

The complaint

The estate of Mr C complains that Age Partnership Limited didn't treat Mr C fairly when it gave him advice in respect of three equity release mortgages. Further, the estate considers that Age Partnership ought to have done more when he approached it for a fourth application, knowing that Mr C was likely the victim of a scam.

What happened

From July 2018, Age Partnership gave Mr C mortgage advice. It recommended that Mr C should take out the following equity release mortgages:

- Application 1– July 2018, £50,000 to buy a new car (£30,000) and for home improvements (£20,000).
- Application 2 – February 2019, £30,000 to repay unsecured credit card debts.
- Application 3 – April 2019, £40,920 (including fees) to update his kitchen (£15,000), update his bathroom (£10,000) to redecorate (£5,000) and gifts for his grandchildren (£10,000).

In July 2019, Mr C contacted Age Partnership (“application 4”). He told it that he needed to borrow around £60,000. When asked about the purpose of the borrowing, Mr C told Age Partnership that he needed to pay a tax bill so that funds he'd invested could be released. Age Partnership said that it sounded like Mr C was the victim of a scam. It didn't recommend another mortgage. But Mr C went to another broker (broker J) and was able to obtain further lifetime mortgages from the same lender.

The estate of Mr C complains about the advice that Age Partnership gave Mr C and that it should have told the lender about its concerns following application 4.

I issued a provisional decision. I said I was intending to uphold the complaint in part. My provisional findings were, in summary:

- Age Partnership acted fairly and reasonably in recommending the mortgages in applications 1 and 2.
- It is unusual to see a borrower look to take out three equity release mortgages in under a year. I think a broker acting reasonably ought to have had concerns about this. It could be a sign of financial difficulty, financial mismanagement or that the borrower was a victim of a scam or coercive behaviour.
- In view of what Age Partnership knew about Mr C's circumstances it would have been reasonable for it to recommend that Mr C sought independent legal advice. While Mr C might have rejected that advice, it demonstrated that the relevant standards might not have been at the forefront of Age Partnership's considerations.

