was still uncertain, meaning there would be a risk they'd still incur an ERC if they completed within a two-year fixed rate.

So, to put things right, I provisionally consider LFSL should refund the cost of the ERC to Miss B and Mr M. However, as the interest charged on the tracker rate would have been higher than the five-year fixed rate, the benefit they received on the fixed rate by being charged less interest, should be offset against the ERC refund. When calculating the difference in cost, LFSL should also include a refund of the £995 product fee Miss B and Mr M paid for the mortgage with Lender N.

Miss B and Mr M have said they've incurred other costs including legal fees, financial advice fees, mortgage product fees, and a higher interest rate. I haven't seen anything to suggest they were charged an advice fee by LFSL. And, as they would always have needed to re-finance their self-build mortgage and incur some costs as part of the self-build process, the advice fee and legal fees relating to that – including the earlier costs of splitting the property title – are something they would have always incurred, even if LFSL had given suitable advice.

The same applies to the higher interest rate Miss B and Mr M have on the mortgage they now have on their self-build property. As they couldn't have ported a mortgage to a property they already own, they would always have needed to seek re-finance. And so, even if they'd been given suitable advice in 2021, this too is a cost I consider they would always have incurred. For these reasons, it wouldn't be fair for me to direct LFSL to refund costs that weren't caused because of its actions.

However, if LFSL had recommended they stay with Lender S, legal work to move their mortgage to Lender N wouldn't have been necessary. If Miss B and Mr M had to pay legal fees for this, LFSL should refund this cost – if so, Miss B and Mr M should provide evidence (such as an invoice) when they respond to this provisional decision so I can include that in my final decision.

I've also considered the distress and inconvenience Miss B and Mr M experienced because of LFSL's actions. Despite seeking professional advice and going through the process of taking a new mortgage following that advice, they were left in a difficult position they weren't expecting – where they had to arrange new finance at a higher cost, instead of being able to transfer the mortgage they already had to the self-build property. I'm satisfied this caused them worry, disappointment and additional time and effort, that could have been avoided if LFSL had provided suitable advice in the first place. So, in addition to rectifying the financial loss set out above, I'm provisionally minded to direct LFSL to also pay Miss B and Mr M a total of £500, in recognition of the distress and inconvenience caused.

In summary, I provisionally consider a fair way to put things right, in relation to the financial loss Miss B and Mr M have incurred, is for LFSL to do the following:

- Calculate the interest Miss B and Mr M actually paid on the mortgage with Lender N from the date of completion to date of redemption based on the actual balance minus the £995 product fee (figure A)
- Calculate the interest they would have paid over the same period had they taken the base rate plus 2.09% tracker rate with Lender S for the same

balance (again minus the £995 product fee) (figure B)

- Calculate Miss B and Mr M's financial loss, which crystallised on the date they redeemed the mortgage with Lender N, as follows:
 - o The ERC they paid to Lender N, plus
 - o The £995 product fee plus compound interest at Lender N's interest rate between completion and redemption, minus
 - o The result of (figure B minus figure A)
- Pay to Miss B and Mr M:
 - o The result of the above calculation, adding simple annual interest of 8%* running from the date of the redemption of Lender N's mortgage to date of refund
 - o Any legal fees they paid on the re-mortgage to Lender N, adding simple annual interest of 8%* running from the date they paid the fees to date of refund
 - o £500 compensation. If compensation is not paid within 28 days of the date we notify LFSL Miss B and Mr M have accepted my final decision (if they do), LFSL should add simple annual interest of 8%* running from the date of my final decision to the date of payment.

*If LFSL considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from the interest refund, it should tell Miss B and Mr M how much it has taken off. It should also give Miss B and Mr M a tax deduction certificate if they ask for one, so they can reclaim the tax from HMRC if appropriate.

I invited Miss B and Mr M and LFSL to let me have any further comments or evidence they wanted me to consider before I make my final decision.

Miss B and Mr M said they'd relied on the advice provided by LFSL to plan and budget for their self-build. They wish to reserve their position in terms of the actual losses they feel they have incurred because they relied on the incorrect advice from LFSL. They have said they didn't anticipate incurring additional fees they had to pay because of the product not being suitable. And that they hadn't planned financially for being in a position where they were unable to port their mortgage, along with having to later take a higher interest rate on their borrowing. However, Miss B and Mr M have expressed that they'd like to conclude this matter and feel they should accept my provisional decision.

LFSL didn't respond to my provisional decision.

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.

As neither party has provided any new evidence, and because Miss B and Mr M have indicated their acceptance of my provisional decision, I see no reason to depart from it. However, I think it would be helpful to respond to the points Miss B and Mr M have made in their response to my provisional decision.

I appreciate Miss B and Mr M relied on the unsuitable advice they were given by LFSL. And that they feel they have incurred more costs because of this than I have proposed they should be reimbursed for. But, for the same reasons I set out in my provisional decision, I consider they would always have incurred the other costs – for example, refinance of the self-build property at a higher interest rate. Miss B and Mr M's plan from the outset was ultimately to obtain the funding they needed to complete their self-build property and I've seen no compelling evidence to suggest that intention, or the overall steps they needed to take, would have been notably different if LFSL had given suitable advice. So, I remain persuaded that the proposed way to put things right fairly compensates them for the financial loss they have incurred because of LFSL's actions.

I accept that finding out they couldn't port the mortgage product recommended by LFSL would have come as an unwelcome shock, particularly at a time where Miss B and Mr M were looking to move into their self-build property. And I have kept this in mind when considering the distress and inconvenience this matter has caused to Miss B and Mr M.

For completeness, I note Miss B and Mr M have said that they didn't incur legal costs for the mortgage with Lender N. I will therefore amend what LFSL needs to do to put things right, taking this into account.

Putting things right

To put things right, LFSL must take the following steps:

- Calculate the interest Miss B and Mr M actually paid on the mortgage with Lender N from the date of completion to date of redemption based on the actual balance minus the £995 product fee (figure A)
- Calculate the interest they would have paid over the same period had they taken the base rate plus 2.09% tracker rate with Lender S for the same balance (again minus the £995 product fee) (figure B)
- Calculate Miss B and Mr M's financial loss, which crystallised on the date they redeemed the mortgage with Lender N, as follows:
 - o The ERC they paid to Lender N, plus
 - o The £995 product fee plus compound interest at Lender N's interest rate between completion and redemption, minus
 - o The result of (figure B minus figure A)
- Pay to Miss B and Mr M:
 - o The result of the above calculation, adding simple annual interest of 8%* running from the date of the redemption of Lender N's mortgage to date of refund
 - o £500 compensation. If compensation is not paid within 28 days of the date we notify LFSL Miss B and Mr M have accepted my final decision (if they do), LFSL should add simple annual interest of 8%* running from the date of my final decision to the date of payment.

*If LFSL considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from the interest refund, it should tell Miss B and Mr M how much it has taken off. It should also

give Miss B and Mr M a tax deduction certificate if they ask for one, so they can reclaim the tax from HMRC if appropriate.

My final decision

My final decision is that I uphold this complaint. Lancashire Financial Services Limited must put things right by taking the steps I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr M to accept or reject my decision before 19 December 2024.

Keith Barnes
Ombudsman