

The complaint

The executors of the Estates of Mr and Mrs C have complained about Brown Shipley & Co Limited, trading as Brown Shipley's ('Brown Shipley') handling of the late Mr and Mrs C's finances and the estates. Advice hadn't been given about the repayment of the interest only Lifetime Mortgage, statements had been incorrectly sent, reports were confusing, the transfer from the late Mrs C's account to Mr C's account had taken too long and the repayment of the mortgage was extremely slow which cost an extra £300 in mortgage charges.

The late Mrs C was already deceased when the executors brought their complaint to this service and sadly Mr C died more recently.

Mr and Mrs C's two children held power of attorney for the late Mr and Mrs C and are executors of the estates. One of them – 'Mrs Y' – is representing the estates.

What happened

The late Mr and Mrs C held investments with Brown Shipley. Sadly, Mrs C had been incapacitated through ill health since 2010 and Mr C had Power of Attorney for his wife's affairs. Mr and Mrs C had previously taken out a Lifetime Mortgage on the advice of a predecessor firm in 2005.

In 2023 a complaint was raised with Brown Shipley about the lack of advice to repay the Lifetime Mortgage and other aspects of the service that had been received.

Brown Shipley addressed the concerns in its letter of 31 July 2023 and 4 August 2023. It said;

- It apologised that Mr C, and his children weren't made aware of the departure of the late Mr and Mrs C's adviser. They should have been told and Brown Shipley had been unable to ascertain why that was in light of their previous adviser's departure.
- It hadn't been able to establish why the request for the statements to be sent to the children rather than Mr C hadn't been acted upon. This had been updated but during the time it took to update its systems some statements were issued to Mr C, and it apologised for the distress and inconvenience caused. Because of its number of customers, it wasn't possible to personalise statements which were produced as a regulatory requirement.
- It provided details of the timeline about what had happened after the withdrawal instruction had been given on 13 October 2022. A signature was missing, an additional form needed completion and the CHAPS fee for the eventual payment on 6 December 2022 was waived. Typical timescales usually took around four weeks but took seven weeks in this instance due to the administrative error.
- The zero amounts showing in the 2022/23 tax pack report were because of the transfer of funds from the late Mrs C's account and its closure. It apologised if this appeared confusing.

- The Lifetime Mortgage was already in place when the late Mr and Mrs C became clients of Brown Shipley and was taken to assist and support one of their children. It was to be repaid upon second death. The monthly repayments had always been assessed as affordable. It said it wasn't the responsibility of Brown Shipley to assess whether the debt was repaid unless this would impact on the late Mr and Mrs C's lifestyle or investments, or unless it was asked to do so. It was to be maintained until second death and there was nothing to suggest this had changed. It would have considered repayment if it had been asked. Power of Attorney had been held since 2010 and the holders could have requested it. No concerns had been raised about the mortgage by Mrs Y who attended the 23 September 2021 meeting.
- Lump sums were taken from investments to cover care costs.
- £300 offered was for distress and inconvenience caused. The sum came to around the same amount as one month's interest on the Lifetime Mortgage but the delays in encashment were because of a missing signature for which it wasn't responsible. However, it appreciated the distress caused while settling the account and withdrawing £60,000 and it offered the £300 which included the issues regarding the statements.

Our investigator who considered the complaint thought that it should be partially upheld. She said;

- The late Mr C – who was recorded by Brown Shipley as being vulnerable – should have been advised about the pending departure of his adviser and that a new one was being appointed. Brown Shipley hadn't kept him informed as it should have done.
- The costs and what they related to had been outlined to the late Mr and Mrs C.
- There was a delay in Brown Shipley providing the necessary form for the mortgage to have been paid off. It had offered £300 in recognition of the distress and inconvenience and for the interest as well. The investigator thought Brown Shipley should pay the interest as well as the inconvenience award of £300.
- Brown Shipley had followed the instructions it had been given about communications being sent to the late Mr C and later the Power of Attorneys.
- The Lifetime Mortgage had been considered and regularly noted by Brown Shipley and because of the late Mr and Mrs C's potential needs – care/support fees, it wasn't unreasonable for it not to have advised him to pay off the mortgage.
- To put the matter right, the investigator said that Brown Shipley should pay one month's interest along with 8% interest.