- Mr C did not merely say that he was expecting money from a court case – it was a court case in America relating to shares. Looking at what Age Partnership knew about Mr C's circumstances that seems to me to be an unusual thing for him to say. He had not indicated that he held any other shares or investments. Yet, he'd told it that he was involved in what on the face of it was a relatively complex legal case regarding a significant amount of money.
- I couldn't see that Age Partnership had asked Mr C why he didn't disclose the credit card debt in application 2 after its compliance department recommended it to do so. Although it was discussed in an earlier phone call, I couldn't see that Mr C said that he didn't think he had to disclose it as it wasn't being repaid. I noted the interest rate Mr C said he was paying (20%) on the credit cards was the same in applications 2 and 3 – so it wasn't reasonable for Age Partnership to understand that he had paid off the credit cards with the higher interest rates – Mr C had told it that the interest rate was the same on the credit cards he had repaid and the ones he hadn't..
- Mr C did not have a clear idea what he wanted the money for when he spoke to Age Partnership on 8 April 2019. It was inappropriate for Age Partnership to suggest other things Mr C could borrow money for. Age Partnership was recommending a mortgage that was suitable for Mr C's needs and circumstances. It is unusual in my experience for a borrower to make such significant changes to their objectives (partially based on what Age Partnership had said) in one phone call during the advice process. I don't consider it was reasonable for Age Partnership to consider that was a sound basis on which to give advice. There is a wide variety of legitimate reasons for a borrower to release equity from their home. But that is something that they will have thought about and costed beforehand. In other words, it is for the borrower to approach the broker with their needs and objectives. It is not for the broker to put forward new needs and objectives that the borrower had not thought about beforehand.
- If Mr C did have a total of £55,000 of credit card debt at the time of application 2, then his minimum payment would likely to have been £1,650 (3%). So the expenditure Mr C declared could not have been correct. That should have been apparent to Age Partnership.
- I agree that there might not be any duty on Mr C to tell Age Partnership about all of his debt. But to give advice it was required to take reasonable steps to gather information about a borrower's circumstances. There is a reasonable expectation that a borrower acting in good faith will disclose all relevant information. That would include a credit card debt of £25,000. So the fact that Mr C had not disclosed that information would cast doubt on the information Mr C had provided – and wasn't a reasonable basis on which to give advice. While that might not have been apparent to Age Partnership during application 2, I think by the time application 3 was made it ought reasonably to have had cause for concern:
 - It was Mr C's third equity release mortgage in under a year.
 - Mr C had withheld relevant information about his finances in a previous application.
 - That not only that Mr C had told it that he was expecting money from a court case in America – but that was in relation to a complex share deal, that on the face of it was out of character for Mr C.
 - I also note that during the phone calls Mr C expresses that he wants the transaction to complete quickly. Bearing in mind his stated needs and objectives there was no reason for any urgency.
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- I considered that if Age Partnership had acted fairly it would have declined to recommend that Mr C take out another mortgage.
- If Age Partnership had declined to give Mr C advice in respect of application 3 it was likely that he would have approached another broker and that he would have given it the same information he gave Age Partnership. I said that because that is what Mr C did when Age Partnership declined to deal with him in application 4.
- If Mr C had approached another broker in respect of application 3 he would have told it:
 - He was expecting money from a court case in America – but that was in relation to a complex share deal that, on the face of it, was out of character for Mr C.
 - Mr C wanted to borrow £25,000 for redecorating (amongst other things).
- I don't consider that another broker acting fairly could have recommended that Mr C take out an equity release mortgage on that basis. I say that as the background to the court case was suspicious and would warrant further investigation. Age Partnership has told us it was unlikely that Mr C would have given any information relating to the court case. So it's unlikely that Mr C would have produced evidence to show that the court case was legitimate.
- Age Partnership identified that the amount Mr C wanted to raise for decorating was excessive. It's unlikely that a broker acting fairly and reasonably would have accepted that as a genuine objective without seeking further proof of any revised plans and the relevant costs. Overall, I consider that if Mr C sought advice from another broker and gave it the information he did to Age Partnership in respect of application 3, another broker, acting fairly and reasonably, would not have recommended that application 3 go ahead.
- In respect of application 4, the Equity Release Council's guidance said that it would "encourage" advisers to notify lenders if they are made aware of trigger points or life events. They give a non-exhaustive list of examples of trigger points and that included: where the period which has elapsed since the original advice could be an indicator that the customer has not fully understood the implications of the original contract, or possibly not been advised correctly or is being subject to some coercion by a third party; where there was known or perceived vulnerability, capacity or coercion issues. The guidance went on to say in some cases, it would not be prudent to continue with the drawdown request. However, where it is identified that there is a vulnerability or other issue, it may be necessary to refer to relevant sources of support.
- I thought it was difficult for Age Partnership to argue that it was reasonable for it not to tell the lender about its concerns. It had already recommended three equity release mortgages to Mr C. It (correctly) declined to recommend a fourth mortgage because it thought Mr C had been the victim of a scam. Age Partnership should have told the lender about its concerns.
- I'm not proposing an award for this part of the complaint. I am satisfied that there was an omission by Age Partnership in not passing on its concerns to the lender. But Mr C went on to receive advice from broker J to take out further borrowing. It seems to me that the cause of those further loans was the advice received from broker J. While there was a clear failing by Age Partnership, I don't consider it would be fair for me to say that it should compensate Mr C for any financial loss where that came about because of the advice given by broker J. I understand that Mr C's estate has settled its complaint about

broker J. It doesn't follow that it would be fair for me to say that Age Partnership should make up the difference.

