

The complaint

Mrs H's complaint is about mortgage advice she received from Just Compare Limited. Mrs H says that, because she relied on the advice given by Just Compare, she incurred unnecessary legal costs and that Just Compare unreasonably withdrew her mortgage application.

To settle the complaint, Mrs H wants Just Compare to pay her compensation for her losses, distress and inconvenience.

What happened

In June 2022 Mrs H approached Just Compare for advice about an equity release mortgage. She wanted to borrow £300,000; £150,000 to pay off her existing mortgage and £150,000 to purchase her husband's (Mr H's) interest in the property. Mrs H told Just Compare she and Mr H were separating.

Just Compare explained that there was only one lender that would lend in circumstances where the parties were separating but there was no final divorce order. I will call that lender CL. Just Compare said that CL required a Separation Agreement (SA) to be put in place as part of the process. CL was the only lender that was prepared to accept a SA rather than requiring a court order made in divorce proceedings.

(I will explain here that a SA is a document entered into by couples who have decided they no longer wish to live together. It sets out the parties' intentions for dividing up property, assets and ongoing finances at the end of their relationship. If there is a later divorce, it can be used as the basis for a consent order. However, the key point is that the parties have decided to separate – that is, no longer live together under the same roof.)

A mortgage offer was issued by CL which said, amongst other things, that there was to be a transfer of equity from the joint names of Mr and Mrs H into Mrs H's sole name, with Mr H taking independent legal advice and no longer having any interest in the property.

Mrs H needed solicitors to act for her on the transaction who were experienced in equity release mortgages, so she instructed FL, solicitors recommended by Just Compare. CL had its own solicitors, KX, acting for it on the transaction.

In late August 2022 FL arranged a home visit with Mrs H, and explained that CL needed to see the SA, and that both Mrs H and Mr H needed to have separate independent legal advice about this from family lawyers. Mrs H confirmed this was in hand. The home visit went ahead on 25 August 2022 so that Mrs H could sign the mortgage documentation in the presence of the solicitor from FL.

After that, FL emailed KX notifying them that Mr H was going to be continuing to live in the property after completion of the mortgage. Just Compare has told us that it wasn't aware of

this at that time, and, indeed, there is nothing in the file to show that FL provided this information to Just Compare until several months later. Mrs H told FL that the family lawyer she'd spoken to had suggested a Post-Nuptial Agreement (PNA).

Just Compare was asked if a PNA would be acceptable to CL. Just Compare, not knowing that Mr H was going to continue to reside in the property, confirmed it probably would be if it confirmed that Mr H would no longer have any interest in the property. FL provided the draft PNA to KX. Arising from this, KX had further questions that needed to be answered, particularly in relation to Mr H's bankruptcy.

It transpired Mr H had been declared bankrupt and his Trustee in Bankruptcy had registered a charge on the property. FL told KX that the funds Mrs H raised on the new mortgage would be used:

- (a) to pay off the existing mortgage;
- (b) to buy out Mr H's interest in the property.

Out of the £150,000 to be paid to Mr H £75,000 would be used to discharge his bankruptcy, some would be used to pay off another charge on the property (details of which I do not have, but which aren't material to the outcome of the complaint) and the remainder would be retained by Mr H.

In October 2022 Mrs H's brother provided £150,000 to Mrs H so she could pay off Mr H's bankruptcy and other debts. This enabled the restriction on the property title in favour of the Trustee in Bankruptcy and the other charge to be removed. Mrs H said that this was a loan from her brother.

On 16 November 2022, the mortgage offer was withdrawn by CL. This was because the funds were now going to being used to repay a loan made to Mrs H by her brother, and so was outside CL's lending criteria; CL would not allow capital raising to pay off debt. The funds were not, therefore, being used to purchase Mr H's interest in the property, as both CL and Just Compare had anticipated. In addition, CL had learned that Mr H wasn't going to be vacating the property. CL said it wasn't able to proceed any further.

On 17 November 2022 FL confirmed to Just Compare that Mrs H had told FL that she and Mr H were not separating. Just Compare spoke to Mrs H to clarify this, and, without either confirming or denying this, Mrs H said that, as Mr H was unwell, he might stay in the property for a short while.

FL told KX that the Trustee had confirmed the bankruptcy restriction had been removed from the title register, and that the Trustee's beneficial interest in the property had been assigned to Mrs H. However, FL also confirmed to KX that the PNA was drafted on the basis of "*any future divorce or separation*" and that Mr H was to continue to reside in the property. FL said that Mrs H's brother had also confirmed that the money he'd paid Mrs H to pay off Mr H's bankruptcy was partly a gift and partly an informal loan.

