DRN-5345758

The complaint

Miss C complains that Loans Warehouse Ltd gave her unsuitable advice to take out a second charge mortgage (secured loan).

What happened

In 2023, acting on Loans Warehouse's advice, Miss C took a secured loan. She borrowed £34,000 plus fees of £2,585, over a term of six years at an interest rate of 13.794% fixed for the first five years – giving a monthly payment of around £750. If the loan was to be repaid during the fixed rate term there would be an early repayment charge (ERC). The ERC was on a sliding scale – 5% of the balance in the first and second years, then 4%, 3% and finally 2% in the subsequent three years. But there was no restriction on overpayments short of full repayment.

In 2024, Miss C complained. She said that the loan was unsuitable for her and should not have been recommended. She said the borrowing was used to consolidate credit card debt. She had credit cards on 0% deals which were coming to an end. Miss C says she initially wanted to consolidate the cards so she would have one monthly payment, and also be able to make overpayments to repay the debts early.

Miss C says she spoke to Loans Warehouse, who told her how much she could borrow and the total amount repayable. She says she decided not to go ahead, because the total amount repayable would be much more than the capital borrowed. But she says that Loans Warehouse then told her that if she repaid the loan early "I wouldn't pay ANY interest, and would just pay the original capital, the broker fee and the early settlement fee, which would be relatively small if I had already made one off payments". Miss C said she decided to go ahead on that basis.

Miss C says that, when she came to repay the loan in 2024, she discovered that she was being charged interest and would still have to pay interest if she repaid early. Her balance hadn't reduced by as much as she had paid. She took the loan out relying on the advice she was given. Had she understood it would be more expensive to repay the borrowing, she would have switched to other 0% credit card deals instead – so she has been left worse off because of the advice.

Loans Warehouse said that it had made a suitable recommendation. It said the loan it recommended met Miss C's needs at the time. It hadn't told her that the loan would be interest free if she repaid it early and the loan documentation clearly set out that interest would be charged. It said that the loan enabled Miss C to repay her credit card debts more quickly than would have otherwise been the case.

Our investigator didn't recommend that the complaint should be upheld, so Miss C asked for it to be reviewed by an ombudsman. I reached a different view of the case, so I issued a provisional decision.

My provisional findings

I said:

> "I've noted that Miss C believes the loan was mis-sold because she was misled about how it worked, and that it's ended up being more expensive than she thought it would be if she wanted to repay it early.
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> In recommending a secured loan, the rules of mortgage regulation require Loans Warehouse to recommend the most suitable loan available – or, if there is no suitable loan, not recommend any loan. In considering whether the loan is suitable, it must take account of Miss C's needs and circumstances at the time of the application – based on what Miss C said, and any other relevant facts it ought to have been aware of.
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> The bulk of the conversations about this loan appear to have been had via phone calls. There are also a few emails, which I've seen copies of. But I've not seen any recommendation letter.
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> Loans Warehouse has not retained the recordings of its calls with Miss C from the time of the advice in 2023. It has retained its notes of the calls. This is unfortunate – but I don't think it's evidence that Loans Warehouse has supressed or withheld evidence; it's merely that it doesn't retain copies of call recordings for this length of time. I've also noted that the adviser Miss C dealt with no longer works for Loans Warehouse – I've considered what Miss C says about that, but I don't think it's relevant to my decision.
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> It would be better if the call recordings were available. But they're not. So I've had to do the best I can with the evidence I do have – which consists of Loans Warehouse's notes on the one hand, and Miss C's recollection on the other. I've carefully considered both, and decided on the balance of probability what I think most likely to have happened.
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> The initial conversation regarding the loan was on 29 March 2023. Loans Warehouse's notes say that Miss C wanted a £40,000 loan over six years to repay other debts, and that she had a monthly budget of £700-800 for repayments. She wanted a fixed rate for five years, but would also consider a variable rate. She receives an annual bonus so wanted the option of making overpayments. It recorded that Miss C would pay off two credit cards and reduce the balance on a third, leaving a fourth on a 0% deal and paying off a fifth with her next annual bonus.
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> Loans Warehouse recorded that it looked at several lenders, but recommended this mortgage because it allowed flexible overpayments and had the lowest monthly payment, whilst also lending more than other lenders would be willing to. Several lenders wouldn't lend because this loan, combined with Miss C's mortgage, would be too high relative to the value of her property.
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> Loans Warehouse initially suggested a loan for £48,000, which would clear all Miss C's credit card debt. On 31 March 2023, Miss C emailed Loans Warehouse, saying that she had decided to look at a personal loan instead, because she was concerned about the total cost she would repay over the life of the loan.
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> Later that day, there was a phone call with Miss C. The notes say that Miss C decided to go with a loan for a lower amount of £34,000 plus fees. Loans Warehouse's notes say:
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> > "[Miss C] wanted a mortgage that had the option of overpayments and early

settlement.

This is because [Miss C] intends on redeeming the mortgage in around 3 years by overpaying and using her annual bonus.

We discussed that terms were available between 5 and 30 [years] and agreed that 6 years would be suitable because the repayment fitted the budget of £800 per month.