- I found that Age Partnership didn't act fairly or reasonably in recommending that Mr C take out the equity release mortgage in respect of application 3. I also found that it is likely that Mr C would have given similar objectives to another broker and that no broker acting fairly or reasonably could have recommended a mortgage on the basis. It follows that Mr C would not have taken the mortgage in respect of application 3 had Age Partnership acted fairly and reasonably.
- We have evidence to show that Mr C was a victim of a scam and that he paid the proceeds of the equity release mortgages to the scammers. I am satisfied that he and his estate suffered a financial loss because of the advice Mr C received in respect of application 3.
- The starting point is for Age Partnership to pay Mr C's estate the amount raised under application 3 plus any associated interest, fees and charges. In saying that, we know that Mr C had received a number of warnings over the years the he'd received number of warnings that he was the victim of a scam from relatives, the police and Action Fraud over a number of years. And of course, Age Partnership told Mr C that he was the victim of a scam Mr C went on to raise more money to pay to the fraudsters.
- Mr C continued to send money to the fraudsters. In the case of application 3 he was advised to take out an equity release mortgage by Age Partnership This loss would not have come about had Mr C not been advised to do so by Age Partnership – and I don't consider any competent adviser could have recommended Mr C take the mortgage in application 3. But in view of the warnings that Mr C had received I think it is reasonable for his estate to take some responsibility for those decisions. I've taken into account that Mr C received advice – and that he was clearly taken in by the fraud. But I consider it would be fair and reasonable to deduct 25% of the above total to reflect Mr C's contribution to what happened.

I proposed that Age Partnership should:

- Work out the total amount that Mr C's estate had to pay to redeem the part of the mortgage that came about because of application 3 (capital and interest), plus any fees paid upfront or added to the mortgage.
- Pay Mr C's estate 75% of that amount.
- Pay interest at 8% simple per year on the above amount from the date the mortgage was repaid until date of settlement.

Age Partnership did not accept my provisional findings. It made a number of points, including:

- Mr C's objectives in each application were entirely plausible.
- Had Mr C suggested that he wanted a reserve facility then he would not have required further financial advice to access additional funds. As there was no requirement for additional funds, Age Partnership correctly recommended that no reserve facility was put in place. That allowed it to request further information during applications 3 and 4.
- Age Partnership recognised that the number of applications in quick succession and correctly followed its internal procedures by referring the matter to its compliance department. The compliance department said that Mr C should be asked to clarify why

he needed additional funds so soon after the previous application. When it spoke to Mr C he said he was expecting £50,000 from a court case in America but was uncertain when he'd receive that money. He wanted to release further equity so he could achieve his objectives sooner.

- It is “quite common” for people of retirement age to have interest in investments. Mr C's property was valued at £700,000 and the £50,000 he was expecting from the court case wasn't “automatically considered to be a significant sum”. While he did say the shares were held overseas, this would not automatically be assumed to be a scam. It wouldn't have been appropriate to recommend that Mr C should wait until he received those funds as he didn't know when he'd get that money.
- Mr C's objectives in the first three applications were home improvements, buying a new car, repaying debt and a gift for his grandchildren – all of which are objectives that are consistent with someone who has retired.
- The guidance from the Equity Release Council on legal advice say that “*it would not be appropriate to make this a requirement in every case, but that Providers should make their own decisions, having regard to a number of factors and circumstances.*”
- While the amount of borrowing was higher in application 3 than in application 2 and Mr C had made a number of applications in a short space of time, as his objectives were different from previous applications and he'd given credible explanations why he needed the funds, this wasn't a cause for concern.
- Age Partnership did ask Mr C why he hadn't disclosed the £25,000 of credit card debt in a phone call on 8 April 2019 and he said it wasn't mentioned because he never intended to repay it from the proceeds of the equity release mortgage. Its compliance department subsequently said that it should clarify why this wasn't disclosed – but Age Partnership has been unable to find any evidence this was revisited or discussed further.
- Knowing what we know now, Age Partnership acknowledged that its remarks to Mr C about the proposed decoration of his house could be perceived as leading, at the time of advice when there was insufficient information there was a potential scam, it attempted to understand how Mr C had arrived at a figure of £25,000 by gathering further information about the extent of the home improvements he wished to carry out.
- At the time of application 2, Age Partnership was told Mr C had £30,000 of debt. During application 3 it was told that there was an additional £25,000 that wasn't previously disclosed. As Age Partnership believed Mr C had freed up around £1,000 a month by repaying debt in application 2, it was agreed he'd use those funds to pay down the additional funds. Therefore there would not have been any additional surplus income as a result of the previous monthly payment.
- No affordability assessment is required with a lifetime mortgage as there is no monthly payment. The recommendation was based on Mr C's requirements, preferences and priorities at the time. As he said he wanted to meet his objectives now and not in the future it is likely that a recommendation to use any disposable or surplus income established as part of a fact find as an alternative to equity release would have been rejected by Mr C.
- If Age Partnership had not recommended the mortgage that came about from application 3 and Mr C had gone to another broker, the information about the court case in America wasn't enough to indicate fraudulent activity. And when Age Partnership

