

The complaint

Mr T says that he didn't receive the cashback he was expecting upon completion of an equity release mortgage he applied for through Age Partnership Limited.

The details of this complaint are well known to both parties so I won't repeat them again here. Instead I'll focus on giving the reasons for my decision.

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.

It's not in dispute that the product Mr T applied for came with a cashback of £1,966. It's also not in dispute that Mr T didn't pay the fees upfront out of his own pocket.

Mr T says the fees should have been added onto the equity release mortgage so upon completion he would have received the approximate £5,000 extra funds he was raising, as well as the cashback; so around £7,000. Instead he only received £5,129.

But Mr T's reason for wanting the equity release mortgage was that he wanted to raise a further £5,000 (after repaying his existing equity release mortgage) to buy a car. He didn't want to raise £7,000 so it wouldn't have made sense for the adviser to have arranged to add the fees to the debt when they could be covered by the cashback amount.

Whilst the initial discussions were around adding the fees, that's before the product was selected so at that time it wasn't known that there would be cashback available, so if there was no cashback then the fees would have needed to be added as Mr T had no way of funding them otherwise.

But when the product was selected, as it came with a cashback that was broadly equivalent to the fees that would be charged, it made sense to use the cashback to pay the fees. So Mr T still got the £5,000 he needed, and the fees were paid. If the fees were added to the cashback product, then Mr T would have only needed to have borrowed approximately £3,000 (instead of £5,000) as the £3,000 plus the cashback would give him the £5,000 he wanted. Either way the same outcome would have been reached, which was a total borrowing amount of £49,150 with Mr T receiving around £5,000 upon completion and not having to pay the fees from his own pocket.

The mortgage offer was clear that the borrowing was £49,150 and *"No Fees have been added to this amount, but the fees you need to pay are shown in Section 11."* With section 11 listing the estimated fees as £1,645 (plus legal disbursements). If Mr T wanted the fees added, and for him to instead receive around £7,000 at completion (the £5,000 extra advance plus the cashback) then he needed to raise that when he received the offer rather than accepting it and completing the equity release mortgage.

The adviser explained that the cashback would cover the fees in the call on 29 October 2019, he said (in reference to the recommendation document he was going through with

Mr T) *"The costs involved on page 14. I said nothing for you to pay upfront, no provider's fee, estimated solicitor's £695 [unclear] disbursements, and advice of £995. But we get you a cashback anyway of £1,996 which pretty much covers all that for you".*

Mr T has said, I quote:

- *"...the agreement also provided for a 'cashback' of £1,966 - and this has not materialised to me. Age Partnership claim this 'cashback' is a sum that is used to pay of their (and other persons) expenses. Nowhere in the agreement is this stated."*
- *"I claim that, under the clear terms of the agreement I am also due the cashback sum which should be regarded as cashback to me."*
- *"Section 6: Benefits: A cashback payment of £1,966. If you claim that this actually means this money will offset fees, 'cashback' is clearly an inappropriate term – 'contribution', 'offset' etc would have been a relevant description. The term 'cashback' is misleading – whether or not deliberately so, in order to induce custom, only you will know."*
- *"Section 11: What fees must you pay?: You will note there is no reference whatsoever to cashback being retained by you to offset the cost of fees. This surely would have been the case had this have been your intention."*

The agreement Mr T is referring to is the mortgage offer which was issued by the lender. Age Partnership has no control over the content of that. In any event the mortgage offer is factually correct, the cashback was due to be paid to Mr T, but countering that the fees were due to be paid by Mr T. As those two events almost exactly cancelled each other out it makes more sense for the fees to be taken from the cashback.

The other alternative was for Age Partnership and the solicitor to demand Mr T pay their fees from his own pocket before the mortgage completed, and then he would have received the cashback at completion. But that would have put him in the same position as he would have had to pay out around £2,000 in fees first, to just receive around £2,000 back as a cashback soon after. I'm sure Mr T can see how nonsensical that would have been, and this way actually helped him as it meant he didn't have to find the money himself to pay the fees upfront and then wait to be "reimbursed" by the cashback.

I understand Mr T's comments that the fees could have been added and that was what they'd discussed, but as I said that was before the product was selected which gave a cashback. Mr T's recorded need was for £5,000, not for £5,000 plus a cashback (so around £7,000). Had the fees been added to the mortgage debt and £7,000 released to Mr T at completion he could – very validly – have complained that he had more money than he said he wanted, and thus would incur extra interest over the term of the mortgage.

The mortgage that was set up met Mr T's objective of repaying his existing equity release mortgage plus releasing £5,000 to buy a car. The contractual mortgage offer was clear that the fees weren't being added to the debt and therefore needed to be paid (whether that was by Mr T from his own pocket, or from the cashback) when the mortgage completed. Taking everything into account there are no grounds for me to uphold this complaint, however much Mr T may want me to.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 February 2021.

Julia Meadows

Ombudsman