We discussed shortening the term of the mortgage as [Miss C] were looking to make overpayments regularly but [Miss C] wanted the flexibility that if she chose not to make the overpayments she weren't committed to a higher payment.

Fixed rates, SVR, etc

[The lender] has the option to fix the interest rate for 2,3, 4 & 5 years with the 5 year fixed rate coming in at 13.794% which I informed [Miss C] of. I also explained that at the of the fixed period the interest rate will revert to the SVR, currently 12.794%.

Following our discussion, I recommended a fixed rate for 5 years.

The reason for the fixed rate over 5 years was because [Miss C] wanted it fixed for as long as possible.

[Miss C] advised me that she was happy with my recommendation for a 5 year fixed rate as it is the longest fixed rate term the lender offers.

The reason for the fixed rate option was because [Miss C] wanted the security of knowing the repayments would stay the same for the fixed period & wanted to be able to accurately budget for the fixed period."

Miss C's recollection of events broadly matches what's recorded in the notes. She says that she received an initial quote, but then decided not to go ahead because of concerns about the cost of credit. She then had a further conversation with the adviser, after which she decided to proceed with the loan she ended up taking.

The main point of difference between Miss C's recollection and what's recorded in Loans Warehouse's notes is that Miss C says she was persuaded to go ahead because the adviser told her that if she repaid the loan early – as she was planning to do – she wouldn't be charged any interest; she would only have to repay the capital. It was on that basis that she decided to go ahead.

I can't consider the call recordings, because they no longer exist. But I have carefully considered what Miss C says. And, having done so, I'm not persuaded by it. On balance, I don't think it's likely that Miss C was told that the loan would be interest free if she repaid it early. I'll explain why.

There's nothing about that in the call notes. But they're a summary of the advice rather than a detailed record of the conversation, so that's not determinative in itself.

I think it's clear that Miss C did believe this was the case by 2024, when she contacted Loans Warehouse to question it. But that was a year after the advice. I also have to bear in mind that human memory is fallible, and – especially over longer periods – isn't always reliable. It can also be impacted, and changed, by the act of remembering and by later events and feelings. That's not to say that Miss C is being in any way dishonest in what she says; I'm sure she genuinely believes that she accurately recalls what she was told. But I think that it's more likely than not she is – genuinely, and honestly – mistaken.

Firstly, it's not actually true that the loan would be interest free if repaid early. That's not how any mortgages work – and there's nothing in the loan documentation to suggest otherwise. The loan documents that Miss C received at the time make clear that she would be charged interest from the start. Miss C accepts that – but says Loans Warehouse told her otherwise to persuade her to take it out.

I think it's more likely that there was a discussion about the total cost of credit – the total amount in capital interest and fees that would be repaid over the whole loan term.

Miss C's email of 31 March, before the call I've quoted above, says:

> "I've had a think about the secured loan and as I would be paying £20k in interest and fees over the term on top of what I would be borrowing, I don't think it makes sense for me to do it. My personal loan was for £25k over 60 months with total amount payable £29,416.80. So interest / fees £4,416.80. So having to repay £60k to borrow £40k isn't very palatable [sic]."

I think this shows that Miss C's primary concern, just before she spoke to Loans Warehouse, was about the total cost of credit – the total amount repayable if she kept the loan for the whole term.

I've quoted above the call note Loans Warehouse made. It's a contemporaneous note, and I've no reason to think it's not broadly accurate about Miss C's needs and circumstances – which are, in any case, not in dispute. It's clear Miss C was intending to repay the loan early, in around three years, rather than keep it for the whole term.

With that in mind, I think it's most likely that Loans Warehouse reassured her that she wouldn't pay the whole cost of credit if she repaid early (because she wouldn't pay interest for the whole term if she didn't keep the loan for the whole term). I don't think it's likely that Loans Warehouse told her that the loan would be interest free if she repaid it early – because that wasn't the case, Miss C would see that when she looked at the loan documents, and that's not how loans work. Either Miss C misunderstood at the time, or mis-remembered what she had been told later.

I'm therefore satisfied that Loans Warehouse didn't mislead Miss C about how things would work if she repaid early, and I don't think the loan was mis-sold on that basis. But I've also thought about whether there were any other reasons the recommendation wasn't suitable.

I'm satisfied that a secured loan was, in general terms, a fair and reasonable recommendation. Miss C wanted to consolidate her credit card debts to ensure they were repaid, and the recommendation achieved that. She now says that she would have been better off taking other 0% deals instead – but that wasn't a course she wanted to pursue at the time, and Loans Warehouse couldn't advise her about 0% credit card deals or the likelihood of getting them. The loan achieved Miss C's objective of consolidating her cards into a single loan with a single fixed payment – allowing for overpayments – and was a cheaper way of repaying them if Miss C hadn't been able to obtain other 0% deals.

However, I have concerns over the specific loan Loans Warehouse recommended – in particular, the recommendation to take a five year rate. The call note I've quoted above makes clear that Miss C's intention was to repay the loan in full within three years. That's inconsistent with taking a five year fixed rate with an ERC payable for all five years, especially when the same lender offered shorter fixed rates – which would also have had the same benefit of unrestricted overpayments short of full repayment.

