

## **The complaint**

Mr and Mrs P complain that their secured loan was mis-sold in 2017 by OSL Financial Consultancy Limited trading as MortgageKey. They say Mr P's spending was out of control, and he had a gambling problem, so MortgageKey's advice was irresponsible.

## **What happened**

Mr and Mrs P applied for a secured loan and the advice was given by an intermediary – MortgageKey – and the loan completed in October 2017.

In 2020 Mr and Mrs P complained to the lender, and then to MortgageKey about the secured loan. To be clear, this complaint reference just relates to MortgageKey.

MortgageKey rejected the complaint and so Mr and Mrs P referred it to us. Our investigator looked at things and didn't think the advice MortgageKey had given was unsuitable. She said it took the information Mr and Mrs P gave in good faith, and there was no requirement for it to request further information if the lender's requirements had been met. The loan reduced their outgoings significantly, which met Mr and Mrs P's recorded objectives. Mr and Mrs P didn't agree and so it has been passed to me to decide.

## **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.

Mr and Mrs P have set out their account in considerable detail. I trust they won't take it as a discourtesy that I've condensed their complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint.

I don't doubt that this is very important for Mr and Mrs P but although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome. This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and I don't act under either's instructions or take directions on how a complaint will be looked at or what questions should be asked or answered.

Mr and Mrs P approached MortgageKey for a debt consolidation loan. Just because it didn't turn them away doesn't mean it was acting irresponsibly. If Mr and Mrs P thought Mr P's spending was out of control, and this loan wasn't a good idea for them, then they didn't have to take it out.

MortgageKey based its advice on the information Mr and Mrs P gave it. There was nothing to suggest that the loan repayments would be unaffordable, that Mr P had a gambling problem, or that his spending was out of control. Mr and Mrs P say the number of payday loans he'd taken should have been a red flag, but the lender queried those as part of its underwriting criteria and the response Mr P gave by email was:

*“With regards to the payday loans. I took these out to finish elements of the construction work, (extension to house) with the intention of paying it off straight away. After consideration this is not a sustainable way of doing it and I wish to spread my payments into monthly affordable amounts, leaving me and [Mrs P] more money at the end of each month after paying out all bills etc.”*

I understand the lender then checked and could see that planning consent had been granted the previous year for an extension to Mr and Mrs P’s property, so that explanation seemed plausible.

An income and expenditure form was filled in for this application and one of the questions on that was how much Mr and Mrs P spent on gambling each month, and the answer given was £11. Whilst Mr P has said if MortgageKey had asked for copies of his bank statements then it would have shown the true picture it had no regulatory responsibility to do so. In given advice it has the right to trust its customers are telling it the truth, it doesn’t have to independently verify that information. If the lender wants to verify the information then it will request the information to do so, but a mortgage broker itself doesn’t have to verify what it is told.

Here the lender asked for payslips, P60s and copies of credit card statements for the credit cards that were being consolidated. So that is all MortgageKey needed to ask for.

As there was an issue with Mrs P’s pay, the lender asked for a copy of Mrs P’s bank statement just to show the income credit going in. It has said it didn’t need to see the full statement, just that item. Mr and Mrs P have said as MortgageKey then only asked them to provide a ‘filtered statement’ to show the credit, it was acting negligently as it was a way of the lender turning a blind eye to any potential issues.

Whilst I understand the point Mr and Mrs P are making, I can’t hold MortgageKey liable for the fact the lender was only interested in seeing the income credit, not a full statement. Whilst the lender didn’t use the phrase ‘filtered statement’ it has said all it needed to see was the income credit so I see nothing sinister in MortgageKey describing what the lender needed in that way. In any event, it seems Mr and Mrs P are saying that it was Mr P that had issues with his spending and gambling, and from the bank statements we’ve been provided I can see those transactions were from his own account. The partial bank statement that was provided for Mrs P to evidence her salary credit is for a different account which she held in her sole name, and that shows no gambling transactions. So it seems that even if the full month’s bank statement had been provided that it wouldn’t have raised any concerns, unless Mr and Mrs P are saying Mrs P was also gambling excessively just not in the few days the bank statement covers.

MortgageKey trusted the information that Mr and Mrs P gave was truthful, and it was allowed to do that. I can’t hold MortgageKey liable for the fact Mr and Mrs P withheld important information, or that Mr P wasn’t truthful about what he used the payday loans for. MortgageKey gave its advice based on the information that had been disclosed to it, and it didn’t have to verify that information was true.

Mr and Mrs P have said that their monthly payments were increased when the loan was underwritten, and MortgageKey didn’t tell them it would be cheaper to take out the additional borrowing with their main mortgage lender. They’ve also said they incurred an early repayment charge (ERC) when they repaid the loan early. To answer those points:

- MortgageKey had no control over the interest rate that the lender was willing to agree to lend at. It issued the illustration in good faith based on the information available, but at

underwriting stage the lender decided the rate should be increased. All MortgageKey could do was pass on that information, and check Mr and Mrs P were happy to still proceed. It did that.

- The lender Mr and Mrs P had their main mortgage with didn't offer further advances for debt consolidation at that time, which is why MortgageKey couldn't recommend that option.
- The details of the ERC would have been set out in the illustration, and then the mortgage offer. The mortgage offer was the legal contract that Mr and Mrs P entered into and MortgageKey had no control over that. If Mr and Mrs P feel the ERC they were charged doesn't match that as set out in the mortgage contract, then that's a matter they'll need to take up with the lender directly as it issued the offer and it charged the ERC.

Based on the information Mr and Mrs P gave to MortgageKey the advice to take this secured loan wasn't unsuitable and therefore I simply can't uphold Mr and Mrs P's complaint, however much they 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 and Mrs P to accept or reject my decision before 26 July 2021.

Julia Meadows

**Ombudsman**