

The complaint

This complaint's about an equity release lifetime mortgage Mr and Mrs B hold with Legal & General Home Finance Limited (L&G). There are two broad elements to the complaint; these are, in summary:

- Mr and Mrs B object to the nature of the information L&G insisted they provide as proof of the source funds they were intending using to repay the mortgage; and
- They believe L&G failed to meet its regulatory duty to consider Mrs B's vulnerability when dealing with them.

Both borrowers have joined the complaint, but our dealings have been primarily with Mr B, as were L&Gs. Where I've referred in the narrative to Mr and Mrs B engaging with us (or with L&G) it was typically Mr B on behalf of them both.

What happened

I don't 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 and Mrs B being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, rounding the figures, 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.

Mr and Mrs wanted to repay their L&G mortgage by faster payment from their bank account. The total amount owing was above the maximum daily amount allowed under the faster payment method, so it necessitated separate payments on separate days. After speaking to L&G on the phone, Mr and Mrs B paid £100,000 on 17 August 2022, but when they called L&G to make the follow-up payment the next day, it wouldn't give them a figure.

On 19 August, Mr and Mrs B made a payment (a little over £37,000) that they had calculated themselves, anticipating a small refund once L&G had processed the correct sum. However, L&G asked for proof of the source of funds. Mr and Mrs B sent information relating to the limited company of which Mr B is chairman, but L&G asked for more detailed evidence. On 31 August 2022, having not received the additional material it had asked for, L&G returned the £37,000 follow-up payment to Mr and Mrs B's bank account.

When Mr and Mrs B complained, L&G defended its position on what it considered to be satisfactory proof of source of funds, but accepted it should have made its requirements clear during the first telephone call with Mr B; for this, it offered £75 compensation, which Mr and Mrs B didn't accept, instead referring the complaint to our service.

Our investigator didn't recommend the complaint should be upheld. She thought L&G had acted fairly and reasonably. Mr and Mrs B remained unhappy and asked for the complaint to be reviewed by an ombudsman. At the same time, they raised a new issue about L&G failing to consider Mrs B's vulnerability. We referred this to L&G to look in to first, as that's a

requirement of our rules; we can't look into a complaint unless the business has at least been given the opportunity to deal with it first.

L&G rejected the second complaint too; it said it had never been told that Mrs B had any vulnerability, and nothing in its interactions with Mr and Mrs B would have given it any reason to suspect she might be vulnerable. Our investigator wasn't convinced this part of the complaint should be upheld either. It's now with me to review.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

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, I've set out my conclusions and the reasons for them below.

The requirement to prove the source of funds is a matter of law and regulation and it applies to all lenders, and to all borrowers. That doesn't mean that every transaction will (or must) be scrutinised; the regulations give lenders discretion on when (and how) they are applied. The need for evidence, and the amount of evidence L&G judges necessary, will differ in every case. But the key point there is that it is L&G's discretion to exercise; it's not Mr and Mrs B's and it's certainly not mine.

I can't know (and won't speculate on) how things might have turned out differently had Mr and Mrs B complied with the request for additional evidence before L&G returned the funds. It was Mr and Mrs B's prerogative to challenge the request; they had their reasons for doing so and it's not for me to question them. But it was also their choice and Mr and Mrs B must accept the consequences of the choice they made; chief amongst which is that mortgage wasn't closed down on 19 August 2022 but instead remained open, accruing interest.

On the second element of the complaint, the first point to make is that these events precede the introduction of the FCA's Consumer Duty, so the standards it imposes on businesses don't apply here. Mr and Mrs B have been remarkably frank in telling us about the health issues Mrs B has experienced. I won't reveal the detail here, to preserve their privacy, but it's clear Mrs B's health is not good, and I extend my sympathies to them. That said, it doesn't seem to me from the available evidence that L&G knew what Mr and Mrs B have told us.

L&G has pointed out that in a phone conversation several months before the events giving rise to the complaint, but after Mrs B had received her diagnosis, it asked if there was anything it needed to know about Mr and Mrs B's circumstances, or any communication adjustments it could make, that would make it easier to manage their affairs. L&G was apparently told there was nothing. If that's the case – and there's nothing in the evidence before me to suggest Mr and Mrs B dispute what L&G has said – then I can't in all fairness conclude that L&G has failed Mr and Mrs B on the issue of vulnerability.

I agree that L&G should have told Mr and Mrs B about its proof of source of funds requirements during the first call they made about repaying the mortgage. I'm not persuaded it would have made a significant difference to what happened, given what Mr and Mrs B have said about their aversion to providing the material L&G asked for. But it was a service shortfall nonetheless, for which a modest compensation payment is warranted. In my view, the offer of £75 is broadly fair in all the circumstances.

My final decision

My final decision is that, in full and final settlement, this complaint should be fairly determined by Legal & General Home Finance Limited paying Mr and Mrs B £75. I make no other offer or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 7 February 2024.

Jeff Parrington

Ombudsman