

The complaint

This complaint is brought by Mr M2 as representative of the estate of the late Mr M1.

Mr M2's complaint is that an equity release mortgage sold to Mr M1 in 2017 by Bower Retirement Limited was mis-sold. Mr M2 says that the advice to take out the mortgage was unsuitable.

To settle the complaint Mr M2 wants Bower to put Mr M1's estate in the position it would have been in had Mr M1 not been advised to take out the mortgage, to include a refund of fees, commission and all interest charged on the mortgage.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here.

In addition, our decisions are published, so it's important I don't include any information that might lead to Mr M1 being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

In May 2017, after contacting Bower, Mr M1 was given advice about equity release mortgages. Following this, Mr M1 applied for a mortgage with a lender I will call LG. For his immediate objectives – debt consolidation, home improvements, to purchase a car for his son, Mr M3, and for the fees to take out the mortgage – Mr M1 borrowed an initial £16,600. The mortgage also came with a drawdown facility of up to £59,000 which Mr M1 could draw down as and when he wanted to.

The fact find and suitability reports prepared by Bower showed that Mr M1 confirmed that, other than State pension, he had no other pensions.

The mortgage completed in about June 2017, after Mr M1 had been given advice by his own independent solicitor. Mr M1 made further drawdowns on the mortgage in 2019, 2020 and 2022.

I am sorry to note that Mr M1 passed away in April 2023. Following this, Mr M2 complained to Bower that he thought the advice to take out the mortgage had been unsuitable. Mr M2 said that Mr M1 had two private pensions from which he could have drawn lump sums sufficient for his needs. However, he had instead been advised to take out this mortgage.

Bower didn't uphold the complaint, explaining to Mr M2 that Mr M1 had made no mention of having any private pensions. Mr M2 referred his complaint to our service, where an

Investigator looked at what had happened. The Investigator was satisfied that the mortgage hadn't been mis-sold.

Mr M2 asked for an Ombudsman to review the complaint. To summarise, Mr M2 says that Bower shouldn't have accepted what Mr M1 had said about having no private pensions, and should instead have made its own enquiries about this. "...even if [Mr M1] *actively stated that he had no pensions, Bower, if provided with such information, should have questioned [Mr M1] more robustly over his pension arrangements...*"

Mr M2 also said that the Investigator failed to request evidence of Mr M1's pension arrangements and the value of those pensions in 2017. Mr M2 said that he was easily able to access this information by going onto the government's pension locating website and searching for Mr M1's previous employer and so both Bower and the Investigator should also have done this.

Mr M2 is unhappy that the Investigator relied on the documentation provided by Bower, given that Mr M2 says there are inconsistencies in these and discrepancies which suggest Bower has acted fraudulently, concocting documentation to support the complaint. Mr M2 says that the outstanding question of what went wrong during Mr M1's meeting with Bower and who is responsible for this has not been addressed.

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.

I'll begin by explaining the scope of this decision.

Under our rules, when he was alive Mr M1 was a consumer, and so meets the definition of an "eligible complainant" set out in our rules. That eligibility now vests in his estate. The rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant or authorised by law. In this respect, Mr M2 is authorised by law under the Letters of Administration to bring the complaint on the estate's behalf.

But I must explain that, although Mr M2 is representing Mr M1's estate, it is Mr M1 who was Bower's customer at the time of the events complained about. Mr M2's role as administrator of the estate is to bring the complaint on behalf of the estate, in the same way that other consumers might instruct a solicitor or accountant to represent them in a complaint. But this does not entitle Mr M2 to air his own grievances about Bower because he is not its customer; Mr M2's role is limited to putting forward the estate's complaint.

I note from the detailed correspondence that Mr M2 has expressed his own concerns about what he perceives to be Bower's failings – and I do not doubt his strength of feeling about this. But because he is not Bower's customer, this final decision is limited to consideration of the estate's complaint about Bower.

Mr M1 hadn't complained about the mortgage previously. Therefore, without a specific complaint from Mr M1 about it, I have considered generally whether Bower did anything wrong when the mortgage was taken out.