Brown Shipley agreed with the outcome.

The executors didn't agree. Their main complaint was about the lack of advice to repay the Lifetime Mortgage and Mr C had more savings than stated by the investigator. He had lost out by not repaying the mortgage. The late Mr and Mrs C had pensions so additional funds to cover care costs wasn't an issue. The Power of Attorney had not been handed over and they were not in the position to make or help with their father's decisions.

As the complaint couldn't be resolved, it has been passed to me for decision in my role as ombudsman.

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.

After doing so I've reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

The Lifetime Mortgage

I understand that the Lifetime Mortgage for £80,000 was sold by another party in in 2005 and a part repayment of £20,000 was made in 2007. A complaint about that advice has been made separately so I am not looking at the suitability of the sale of the Lifetime Mortgage in this decision.

But for this complaint, the executors have asked why since 2015 when Brown Shipley took over advising the late Mr and Mrs C, they were never advised to repay the remaining £60,000.

The executors have said that the late Mr and Mrs C had sufficient pensions etc in place to pay for the care fees. And for NHS funding purposes it would have been beneficial if the funds had been used to repay the mortgage rather than held in cash. While the mortgage was originally set to be repaid upon second death, Mr and Mrs C's circumstances had changed significantly during this time – particularly Mrs C's health – and the planned repayment should have been revisited. Mrs C had been unwell since 2010 and needed a lot of support from Mr C and carers who attended several times a day. Lump sums were taken from Mrs C's investments during this period to maintain and support her.

The earliest client profile and suitability letter I've been provided is from 2018 when Brown Shipley was recommending a transfer of Mr and Mrs C's assets to its Managed Fund Service, a discretionary managed portfolio. The suitability letter records Mr and Mrs C's assets as being their home valued at £350,000, cash of £54,500, stocks and shares ISAs valued at £181,000 for Mr C and £137,000 for Mrs C. They had a Lifetime Mortgage on their home of £64,000 which would be paid by the estate upon death.

Mr C received a pension income of £21,800 and Attendance Allowance of £6,916 per year. Mrs C's pension income was £14,916 and an Attendance Allowance of £4,030 annually. Mr and Mrs C ;

'...confirmed that this level of income is sufficient to cover your ongoing expenditure and you therefore have no requirement for additional income or capital at this stage.'

The 14 October 2019 suitability letter records that the;

'...care costs for [Mrs C] remain the same and you have set up a monthly direct debit to cover these costs. Any shortfall in your total spending is covered by your cash on deposit.'

At that time Mr and Mrs C's monthly expenditure was £4,500 and their income was £4,700 net. Any shortfall could be taken from the £62,000 held on deposit but they were currently spending within their income. The 'investments are not required for your essential spending.' I can see the 8 September 2020 phone review (during COVID) and subsequent suitability letter of 16 October 2020 makes reference to an update on the cash position for Mrs C's care costs and that based on 'the discussions your objectives can be summarised as follows:

- You hold your investments for later life rainy day needs, annually you may need to withdraw funds from the accounts held by [Mrs C] to support her care cost.

- You look for your investments to achieve a greater long term return than the returns available through cash deposits.'

Mr and Mrs C's ISAs and whole of life policy were valued at £354,454. It was recorded;

'You have an existing lifetime mortgage with [provider]. This is an interest only loan taken out many years ago to support one of your children at the time. The debt will be repaid on the sale of your home on second death. The monthly payments are affordable for you.'

It further said;

'...You do not rely on this portfolio for income. You have for many years been funding care from cash savings. This year you will need to make a withdrawal to cover the next 12 months care. Any short term fall in fund value will have no material impact on your financial situation.'

...

'We believe the current plans remain suitable for your circumstances and needs as you have no need for income from your portfolio. You have the option to take some capital funds annually to support care costs and we keep this under review. The portfolio meets your objective for long term rainy day funds that offer the potential to beat cash and or inflation.'