Just Compare also emailed FL asking FL to appeal the decline of the decision to withdraw the mortgage offer. Just Compare said to FL that the bankruptcy issue had been resolved, and "*all we need to do is settle the mortgage and to settle with [Mrs H's] ex-partner as part of the separation.*".

FL replied:

"...we have been consistently advised that [Mrs H] and her husband are not separating and the post nuptial agreement is merely the basis for any future

divorce/legal separation. I would need [Mrs H] to confirm in writing that she is separating from her husband so we have her formal instructions on file.

As a wider issue, we, and more importantly [KX and CL] are on notice that the funds are not being used to simply pay [Mr H] for his share of the property. Ultimately these funds will be used to repay [Mrs H's] brother. We would again need confirmation from [Mrs H] that her instructions are this is not the case and the money given by her brother is a gift and not repayable from the funds being released under the equity release."

On 21 November 2022 Mrs H's brother wrote to FL stating:

"I would like to clarify the situation between myself and my sister [Mrs H] regarding recent money that I have provided to her.

[Mrs H and Mr H] have had a very difficult time over the past few years, especially given [Mr H's] financial situation and his medical condition.

I have therefore decided to gift to [Mrs H] £150,000 which allows her to stabilise their financial situation and clear all their debts. I am in a fortunate position to have access to excess savings and therefore will NOT require them to return any of this money at any time.

For clarity there no longer remains any loan agreement between myself and my sister, all funds that have been provided are Gifts. Please feel free to provide this letter for clarity to the lender as required"

FL asked KX if it would ask CL to allow the mortgage application to proceed, as the money from Mrs H's brother was now stated to be a gift, and so the mortgage funds would be used to pay off the existing mortgage and to provide a settlement to Mr H in relation to their separation. It was confirmed by FL that Mrs H had instructed them that she and Mr H were separating, but due to ill health, Mr H wasn't well enough to leave the property at the present time.

KX confirmed to FL that CL would agree to look at the application again, provided the PNA was amended to reflect the fact that there would be a delay in Mr H leaving the property due to ill health. There was some back and forth between FL and KX to get the documentation approved.

Completion was initially fixed for 6 December 2022, but this had to be postponed as KX still required the redemption statement, signed transfer documents and the amended PNA. A new completion date was fixed for 12 December 2022. However, on 7 December 2022 KX was still unhappy that the PNA had no date agreed for the separation.

On 9 December 2022 FL told Just Compare that Mr H's solicitors were no longer acting for him, which meant that Mr H would need to find new solicitors to advise him on the PNA.

Also on 9 December 2022 Just Compare took the decision to withdraw the application. Mrs H was very unhappy about this and complained.

In a long telephone conversation between Mrs H, a director at Just Compare and the mortgage advisor on 5 January 2023, Just Compare explained why the application had been withdrawn. Just Compare highlighted the inconsistencies in what it had been told,

which conflicted with the instructions Mrs H had given to FL. There were also the concerns raised by CL about the purpose of the application.

Just Compare said that, given the original objectives Mrs H had wanted – to pay off the mortgage and buy out her husband's interest in the property due to their separation – an equity release mortgage would have achieved those objectives. However, during the application, other issues came to light – the bankruptcy, the involvement of Mrs H's brother, and that Mr H wasn't, in fact, moving out of the property. Just Compare hadn't been kept informed by Mrs H when things had changed, and only found out about them after the event from FL. In addition, the final draft of the PNA which had been submitted to KX was unsatisfactory, as it only said that the transfer of the property would take place "*if the parties separated*". Given this, Just Compare didn't think it was able to act for Mrs H any longer.

Mrs H brought her complaint to our service in August 2023. She was unhappy about the advice she'd been given. She said that she'd only gone to all the expense of getting the PNA because of the advice she'd been given by Just Compare.

An Investigator looked at what had happened. However, he was satisfied that it was Mrs H's solicitors, not Just Compare, who'd advised Mrs H about the PNA. The Investigator noted that CL had been willing to reconsider the application in December 2022, but Just Compare had withdrawn it. However, after looking at the timeline of events, the Investigator didn't think Just Compare's actions were unreasonable. He was satisfied that the information that came to light during the course of the application gave Just Compare reasonable grounds for withdrawing the application.

Mrs H didn't agree with the Investigator's findings, and asked for an Ombudsman to review the complaint. Mrs H didn't think Just Compare had given any justifiable reason for withdrawing the application and said that she hasn't been given answers to her questions.