declined to offer advice in application 4, broker J recommended a mortgage based on the same information that Age Partnership had. So it was unable to agree that another broker would not have recommended a lifetime mortgager to Mr C based on the information presented in application 3.

- Age Partnership expected the lender to have its own processes in place to identify where a number of applications had been submitted in quick succession.
- While Age Partnership could have raised concerns with the lender following application 4, it had already been raised on a number of occasions with Mr C by family members, the police and Action Fraud. This suggests that Mr C's family were better informed about this situation than Age Partnership and additional measures should have been taken to protect him from the scam.
- While certain details may not have been identified as being inaccurate, such as the expenditure figures between applications 2 and 3, this would not lead to the assumption that an individual was being scammed unless there is additional knowledge of events in the background, which Age Partnership didn't have.
- Age Partnership didn't consider the number of applications in a short period of time were a concern as Mr C was able to explain why he needed the funds.
- Mr C was an individual who despite multiple warnings continued to apply for funds and send them to scammers. Having all the information we have now paints a different picture of the circumstances surrounding application 3. But at the time of advice it isn't appropriate to conclude that Age Partnership should not have proceeded with the application.

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.

Application 3

I've thought very carefully about the outcome to this case. I agree it is important not to apply hindsight to my consideration of this complaint. I accept that Age Partnership would not have known everything that we know now. I am only determining what I consider to be fair and reasonable in the individual circumstances of this complaint in respect of the advice, based on the information that was available to Age Partnership at the time of the advice.

Age Partnership was giving Mr C advice. It wasn't for it merely to give Mr C what he wanted. It could only recommend a lifetime mortgage to Mr C if it was appropriate for his stated needs and circumstances. But it recognises that it should take steps to identify where a consumer seeking advice might be the victim of a scam and decline to offer advice if that is the case. That is what it did in application 4.

The FCA's principles required Age Partnership to conduct its business with due skill care and diligence, and to pay due regard to the interests of its customers and treat them fairly. I also consider it was good industry practice at the time of the advice for businesses to look out for warning signs that a consumer may be the victim of financial abuse – including being scammed in the way that Mr C was.

Application 3 was Mr C's third application for a lifetime mortgage in under a year. Age Partnership said it recognised the number of applications from Mr C in a short space of time

and referred the matter to its compliance department. I agree this was a reasonable step for it to take. The compliance department said that the adviser should ask Mr C why he had not previously disclosed £25,000 of credit card debt, obtain quotes for his home improvements and be offered a face to face appointment. Age Partnership has accepted, that while the point about the credit card debt was dealt with in an earlier phone call, it was not followed up after the compliance department's advice.

I'm not sure the position regarding the outgoings in applications 2 and 3 is as clear as Age Partnership says. But this point does not make a difference to my findings. Nor does the point about whether Mr C should have been advised to seek independent legal advice.

