

complaint

Mr and Mrs W complain that, in the course of giving them mortgage advice, Leap Finance Limited recommend they borrow additional money to pay for a will-writing service they never received.

background

In 2011, Mr and Mrs W took mortgage advice from Leap. As a result, they re-mortgaged their property. Leap also recommended that they get a will, and recommended a third party provider I shall call B to provide that service. The cost of B's will-writing service was added to the mortgage balance.

At the time, Leap frequently referred its clients to B. The process was that, on completion, the mortgage money for the service would be paid to Leap. It would then – informally, via phone or email, contact B and ask it to get in touch with the clients. Leap would pass the money for the service on to B.

Mr and Mrs W say that they went on holiday shortly after the mortgage completed and then forgot about the wills service. When they remembered, in 2015, they realised they'd never been contacted and so had paid for a service they hadn't received. They complained to Leap and to B. Leap said that it was B's responsibility to contact Mr and Mrs W. B said that it had never had the referral from Leap.

Mr and Mrs W complained to us. Our adjudicator thought that he had the power to investigate the complaint as far as it related to services provided by Leap in the course of advising on and arranging a mortgage, but not as far as it related to services provided by B. He thought it most likely that Leap had failed to make the referral. He recommended that it refund the cost of the wills service to Mr and Mrs W. But he said that interest shouldn't be added because Mr and Mrs W had delayed in making their complaint and had they made it at the time the issue could have easily been resolved.

Neither party accepted that. Mr and Mrs W said interest should be added. Leap said that it was right to recommend a will. While it can't show that it made the referral, that's due to the passage of time and can't be held against. It believed that the complaint is essentially about the provision of services by B and so outside our jurisdiction.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've looked first at the question of whether I have jurisdiction to consider this complaint. Will-writing isn't a regulated activity, but mortgage advice is. That means I don't have any jurisdiction over B. As regards Leap, I have jurisdiction over anything it did that was, or was ancillary to, a regulated activity.

In this case, I'm satisfied that the recommendation to take out a will and to fund doing so through the mortgage was part of the regulated activity of mortgage advice. It directly affected the amount to be borrowed, and so was part and parcel of the overall advice process. Having given that advice, I think that what Leap did – or didn't – do with the

mortgage money raised as a result of that advice is ancillary to the advice, and so also within my jurisdiction.

It isn't in dispute that Mr and Mrs W accepted the advice to take B's service and paid for it through their mortgage. I've seen the completion statement from their solicitors which shows the fee separately itemised. I don't doubt that, in accordance with the usual process, it was paid to Leap.

It is what happened then that is in dispute. B says that no referral was ever made to it. Leap says that it would have made the referral and would have passed the money on. But because it only kept records for three years, it can't now evidence that.

Leap does say that it had problems with B's service around that time. It was aware of several other clients who also didn't get the service with B they had paid for. So it stopped using B and brought will-writing in-house. Had Mr and Mrs W complained at the time, it could have identified what went wrong and if necessary arranged for them to use its own new service for free.

I don't think I need to decide whether B's or Leap's account is more likely to be correct. It isn't disputed that Leap recommended the service, recommended it be paid for out of the mortgage funds and received the mortgage funds – but Mr and Mrs W didn't get the service. Either the service wasn't provided because Leap didn't make the referral, or because the company Leap recommended didn't provide it. Either way, I don't think it fair that Mr and Mrs W should have to pay for a service that Leap recommended and took payment for but didn't ensure they received. So I agree with the adjudicator that Leap should refund the cost.

I agree with the adjudicator that, in the circumstances of this case, it wouldn't be fair to direct interest as well. I think there was some obligation on Mr and Mrs W to identify sooner that they hadn't received the service they'd paid for. Had they done so, it would have been possible for it to have been arranged – either through B or Leap's own service. That won't resolve the issue now because Mr and Mrs W have decided to go elsewhere. But had they complained first, I think it likely the issue could have been resolved without that being necessary.

my final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Leap Finance Limited to refund the cost of the wills service to Mr and Mrs W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 13 November 2015.

Simon Pugh
ombudsman