The whole of life policy held provided 'valuable life cover on 2nd death and premiums are no long[er] paid as your fund value supports the level of life cover in place.' The Client Profile of October 2018 records there was a whole of life policy in place with a benefit of £35,195 so I assume this is the policy being referred to.

It's clear that Mr C was always careful to ensure he had sufficient cash to cover any care costs over and above their household income. Cash savings had historically been used but £24,000 was withdrawn from Mrs C's investments in September 2020, so that a full 12 month care costs were in place, and a further £25,000 was taken in September 2021.

After reviewing all of the information presented to me, I'm of the opinion that Mr C preferred to retain his capital rather than use a portion of it to repay the Lifetime Mortgage. I think Mr C was reliant on the capital – particularly Mrs C's – to provide any additional cash needed over and above Mr and Mrs C's annual income. Mrs C's capital could be depleted if necessary if the cash balance needed to be topped up – which was done twice.

In order to have financed the repayment of the mortgage it would have required a sale of investments of around £60,000 which I'm not convinced the evidence suggests Mr C would have been willing to take. Mr C was retired and wasn't in a position to recoup such an amount. Such a sum would have taken a considerable time to replace from income in excess of expenditure. I think it most likely that by retaining the capital it provided Mr C with a financial cushion he could have relied upon if it was needed. And I don't think it is unreasonable to assume that Mr C wanted to retain capital for future use as much as he was able to, hence the Lifetime Mortgage to be repaid upon death despite the monthly interest payments being made. The whole of life policy would have covered half the outstanding mortgage upon second death in any event.

The executors have questioned the logic of making a monthly interest payment on the mortgage and I appreciate that point. But the Lifetime Mortgage was referred to during meetings so clearly Mr C was aware of it, and I'm satisfied its more than likely that he made a conscious decision to retain it by making interest payments rather than repaying it out of

capital. And it's noted those payments were affordable for Mr and Mrs C from their regular income.

It is my understanding that a Lifetime Mortgage does allow for the facility where Mr and Mrs C could stop making the payments and allow the interest to roll up. The loan and interest would then be paid upon sale of the home, death or move into permanent care. This may have been a flexible option for Mr C for the future and particularly if he wasn't concerned about leaving capital as inheritance but preferred to have access to it during his own and Mrs C's lifetimes.

Mr and Mrs C's income/expenditure were affordable and stable, but the investments were available if an injection of cash was needed. And the suitability reports suggest Mr C didn't want to drawdown on the investments unless necessary as they were for longer term growth, hence the reason for retaining the Lifetime mortgage which only needed financing from income which was more than sufficient rather than repayment via capital obtained through the sale of investments.

As pointed out by the executors, Mr and Mrs C's circumstances had changed significantly and in particular Mrs C's poor health from 2010. I am sorry to hear of Mrs C's unfortunate circumstances which must have been very difficult for the family. But clearly it wasn't unforeseeable that those circumstances could change further – deterioration of Mrs C's health and Mr C aging as examples – and which could have required a future use of capital to support whatever the outcome of the change in those circumstances were. And I think this supports my view that Mr C had decided to have the Lifetime Mortgage repaid on second death by the estate rather than out of capital during his and Mrs C's lifetime. It was affordable and flexible, and I think this was a more attractive alternative to him than reducing capital.

I can see that Mr C's daughter emailed his adviser on 24 August 2022 to ask about the mortgage as it had increased by £37 per month and whether he was still best advised to keep the mortgage running. I haven't been given anything to show that this was replied to or if it was, then what was said. And in the absence of that I have to fall back on what is known. And that is that Mr C was planning for the Lifetime Mortgage to be repaid upon death.

It follows I'm not sufficiently persuaded that it was wrong for Mr and Mrs C not to have been advised to repay their Lifetime Mortgage out of capital. I think there is sufficient evidence that their repayment plan – to do so after their deaths – was clearly discussed and recorded. And there's no indication there was a need for any change bearing in mind their stated investments objectives and needs.