Age Partnership was right to ask Mr C why he couldn't wait for the outcome of the court case. I think any broker acting reasonably ought to have done so. Mr C said in response:

"I had been expecting a payment from a court case that was running in America and the money simply hasn't turned up and I don't know when I'll get it. It is still promised but I don't know when it might come and I just don't really want to have an uncertainty in my mind I'd like to get on with things...it would be about £50,000...it was some sort of share acquisition thing they were buying our shares but there were problems with the lawyers in America and somebody else has gone to court about it and it's taking ages I just want to get on with it..."

Age Partnership said it was "*quite common*" for people of retirement age to have interest in investments. Mr C's property was valued at £700,000 and the £50,000 he was expecting from the court case wasn't "automatically considered to be a significant sum". While he did say the shares were held overseas, it wouldn't automatically assume that meant it was a scam. It wouldn't have been appropriate to recommend that Mr C should wait until he received those funds as he didn't know when he'd get that money.

I agree that it wouldn't necessarily be unusual for a someone who had retired to have investments. What is more unusual is that those investments were held abroad, the money hadn't turned up as expected and was now subject to an ongoing dispute in court. If Age Partnership understood that Mr C did hold shares, it isn't clear why he couldn't just sell them – unless they weren't conventional shares that were traded on an open market. And if they weren't, that in itself might be also unusual.

I consider that Age Partnership ought to have carried out further enquiries when Mr C told it about the court case relating to shares. I accept that there will be consumers who hold straightforward investments where it is reasonable for a broker to accept what they say at face value.

Putting aside the other information Age Partnership had, I consider a broker presented with the information Mr C gave here ought to have asked for more information from Mr C about the shares and the court case. I say that because the combination of an overseas share purchase, broken promises and a dispute about the shares is not in line with someone who holds a conventional investment. In fact, those things are all features of share sale and fraud recovery frauds. Elderly people are often targeted in such scams.

If Mr C had been asked to produce evidence to show the shares and the progress of the court case, as I see it there were two possibilities:

- 1) He refused to produce the evidence.
- 2) He produced the paperwork he had.

In either case I don't see how Age Partnership could reasonably recommend that Mr C should go ahead with a lifetime mortgage. If Mr C refused to produce any evidence, then it couldn't satisfy itself that Mr C had a genuine need for the funds – both in the respect that it would indicate he was hiding something and that it wasn't a sound basis on which to give advice if it wasn't clear when he would receive the funds. If he did produce the paperwork, then it is likely that it would have shown that Mr C was the victim of a scam. I say that because Mr C's estate has provided evidence of communication between the fraudsters to Mr C. It is likely that Mr C would have produced this paperwork – and that would indicate that he had been scammed.

Mr C said he needed £25,000 for redecorating. I don't see how any broker acting reasonably could accept this as a valid reason to borrow that amount on a lifetime mortgage. Age Partnership did challenge Mr C that the amount seemed high. It then asked whether Mr C needed any work on his kitchen and bathroom. Mr C said he did. I don't consider Age Partnership acted fairly or reasonably here. There is a difference between a consumer approaching with a set of objectives and asking for advice and a consumer changing his objectives (significantly) during a phone call without at least being given the chance to reflect on what their needs actually were.

It was clear that Mr C's objective to borrow £25,000 for home decoration was unrealistic. I don't consider it was fair for Age Partnership to then prompt him to think of other reasons to borrow the money on the spot. His objective was to decorate, not to carry out other home improvements. I can't see how he could have known a reasonably accurate budget for a new kitchen and bathroom. It was certainly not a sound basis on which to give advice. There was a potential for Mr C to be left with surplus funds if he didn't need that much – or if there was a shortfall he would need to raise funds another way. That isn't a fair or reasonable way to go about giving advice.

A broker acting fairly and reasonably would have asked Mr C to obtain quotes for the work he needed. I note that Age Partnership did this on the advice of its compliance department. But I don't consider it was reasonable for it to go ahead and recommend the mortgage when Mr C refused to do so. There was a significant risk of detriment to Mr C in doing so - and Age Partnership ought to have known that.