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 will explain first that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality.

It's up to us to determine what evidence we need in order to investigate a complaint. So although I've noted the questions which Mrs H would like answered, it's not my role to put those questions to Just Compare or act as a representative or go-between on this case.

The instructions Mrs H originally provided to Just Compare were that the funds raised by the mortgage were to be used to repay the existing mortgage, and pay a settlement to Mr H on separation (which included the redemption of two charges to be redeemed within this separate settlement amount – one to his Trustee in Bankruptcy and the other to a third party), with the remaining funds to be provided to Mr H.

However, as noted in the background section to this decision, the purpose of the application changed. On 7 September 2022 when Just Compare was asked about whether CL would accept a PNA, Just Compare was unaware that Mr H was to continue to remain living in the property. I'm satisfied, therefore, that what Mrs H was told about this by Just Compare was

accurate, based on the information available to it at the time. Just Compare did not say that CL would definitely accept a PNA, only that the PNA must confirm that Mr H would retain no interest in the property. It was up to the solicitors acting for Mrs H, Mr H and CL to reach agreement on what was required in the PNA. Just Compare wasn't responsible for this.

I'm satisfied that it was reasonable for Just Compare to assume, given that Mrs H had told Just Compare that she and Mr H were separating, that Mr H would no longer be living in the property. I'm therefore not persuaded that Just Compare would, or should, have thought otherwise, until it was told on 17 November 2022 by FL that Mr H wouldn't, in fact, be moving out.

After that came to light, with FL confirming that their instructions from Mrs H were that Mr H *would* continue to live in the property, Mrs H said that this was only temporary, due to Mr H's ill health. I'm satisfied that it was reasonable for KX to require this to be reflected in the PNA, but even after that the PNA didn't meet KX's requirements, as it stated that it was only effective *if* there was a separation, and no date was given as to when this would happen. Given this, the original stated purpose of the mortgage – to fund the settlement to Mr H on the marital separation – was undermined to the point where Just Compare felt it could no longer act on the application.

In addition, the involvement of Mrs H's brother, and the changing scenario of whether the money he was providing was a loan, a part-loan or a gift, gave Just Compare cause for concern. Once Mrs H's brother had given her the money to pay off Mr H's bankruptcy this caused an issue, because at this point the application was no longer in relation to a marital separation, but was instead in respect of a loan made by a third party.

The letter from Mrs H's brother, which purportedly clarified that the £150,000 was a gift, not a loan, has, in my opinion, little evidential value, given the overall background to the complaint. It was only written *after* CL said that payment of third-party debts was outside its lending criteria.

As well as wanting to make sure that the information provided to CL was accurate and truthful, Just Compare was also concerned that the involvement of third parties – Mr H and Mrs H's brother – might have resulted in Mrs H being put under pressure to enter into the mortgage. I'm satisfied that, during the call with Mrs H on 5 January 2023 Just Compare explained this to Mrs H.

I think Just Compare's concerns in this regard were legitimate. The timeline of events suggests that the changing scenarios were prompted and driven by the needs and wishes of the third parties, rather than Mrs H. I also note that Just Compare found out about these issues – the bankruptcy, the funds provided by Mrs H's brother, and Mr H continuing to live in the property – not from Mrs H, but from FL. When Just Compare tried to clarify the position with Mrs H, the information she gave Just Compare conflicted with what she'd told FL. Just Compare therefore had genuine concerns that the transaction might not have been in Mrs H's best interests, given the involvement of the third parties.

I'm not suggesting Mrs H was being deliberately evasive or dishonest about the circumstances surrounding the application; I think she was genuinely looking for a way to resolve Mr H's financial difficulties in relation to his bankruptcy, and had hoped that the equity release mortgage would provide a way to fund this. But as things evolved during the course of the transaction, I'm satisfied Just Compare wasn't kept fully apprised by Mrs H, which led to Just Compare having concerns about what might be happening in the background. In addition, the original stated purpose of the loan – to fund the separation between Mr and Mrs H – had changed to the point where Just Compare felt – reasonably, in

my opinion – that it would no longer be in Mrs H's best interests for Just Compare to continue with the application.

Overall, considering the entire circumstances surrounding the application, I'm satisfied that Just Compare acted reasonably and legitimately when it withdrew the mortgage application. I know this isn't the outcome Mrs H was hoping for, but taking into account everything that happened, I'm unable to find Just Compare 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 Mrs H to accept or reject my decision before 17 April 2024.

Jan O'Leary
Ombudsman