

complaint

This complaint is about an interest-only mortgage sold to Mr F in 2005. The mortgage was arranged by a broker partnership called Case Funding Centre under the trading name New Horizons. Case Funding Centre ("CFC") has ceased trading and a third party (which I'll call M) has been handling the complaint on Case Funding Centre's behalf. M has recently told us that it too is no longer trading.

Mr F complains that the mortgage shouldn't have been sold to him.

background

I set out my thoughts on the complaint and how it should be resolved in a provisional decision dated 18 December 2015. It said:

background

Mr F lived in a public-sector rented flat. He was infirm and the flat had been adapted to his needs. In 2005, when he was 66 years old, he had an opportunity under a right-to-buy scheme, to buy the flat at a discounted price of £21,000, rather than its full value of 45,000. CFC arranged a mortgage for him. Mr F already had a substantial amount of unsecured consumer debt, so CFC set up a mortgage for £42,500, plus fees, one of which was its own fee of £3,000. The mortgage was on an interest-only basis, with a repayment period of nine years.

Mr F maintained his monthly interest payments to his lender throughout the mortgage term but when it became due for repayment in 2014, he had no means to do so other than selling the flat. By now, Mr F was in his mid-70s.

His lender has started possession proceedings for repayment of the mortgage debt. These proceedings have been on hold whilst we've been considering this complaint, but Mr F has also made a separate complaint to his lender. I mention that for background only, as the complaint I'm considering here is solely about how CFC arranged the mortgage for Mr F.

One of our adjudicators investigated the complaint, and concluded that it should be upheld. His findings, in summarised form, were:

- he wasn't convinced it was truly a non-advised sale, given a detailed fact-find was completed;*
- an interest-only mortgage with no repayment vehicle was high-risk and inappropriate for someone who was elderly, in poor health, reliant on benefits for income, and had no savings, assets or immediate family;*
- consolidating his consumer debt onto an interest-only mortgage meant they stopped being repaid;*
- the broker recommended he look into setting up a repayment vehicle and when Mr F couldn't find one that was affordable, apparently told him not to worry as something would turn up;*
- Mr F had gone from a secure tenancy with his rent paid by benefits to facing the prospect of being forced from his home.*

The adjudicator recommended CFC pay Mr F redress using a formula for calculating the financial loss he'd suffered as a result of taking out the mortgage. He also said CFC should pay Mr F £3,000 compensation for trouble and upset.

M, on CFC's behalf, asked for the complaint to be reviewed by an ombudsman, saying, in summary:

- *Mr F knew from the outset that CFC wasn't authorised to sell investments, and instructed his solicitor to proceed with the transaction knowing he had no means of repaying the capital other than selling the flat. Once he'd signed the mortgage offer, he completed the mortgage without any further contact with CFC.*
- *Rather than being "vulnerable", Mr F was still of working age when he took out the mortgage. Findings based on his recollections were speculative rather than fact-based.*
- *The fact-find was an information-gathering exercise to support the mortgage application, not an indication that advice was given.*
- *Mr F had spoken to the Department for Work and Pensions about how much mortgage benefit he'd receive. As it would only pay the interest, it was in his best interests to set the mortgage up the way it was. He signed a declaration that he was happy to go ahead.*
- *There was no certainty Mr F would have repaid his unsecured debt when due, as much of it was revolving credit accruing further interest. Mr F most likely entered into the mortgage specifically to clear his consumer debt.*

my provisional findings

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

M, on CFC's behalf, says our conclusions should be based in fact. But the very reason people bring complaints to us is because facts are often in dispute. Meanwhile, the available evidence is typically incomplete or contradictory, or both. Where that happens, we do what the civil courts do; we decide what's most likely to have happened on the balance of probabilities.

The adjudicator thought it likely, regardless of what the paperwork said, that the sale of the mortgage involved some advice being given. M's protestations notwithstanding, I think he's probably right. But ultimately, that doesn't matter. I say that because even if CFC didn't advise Mr F, it still let him down very badly. I'll explain why.

CFC had a duty to ensure Mr F made a properly informed decision to take out an interest-only mortgage with no repayment vehicle to buy the flat and consolidate his unsecured debts. What that means in Mr F's case is that he needed to know that doing so created a real and substantive risk that he'd lose his home when the mortgage term ended.

I'm not talking here about the regulatory warning given to all who take out secured lending that their home is at risk if they don't keep up with their payments. Mr F did keep up with his interest payments, all the way to the end of the mortgage. The risk to him came from not having the means to repay what he'd borrowed, because there

was no strategy to do so, other than selling his home. That's what Mr F needed to know and understand, and CFC had a regulatory duty to tell him.