While it is important to examine the individual reasons why I consider that Age Partnership didn't act fairly and reasonably – it is also important to look at *all* of the information that Age Partnership had together. While one piece of information in isolation might not reasonably give rise to any concerns, looked at as a whole it might indicate there was a problem where a business – acting fairly and reasonably – could not proceed. For the reasons I've explained, I don't consider that Age Partnership did act fairly or reasonably. I consider if it had it would have declined to recommend that Mr C should take this mortgage.

The question for me therefore is, what was Mr C likely to have done if Age Partnership had not recommended another lifetime mortgage. We know that when Age Partnership would not proceed with application 4, Mr C approached broker J and it arranged a lifetime mortgage for him. We also know that when Mr C approached broker J, he gave it the same information that he gave Age Partnership in respect of the aborted application 4. That is despite Age Partnership telling Mr C that it couldn't recommend a lifetime mortgage because of what he'd told it.

It follows, that it is more likely than not, if Age Partnership had not proceeded with application 3 that Mr C would have approached another broker and given it the same information that he gave to Age Partnership in respect of application 3.

I note that Age Partnership said the fact that broker J arranged a lifetime mortgage for Mr C

in respect of application 4 meant that he would have been able to obtain another mortgage through another broker in respect of application 3. I don't consider that is the right way to look at it.

While Mr C was able to obtain a mortgage through broker J, it is clear that broker J wasn't acting fairly or reasonably when it recommended that mortgage to him. So I need to decide if Mr C had approached another broker in respect of application 3 could it – *acting fairly and reasonably* – have recommended that Mr C go ahead with application 3. If he had received poor advice his estate would have been able to seek redress from the other broker – just as it has against broker J.

If Mr C had approached another broker, it would not have had the information about the previous lifetime mortgages or the information that Mr C had given Age Partnership in previous applications. It is more likely than not that Mr C would have given it the same information about the court case and the reasons for borrowing the money.

I consider that another broker acting fairly and reasonably would have sought further information from Mr C about the court case. And if it had done so I consider the outcome would have been the same as I have set out above. That is, If Mr C had been asked to produce evidence to show the shares and the progress of the court case, again, as I see it there were two possibilities:

- 3) He refused to produce the evidence.
- 4) He produced the paperwork he had.

In either case I don't see how a broker could reasonably give Mr C advice. If he refused then it couldn't satisfy itself that Mr C had a genuine need for the funds – both in the respect that it would indicate he was hiding something and that it wasn't a sound basis on which to give advice if it wasn't clear when he would receive the funds. If he did produce the paperwork, then it is likely that it would have shown that Mr C was the victim of a scam. I say that because of the evidence Mr C's estate has provided from the fraudsters to Mr C.

There is also the background of the £25,000 for "decorating". Age Partnership thought it necessary to probe Mr C further about his objectives. I've already found that it wasn't fair or reasonable for it to lead Mr C towards different objectives. I don't consider another broker acting fairly or reasonably would have done that. So another broker would have considered that Mr C had not only said he was expecting funds from a potentially suspicious source but also that his reason for borrowing the funds wasn't clear.

In all the circumstances, I consider that if Age Partnership had declined to offer advice in respect of application 3 and Mr C had approached another broker, then if that other broker was acting fairly and reasonably it would also have declined to recommend a mortgage to Mr C. That is because the background of the court case on the face of it deserved further investigation. Even if the broker only asked Mr C for more information about the court case (and I consider any broker acting fairly and reasonably would have done so), Mr C either would not have provided any information or provided information which was likely to show that he was the victim of a scam. In either case, that would not be a sound basis for any broker to recommend a lifetime mortgage to Mr C and they would not be in a position to consider that a lifetime mortgage was appropriate for Mr C's needs and circumstances.

Application 4

The Equity Release Council's rules and guidance say:

3.4 All members have a duty of care to consider any existing equity release plans when advising either an existing customer with a plan previously arranged by the firm, or a new customer with an existing plan arranged by another firm.

We would encourage Provider firms to notify Adviser firms (and vice versa) if they are made aware of trigger points or life events. This will ensure that there is continuity between providers and advisers to ensure that a client's change of circumstances is reviewed as required.

