

## complaint

Ms L and Mr P complain that they were given unsuitable mortgage advice by Positive Solutions (Financial Services) Limited (Positive). The complaint has been brought on their behalf by a claims management company (CMC).

## background

Ms L and Mr P bought their property in February 2004, but remortgaged in May 2006 through Positive, refinancing their existing mortgage of about £80,000. At that time they'd wanted to borrow £16,000 to pay off debts and £30,000 for an extension on the property. After receiving advice from Positive, in May 2006 they took out a repayment mortgage of about £123,000 on a product that allowed them to borrow more than 100% of the property value. It offered a concessionary rate to 1 July 2009, but with no early repayment charge.

The adviser has told us that, after the May 2006 remortgage, he'd made a diary note to contact Ms L and Mr P in May 2009, as the three-year deal he'd arranged for them would be ending. But they contacted him in August 2007 and asked to see him.

The factfind compiled by the adviser on 20 August 2007 shows that Ms L and Mr P owed £123,000 on their mortgage, with a monthly repayment of £960. And, despite consolidating their unsecured debts in May 2006, they now had unsecured debts of £21,000 on two credit cards and a personal loan, with monthly repayments totalling £510.

After taking advice from Positive, Ms L and Mr P took out a new mortgage of £123,000 (plus £799 fees) over 22 years on an interest-only basis. The mortgage was on a tracker rate for the first two years, after which it would be on the lender's standard variable rate.

The factfind – compiled at the time of the interview on 20 August 2007 – records *“current mortgage is £123,000 on 22yr repayment ...want to change to int only for next 2 yrs to enable clients to pay off credit cards and loan... will convert back to repayment in 2 years over 20 yrs so as not to add any years to mortgage...”*

The mortgage that was arranged left them with monthly repayments of £576.70, freeing up about £380 per month for them to use towards their unsecured debts.

It seems that, once the two-year fixed rate expired, Ms L and Mr P did not follow through on their plan to convert the mortgage to a repayment basis, but instead decided to continue to pay interest-only. They do not have a repayment plan in place to pay off the capital at the end of the mortgage term.

The CMC now says that the advice they were given in 2007 was unsuitable. In summary, the CMC says that Ms L and Mr P had always been on a repayment mortgage, and so the arrangement of an interest-only mortgage with no repayment vehicle was unsuitable for their needs. The CMC emphasises that the factfind records that Ms L and Mr P didn't want to have an outstanding capital balance to pay at the end of the term.

Positive didn't uphold the complaint, and so it was brought to us. Our investigator didn't think it should be upheld. The CMC has asked for the complaint to be reviewed by an ombudsman.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not upholding the complaint.

I acknowledge that the letter of suitability records that Ms L and Mr P didn't want a mortgage where they'd have to find a lump sum to pay off the capital at the end of the term. But, although the CMC considers this to be crucial, it has to be taken in the context of the transaction as a whole, rather than in isolation. The advice also has to be considered in relation to the mortgage market as it was in August 2007, before the financial crash and the "credit crunch".

By August 2007, Ms L and Mr P had accrued a large amount of unsecured debt – about £21,000 – since their remortgage 15 months earlier. And that earlier remortgage had been arranged, in part, to consolidate previous unsecured debt. It's recorded in the factfind that Ms L and Mr P wanted to free up some money each month to pay down their unsecured debts.

Ms L and Mr P couldn't have converted their 2006 mortgage onto interest-only. That's because part of the product was a regulated Consumer Credit Act loan. So in order to reduce their mortgage repayments by switching to interest-only, their only option was to move from that lender.

I'm satisfied that the August 2007 remortgage was intended to reduce significantly Ms L and Mr P's monthly outgoings. This would give them a further £380 per month to pay towards their unsecured debt. They had told Positive they were already paying £510 towards this. Then at the end of the fixed-rate period, the intention was that they would switch with their existing lender or remortgage onto a repayment mortgage.

I don't think this was inappropriate advice. The remortgage reduced their outgoings and left them with money towards discharging their other debts. I think it's likely that, given the amount of debt that had accrued over so short a time since the last remortgage, Ms L and Mr P might have found themselves in an unmanageable debt situation if they'd not taken steps to address their unsecured debt.

I've taken note of what the CMC has said – that it was wrong to prioritise unsecured debt in this way. I think in the circumstances it was reasonable, given the speed at which the unsecured debt had grown in 15 months, to treat this as a short-term priority.

Ms L and Mr P understood that they were paying an interest-only mortgage and don't dispute that they were aware of the implications of this; their previous mortgages had been repayment. The adviser's told us that he recalls asking Ms L and Mr P how they'd repay the capital if they didn't switch to a repayment mortgage. His recollection is that they said they anticipated inheriting money from parents in the future. That's not unreasonable; in 2007 lenders didn't need to see evidence of a repayment vehicle.

I'm satisfied the mortgage arranged by Positive was the most suitable for Ms L and Mr P's needs and circumstances at the time. Positive accepted in good faith Ms L and Mr P's assurances that they'd be paying off their unsecured debt over the two years so they could switch to a repayment mortgage. The mortgage they were advised to take out allowed them to do that. Given the level of unsecured debt that had accrued since the earlier remortgage,

I'm satisfied the arrangement gave them some breathing space to get their finances back on track.

Ms L and Mr P haven't said why, at the end of the two-year fixed rate period, in 2009 they decided to stay on an interest-only mortgage rather than follow through their plan to switch to repayment. If they'd paid off their unsecured debt, I can see no reason why they wouldn't, or couldn't, have moved onto a repayment mortgage when their fixed rate came to an end in 2009, or at any time since then.

In all the circumstances, I'm satisfied the advice given by Positive was suitable.

**my final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mr P to accept or reject my decision before 21 July 2017.

Jan O'Leary  
**ombudsman**