DRN-2822580

## The complaint

This complaint is about a mortgage that Mrs and Mr J took out in 2007 on the advice and recommendation of a broker who represented London and Country Mortgages Ltd ("L&C"). Mrs J and Mr J, who have third-party representation, are unhappy with several aspects of the mortgage, but chiefly that L&C recommended they take the mortgage on an interest-only basis.

## What happened

The details of this complaint are well known to both parties so I won't repeat them again in detail here. Instead I'll give a brief summary (in my own words and rounding the figures involved) and then focus on giving the reasons for my decision.

Mrs J and Mr J took the mortgage in 2007; it was for a little under £119,000, on interest-only, and repayable after 25 years. The point-of-sale documentation recorded Mrs J and Mr J's intended repayment strategy as the sale of their home.

The complaint is that the interest-only mortgage had been mis-sold. We initially thought the complaint might be time-barred under our rules. L&C later consented to us considering the case. When we did so, our investigator didn't think L&C had done anything wrong. Mrs J and Mr J have asked for the complaint to be reviewed by an ombudsman.

## What I've decided – and why

If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

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. 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, or when we have enough information on file to decide it

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

If the available evidence is incomplete (not unusual in a case such as this where the sale happened so long ago) and/or contradictory, we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

It's for us to assess the reliability of evidence and decided how much weight should be attached to it. In this case, slightly unusually in a case where the consumers have third-party representation, we have testimony direct from Mrs J and Mr J (in the form of Mrs J's emails of 14 February and 24 March 2021) as well as from their representative. Having considered both very carefully, I find Mrs J's comments to be of more value than those of the representative. They have the advantage of being personal and unrehearsed, hence they come across to me as more authentic.

The complaint presented by Mrs J and Mr J's representative relies heavily on the Mortgage and Home Finance Conduct of Business rules (MCOB). Those rules have been in force since 2004, and so are relevant to this sale, which took place in 2007. But each time the representative quoted from MCOB to allege a breach of the rules by L&C, it quoted the rules as they apply now, not as they applied in 2007. But the rules as they are today aren't the correct test to use when deciding this complaint.

In this decision I have to look at the sale of the mortgage (in terms of regulatory requirements and what was regarded as good industry practice *at the relevant time)* and considered generally whether L&C did anything wrong when the mortgage was taken out. In doing that, I can give no regard to the regulatory standards as they are *today*, or to any hindsight that the intervening years might have brought.

The starting point in a complaint of this type is the point-of-sale documentation from 2007. The value of such documents is that they're contemporaneous; so they should reflect what was said and agreed at the relevant time. They're not fool-proof, of course; it's always possible information might be recorded incorrectly; but it's typically more reliable than people's individual recollections at a distance of time which, although given in good faith, can sometimes be inaccurate or contradictory.

So unless there's a compelling reason to believe the information is inaccurate, we'll generally attach some weight to it. Even if anomalies or mistakes are identified, that doesn't automatically mean a mis-sale has taken place. We still have to consider whether they might or might not have affected the suitability of the advice that was given.

But as I said earlier, Mrs J's personal testimony from earlier this year carries a lot of weight too; and having considered what she told us very carefully, it's difficult for me come to any other conclusion that the mortgage L&C arranged in 2007 was suitable, given Mrs J and Mr J's circumstances at the time. I'll explain why.

Whilst L&C's point-of-sale documentation doesn't fully make this as clear as it might, it's apparent from what Mrs J has told us that she and Mr J were under considerable financial pressure at the time. The mortgage they already had in 2007 had begun as capital repayment, but they'd been forced to switch it to interest-only to make it more affordable. They had other debts they were struggling to pay, and in the case of one of those debts, the creditor had obtained a charging order over their property. So, by the time Mrs J and Mr J sought advice from L&C, I'm satisfied they were in difficulties financially, and very much in need of a solution.

Advising people to re-mortgage to consolidate existing debt isn't inherently unsuitable, whether that be now or in 2007. It all depends on the grounds given for the argument that the advice was unsuitable, and the individual's circumstances and objectives *at the time the advice was given.* As I've said, hindsight can't be a factor here.

The main argument against consolidating unsecured debts into a mortgage are that the debts become secured, and are repaid over a longer period. So, even if the mortgage is on a lower rate, it's likely the overall interest cost will be higher in the long term. The main argument in favour of consolidation is that it frees up cashflow in the consumers' monthly budget.

The balancing factor tends to be the extent to which there is a need for improved cashflow. In this particular case, there was the added pressure of the charging order one of Mrs J and

Mr J's creditors had obtained. I'm satisfied that L&C's advisor drew Mrs J and Mr J's attention to the downsides of consolidation, which I detailed a moment ago, allowing them to make an informed decision that the benefits generally outweighed the disadvantages.

L&C's advice was a re-mortgage to repay the existing mortgage and consolidate all the other debts including the one that was the subject of the charging order. The initial recommendation was for the re-mortgage element (a little over £92,000) to be on capital repayment, and the consolidation element (£28,000) to be in interest-only.

However, this provided impossible after the property valuation came back less than anticipated, changing the terms on which the lender was willing to lend. The lower valuation meant Mrs J and Mr J faced a choice between borrowing less, or borrowing the same amount but at a higher interest rate. L&C's contemporaneous notes show that Mrs J and Mr J opted for the latter, but asked that all of the mortgage be interest-only, for affordability reasons.

The rate in question was 6.99%, fixed for three years. That might seem high in today's terms, but this sale pre-dates the financial crisis that caused rates generally to fall substantially only a year or so later.

Mrs J has told us that it was never her and Mr J's intention to remain on interest-only for long. However, when they approached the lender a few years later to ask about switching back to capital repayment, the figure they were quoted for the monthly repayment was unaffordable, based on Mr J's earnings.

That's not something I can consider as part of this complaint, insofar as it happened several years later, and involved the lender rather than L&C. But I think it serves to illustrate that affordability was always centre stage for Mrs J and Mr J and at the heart of the recommendation L&C made in 2007. I also think it goes a long way to explaining why a 25-year term (which ran beyond Mr J's anticipated retirement date) was recommended and accepted. Again, recommending a mortgage that ran beyond retirement wasn't unusual or frowned upon in 2007.

Lastly, on the subject of affordability, it's been suggested this was a self-certification mortgage; that is, one where the applicants aren't required to prove their income. Quite the contrary is the case; it's evident from the point-of-sale documentation and contemporaneous contact notes that L&C obtained proof of Mrs J and Mr J's incomes at the time.

Taking all of the above together, given the information captured about Mrs J and Mr J's situation in the point-of-sale documentation, combined with Mrs J's own description of the pressures they faced at the time, the overall conclusion I've come to is that the recommendation L&C made – to take the entire mortgage on interest-only over 25 years - wasn't just suitable; it was probably the only option for them at that moment.

## My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 14 June 2021.

Jeff Parrington

**Ombudsman**