In my view, the better recommendation would therefore have been a three year fixed rate. That would achieve a sensible balance between Miss C's desire to fix her payment for as long as possible and her desire to repay the loan early. I'm satisfied that's what Loans Warehouse should have recommended – and to that extent, this wasn't a suitable recommendation.

To put things right, Loans Warehouse should refund any ERC Miss C might incur if she repays the loan early – but only if she does so in years four and five of the loan. If she repays sooner than that, earlier than her plans at the time of the advice, an ERC will still be payable, but it would have been payable too if Loans Warehouse had recommended a three year rate, as I've found it should have done. But if Miss C ends up repaying the loan after three years, she will incur an ERC that wouldn't have been applicable if a three year rate had been recommended.

When it replies to this provisional decision, Loans Warehouse should provide evidence of the three year fixed rate the lender had available at the time of the advice. It would be fair and reasonable to take that into account too. For example, if the three year rate is higher, then the interest saving should be offset against any ERC refund. But if the three year rate is lower than the five year rate, Loans Warehouse should also refund the additional interest charged."

The responses to my provisional decision

Miss C said:

- There was no confusion. She was definitely told she would pay no interest if she repaid the loan early. That was the only reason she took the loan.
- She intends to settle the loan shortly when she re-mortgages her main mortgage.
- Loans Warehouse should not have recommended a secured loan at all. Miss C was only looking at this as an alternative to doing further 0% balance transfers for convenience. The cheapest option would have been to do further 0% balance transfers, so that is what Loans Warehouse should have recommended.

Loans Warehouse said the three year fixed interest rate would have been 14.044%.

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've considered what Miss C has said, but I'm not persuaded to change my mind. I appreciate Miss C clearly recalls being told that she would pay no interest if she repaid early, but for the reasons I gave in my provisional decision I think that's unlikely and that her recollection is mistaken.

It wouldn't have been for Loans Warehouse to have advised Miss C to do balance transfers instead of taking out this loan. Loans Warehouse doesn't offer general financial advice, it only advised on secured loans. In doing so, it was obliged to recommend the most suitable loan of those available, or make no recommendation if there was no suitable loan. But this involves looking at the range of secured loans available – not comparing secured lending to other options it doesn't offer. All Loans Warehouse could do was recommend the most suitable loan it had available and then give Miss C information about it – it was then for Miss C to decide whether to go with the secured loan or whether to pursue other options.

In cases of debt consolidation, advisers are required to consider whether – in the case of payment difficulties –entering into an arrangement with creditors might be more appropriate. But that wasn't the issue here; Miss C wasn't in financial difficulty, she was just weighing up the most cost-effective way of managing her debt. That wasn't something Loans Warehouse could advise her about – all it could do was tell her about the secured lending option so she could then decide whether to do that or do something else.

For those reasons, I'm not persuaded that Loans Warehouse shouldn't have recommended a loan at all. Consolidating her credit cards was an option open to Miss C, and one she wanted to consider, and there was a way of doing that consistent with her needs and circumstances. But I do think that the specific loan Loans Warehouse recommended wasn't suitable. As I said in my provisional decision, given Miss C's express intentions of repaying the loan after three years, it ought to have recommended a three year fixed rate not a five year fixed rate.

Loans Warehouse has now provided evidence from the lender showing that the equivalent three year rate was 14.044% - compared to the 13.794% five year rate Miss C ended up taking. The five year rate has therefore proved to be cheaper – but it still wasn't the right recommendation given Miss C's plans at the time.

Putting things right

Miss C now says that she intends to repay the loan shortly. That will incur an ERC. But that does not mean that the recommendation was unsuitable or that Loans Warehouse should refund the ERC if she does. Her plan at the time of the lending was to repay after three years, and Loans Warehouse ought to have taken that into account. If she now intends to repay after two years, that's a change of mind since the advice which couldn't therefore have been taken into account at the time. It's a matter for Miss C to decide whether she's better off re-financing and paying the ERC, or keeping the loan.

However, if she ends up incurring an ERC not after two years but after three, in line with the original plan, that is something that Loans Warehouse ought to have avoided by recommending a three year rate.

Therefore, if Miss C redeems the loan before its third anniversary, Loans Warehouse will not have to make any payment to her.

But if Miss C redeems the loan between the third and fifth anniversary, and in doing so incurs an ERC, then she will need to let Loans Warehouse know about the redemption and ERC. Within 28 days of her doing so, Loans Warehouse should then pay to Miss C the ERC she incurs, minus the saving she has made in being charged interest at 13.794% instead of 14.044% between the start of the loan and the redemption.

My final decision

My final decision is that I uphold this complaint. If Miss C redeems the loan after the third anniversary of the lending but before the fifth anniversary and incurs an ERC in doing so, Loans Warehouse Ltd should calculate and pay redress in the way I have set out above. But if Miss C redeems the loan before the third anniversary, or after the fifth anniversary, no redress will be due.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 27 March 2025.

Simon Pugh
Ombudsman