The delay in the repayment of the Lifetime Mortgage

Brown Shipley has told us it received instruction on 17 October 2022 to pay off the Lifetime Mortgage of £59,400. Mrs Y was emailed on 25 October 2022 to advise that the £60,000 would be sent from the late Mrs C's account to Mr C's account and the funds could be withdrawn from there. However, one of the executor's signatures was missing from one of the forms – which wasn't Brown Shipley's fault – and this wasn't resolved until early November. A further form was needed to move the funds from the Mrs C's account to Mr C. On 1 December the funds were being transferred subject to a security call and on 6 December the CHAPS charge was waived, and Mrs Y was informed the funds would be received in Mr C's account within three working days.

Clearly the transfer could have been completed sooner if the necessary form had been provided and completed. I understand a transfer usually takes four and not seven weeks. This could have been avoided if the necessary documents had been available and

completed sooner. As a result of that, Mr C incurred an additional interest payment for the Lifetime Mortgage. Brown Shipley has accepted this was the case and agreed with the investigator's assessment this sum should be repaid to the estate as well as a payment for recognition of the upset caused. I think this is a fair outcome and would put the estate back in the position but for Brown Shipley's error.

Statements being sent to Mr C and were difficult to understand

Mr C started to become confused by the statements he was sent by Brown Shipley and Mrs Y requested they be sent to her instead. She says this didn't happen as it should have done, and I understand this caused great distress to Mr C as he had problems understanding them, was contacting his children. Mrs Y contacted Brown Shipley as it had been promised on 4 July 2023 that no further correspondence would be sent to Mr C, but further valuations were sent to him on 7 July 2023 which caused upset.

On 25 July 2023 Brown Shipley confirmed that the instruction of 4 July had been put in place, but this required processing by different departments which couldn't be completed by 7 July. It confirmed the processing of the instruction was complete and Mr C wouldn't receive any further documents.

It's not clear when any earlier request was made or how many times Brown Shipley was asked to redirect the statements, but Brown Shipley has said it hadn't been able to trace any earlier requests for the statements to be sent to Mr C's children only, but it had been put in place after 4 July 2023 request. Brown Shipley did act on the instruction, albeit with delays caused by the need for it to be processed.

The charges

The executors have complained that the charges were confusing. But it's clear the late Mr and Mrs C had been advised of the account fees when they became clients of Brown Shipley – the 'Managed Fund Service Schedule of Charges' document. And I can also see the charges of the discretionary managed service were outlined in the October 2018 suitability letter. So, while I appreciate the executors might now find they are unclear, but Mr and Mrs C were aware of them and what the charges were for and there's no evidence they didn't agree with or understand them. I don't uphold this complaint point.

The retirement of Mr and Mrs C's adviser

One of the executors messaged the Brown Shipley adviser on 23 April 2023 and received an automated response informing them of the estate's adviser's retirements. They hadn't been advised of this beforehand. Mr C had been recorded by Brown Shipley as vulnerable so he should have been told of this in advance.

Brown Shipley has acknowledged this didn't happen and has apologised. It couldn't explain why this didn't happen as it should have done. I've borne in mind this would have caused upset. Brown Shipley has agreed to pay £300 for the distress and inconvenience caused by this as well as the delays in the repayment of the mortgage. I think that is fair and reasonable under the circumstances.

Taking all of the above into consideration I partly uphold the complaint to the extent that estate should be repaid the additional month's interest payment incurred because of the delays. The estate should also be paid interest on that sum for being out of pocket during that time. A payment for the distress and inconvenience caused is also warranted. I appreciate the executors will be disappointed I haven't upheld the complaint any further. Its

clear they feel strongly about the complaint, but I hope I have been able to explain how and why I have reached the decision that I have.

Putting things right

To put the matter right, Brown Shipley should pay the estates;

- the additional month's interest payment for the Lifetime Mortgage caused by the delay in the completion of the instruction to repay the mortgage.
- Added to that should be 8% simple interest from the date it was paid to the date it is repaid to the estate by Brown Shipley.
- £300 for the distress and inconvenience caused because of that delay as well as the lack of notice given about the adviser's departure.

My final decision

My final decision is that I partially uphold the executor's of the estates of Mr and Mrs C's complaint about Brown Shipley & Co Limited trading as Brown Shipley.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estates of Mr C and Mrs C to accept or reject my decision before 8 January 2025.

Catherine Langley
Ombudsman