The advice was given in May 2017, and the complaint was first raised with Bower in June 2023, more than six years later. Bower has consented to us considering the complaint, which would otherwise have been out of time under our rules, notwithstanding Mr M2's belief that he made the complaint within three years of the date when *he* knew there was first

cause for complaint. As I've explained above, he is not the consumer, and so his date of knowledge is not relevant here. But as Bower has consented, the issue of whether or not the Financial Ombudsman Service has jurisdiction to consider the complaint has been resolved.

The crux of the complaint is that Mr M2 believes Bower should have assumed, when Mr M1 said he had no private pensions, that he was lying, and thus made further enquiries about this. However, a financial adviser is entitled to accept in good faith that the information provided by a client is truthful. It would seriously undermine the relationship of trust and confidence that must exist between adviser and client if, as Mr M2 suggests, Bower should have said to Mr M1 that it thought he was lying.

There is no need, as Mr M2 has suggested, for either the investigator or me to know what the values of Mr M1's pension funds were in 2017. Mr M1 didn't tell Bower he had pensions, and so their existence in 2017 cannot be of any relevance to the advice given by Bower. As I have explained, Bower was entitled to treat the information given by Mr M1 as truthful, and to rely on it in good faith when advising him.

I've noted what Mr M2 has said about the documentation. He believes, due to Mr M1's age being incorrectly stated on one document, and what he says are other discrepancies in the numbering of the paperwork provided by Bower, that the documents may have been "*fraudulently*" compiled for the purpose of supporting Bower's rejection of the complaint. Whilst I agree Mr M1's age is given incorrectly on one document, his date of birth is correct. The documentation appears to be contemporaneous with the time the advice was given.

Mr M2 has criticised the Investigator for relying on the contemporaneous documentation. However, this is the record of what was discussed at the time. It's not part of our process to analyse the metadata of documents provided to us by the parties to a complaint to determine when they were compiled.

Mr M2 said he was easily able to find information about Mr M1's pension by putting details of a past employer into a government website. Mr M2, of course, would have known who Mr M1's past employer was. There is no evidence to suggest Mr M1 ever told Bower who he had previously worked for; this wasn't information Bower needed, given that Mr M1 was retired. Whilst Mr M2 thinks it would have been "*good practice*" for Bower to reject what Mr M1 had told it about his circumstances, there is no obligation on the part of an adviser to go into the employment history of an applicant for an equity release lifetime mortgage.

Importantly, it was noted in the documentation that Mr M3 was also living in the property. The implications of this were explained to Mr M1 in the suitability report. In addition, LG (not Bower) required Mr M3 to sign a waiver of his rights in its favour, for which Mr M3 would need to take his own independent legal advice. I also note that some of the money Mr M1 was raising was to purchase a new car for Mr M3. The mortgage couldn't have gone ahead without LG receiving Mr M3's consent to waive his rights in favour of LG. I'm satisfied, therefore, that at least one family member other than Mr M1 was aware of the existence of the mortgage in 2017. If Mr M1 hadn't discussed it with Mr M2, that was his prerogative.

I'm satisfied the advice given was suitable, based on the information Mr M1 had provided to Bower. Mr M1 was advised about the implications of unsecured debt consolidation into long-term secured debt, about the potential impact of equity release on means tested benefits and there was full disclosure of the fees involved in taking out the mortgage. In addition, the potential implications for Mr M3 were also discussed.

Overall, I'm not persuaded the mortgage was mis-sold. Bower acted on the information provided by Mr M1 in 2017. If that information was inaccurate, Bower would not have known

this, and Bower certainly wasn't required to treat Mr M1 as being untruthful about his finances, or make additional enquiries in order to disprove what Mr M1 had told it.

In the circumstances, I'm unable to find the mortgage was mis-sold or that Bower has done anything wrong.

My final decision

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M2 on behalf the estate of Mr M1 to accept or reject my decision before 5 August 2024.

Jan O'Leary
Ombudsman