The rules go on to give a non-exhaustive list of examples of such "trigger points". It includes:

6.7

b) The period which has elapsed since the original advice

Could be an indicator that the customer has not fully understood the implications of the original contract, or possibly not been advised correctly or is being subject to some coercion by a third party

(f) Known or perceived vulnerability, capacity or coercion issues:

These may have been reported at point of sale or identified with ongoing contact,

And in some cases, it would not be prudent to continue with the drawdown request. However, where it is identified that there is a vulnerability or other issue, it may be necessary to refer to relevant sources of support.

I think it is difficult for Age Partnership to argue that it was reasonable for it not to tell the lender about its concerns. It had already recommended three equity release mortgages to Mr C. It (correctly) declined to recommend a fourth mortgage because it thought Mr C had been the victim of a scam. Age Partnership should have told the lender about its concerns.

I'm not proposing an award for this part of the complaint. I am satisfied that there was an omission by Age Partnership in not passing on its concerns to the lender. But Mr C went on to receive advice from broker J to take out further borrowing. It seems to me that the cause of those further loans was the advice received from broker J. While there was a clear failing by Age Partnership, I don't consider it would be fair for me to say that it should compensate Mr C for any financial loss where that came about because of the advice given by broker J. I understand that Mr C's estate has settled its complaint about broker J. It doesn't follow that it would be fair for me to say that Age Partnership should make up the difference.

Putting things right

I've found that Age Partnership didn't act fairly or reasonably in recommending that Mr C take out the equity release mortgage in respect of application 3. I've also found that it is likely that Mr C would have given similar objectives to another broker and that no broker acting fairly or reasonably could have recommended a mortgage on the basis. It follows that Mr C would not have taken the mortgage in respect of application 3 had Age Partnership acted fairly and reasonably.

We have evidence to show that Mr C was a victim of a scam and that he paid the proceeds of the equity release mortgages to the scammers. I am satisfied that he and his estate suffered a financial loss because of the advice Mr C received in respect of application 3. Mr C did not receive the benefit of the proceed of that mortgage.

The starting point is for Age Partnership to pay Mr C's estate the amount raised under application 3 plus any associated interest, fees and charges.

In saying that, we know that Mr C had received a number of warnings over the years that he was the victim of a scam from relatives, the police and Action Fraud . And of course, after Age Partnership also told Mr C that he was the victim of a scam Mr C went on to raise more money to pay to the fraudsters.

Mr C continued to send money to the fraudsters. In the case of application 3 he was advised to take out an equity release mortgage by Age Partnership. This loss would not have come about had Mr C not been advised to do so by Age Partnership – and I don't consider any competent adviser acting fairly and reasonably could have recommended Mr C take the mortgage in application 3.

But in view of the warnings that Mr C had received I think it is reasonable for his estate to take some responsibility for those decisions. I've taken into account that Mr C received advice – and that he was clearly taken in by the fraud. But I consider it would be fair to deduct 25% of the above total to reflect Mr C's contribution to what happened. That reflects that Mr C continued to act despite receiving numerous warnings. But also that Age Partnership actively recommended this mortgage to Mr C – this isn't a case where it had no option other than to recommend a lifetime mortgage to Mr C.

Age Partnership has said that Mr C's family ought to have taken additional measures to protect Mr C. It's not clear what those measures were. For example, there is no suggestion Mr C lacked the capacity to manage his affairs where his family could take steps to obtain a power of attorney for him. And so I make no further deduction for that.

My final decision

My final decision is that Age Partnership Limited should:

- Work out the total amount that Mr C's estate had to pay to redeem the part of the mortgage that came about because of application 3 (capital and interest), plus any fees paid upfront or added to the mortgage.
- Pay Mr C's estate 75% of that amount.
- Pay interest at 8% simple per year on the above amount from the date the mortgage was repaid until date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C to accept or reject my decision before 1 December 2022.

Ken Rose
Ombudsman