M, on CFC's behalf, says Mr F was still of working age, and therefore not vulnerable. Mr F might have been of working age, but he wasn't working. His income came from disability living allowance and other state benefits (including his rent). These facts alone meant it would have been prohibitively expensive for Mr F to obtain a suitable investment to repay the capital; and CFC must have known this.

M, on CFC's behalf, says Mr F was motivated by a wish to clear his consumer debts. Maybe he was, but he also needed to know that if he didn't do that, and failed to pay the debts, the worst that could happen to him is that creditors might obtain court judgements against him. He wouldn't be at risk of losing his home. His tenancy was secure so long as his rent was paid.

But Mr F is at risk of losing his home now, and the primary reason for that I find to be the shortcomings on CFC's part when selling the mortgage to Mr F. If CFC had made sure Mr F was properly informed, and understood the risk he was taking, I don't believe Mr F would have agreed to take out the mortgage and buy the flat. Considering section 4.8.2(2) of the Mortgage and Home Finance Conduct of Business sourcebook (MCOB) as written at the time, if CFC didn't give Mr F advice, then it should have done. And that advice should have been that he should not take out the mortgage.

Awarding redress in a situation such as this isn't easy, as it's not immediately apparent how Mr F could be placed back in the position he'd be in if he hadn't taken the mortgage and bought his home. But in all the circumstances, I consider the adjudicator's recommendation, including the award of compensation, to be the fairest solution.

Even the award I intend making, assuming Mr F accepts it, won't necessarily remove the threat to him of losing his home. He'll need to pay the award to his lender in part-settlement of the mortgage debt, but he'll still owe it a lot of money. Hopefully, his lender will be sympathetic, and negotiate a repayment plan for the rest of the debt that allows Mr F to stay in his home. But if the lender goes ahead with legal action, Mr F (or his representative) could show this decision to the court as part of an argument that possession shouldn't be granted.

my provisional decision

My provisional decision is that I intend to uphold this complaint. Case Funding Centre trading as New Horizons operated its business as a partnership and so the partners remain responsible for settling any redress I award.

Therefore, in full and final settlement, I intend to direct the former partners of Case Funding Centre trading as New Horizons to pay Mr F $A + B + C + D + E + F$, where:

- A. = all payments Mr F has made towards the mortgage to date;
- B. = interest on payments making up A at 8% simple running from the date of each payment to the date of settlement;
- C. = the total set up costs of the mortgage – broker, legal, lender and valuation fees etc.;
- D. = interest on payments making up C at 8% simple running from the date of each payment to date of settlement*;
- E. = the difference between the outstanding mortgage balance at present and the total consolidated debts at commencement of the mortgage;
- F. = £3,000 compensation for the overall trouble and upset that Mr F has experienced due to the mis-selling of his mortgage.

**If the former partners of Case Funding Centre trading as New Horizons consider that basic rate tax should be deducted from the interest elements B and D of the award, they may do so provided they then issue Mr F with the relevant tax certificate.*

Mr F has accepted my provisional findings. The former partners of CFC haven't responded.

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, and with no further submissions to consider, I've no reason to depart from my provisional conclusions in my final decision.

If Mr F accepts my decision, it'll be binding on the former partners of CFC. If they don't pay him the compensation I'm ordering, the decision can be enforced by a court. But I very much hope that won't be necessary. Meanwhile, we will be sending a copy of this decision to Mr F's lender, so that it knows what is happening.

my final decision

My final decision is that I uphold this complaint. In full and final settlement, I direct the former partners of Case Funding Centre trading as New Horizons to compensate Mr F by paying him $A + B + C + D + E + F$, where:

- A. = all payments Mr F has made towards the mortgage to date;
- B. = interest on payments making up A at 8% simple running from the date of each payment to the date of settlement;
- C. = the total set up costs of the mortgage – broker, legal, lender and valuation fees etc.;
- D. = interest on payments making up C at 8% simple running from the date of each payment to date of settlement*;
- E. = the difference between the outstanding mortgage balance at present and the total consolidated debts at commencement of the mortgage;
- F. = £3,000 compensation for the overall trouble and upset that Mr F has experienced due to the mis-selling of his mortgage.

**If the former partners of Case Funding Centre trading as New Horizons consider that basic rate tax should be deducted from the interest elements B and D of the award, they may do so provided they then issue Mr F with the relevant tax certificate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 22 February 2016.

Jeff Parrington
ombudsman