DRN-3064799

Financial Ombudsman Service

The complaint

Mr and Mrs F complain that D A Calder Limited (DAC) mis sold them an interest only mortgage in 2007.

What happened

In 2007 Mr and Mrs F had a mortgage with a company I shall call 'L'. The product they had was coming to an end and at the same time Mr and Mrs F wanted to carry out some home improvements at a cost of around about £31,000. They approached DAC for advice and were told that as they also had some unsecured debt, they should consolidate that debt into a re-mortgage which would also provide funds for the home improvements.

DAC advised Mr and Mrs F to take a re-mortgage over 14 years, on a part repayment and part interest only basis, the first two years of which were at a fixed rate of interest.

Mr and Mrs F went ahead with the re-mortgage but in 2019 complained to DAC that they had been unaware of the true cost, and said that had they been given information about the true cost at the time they were advised, they wouldn't have gone ahead since it was more costly for them. They have since repaid that mortgage.

DAC didn't comment on the substance of the complaint, as they thought it had been brought out of time. Our investigator thought the complaint had been referred in time, but DAC disagreed, so this matter was reviewed by an ombudsman who decided the complaint was brought in time and that we could consider it.

Our investigator looked into the merits of the complaint further and thought DAC ought not to have recommended Mr and Mrs F add their unsecured debt to the mortgage because it wasn't in their best interests at that time. She thought that to resolve the complaint, DAC should;

- calculate the amount Mr and Mrs F paid, in interest and capital repayments, to the part of their mortgage balance for the debt consolidation, to the date they repaid their mortgage;
- calculate the amount it would have cost Mr and Mrs F to pay the debts back had they not been consolidated; and
- deduct the second figure from the first figure to arrive a t a figure which they should pay to Mr and Mrs F.

DAC didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision.

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.

My summary of what happened is brief and I know the parties went into a lot more detail. I'm going to focus on what I think are the key issues. Our rules allow me to do this and it reflects the nature of our service as an informal alternative to the courts. So, if there's something I've not mentioned, it isn't because I've ignored it, it's because I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

It is important to first set out the known and accepted facts. At the time Mr and Mrs F were advised by DAC in January 2007;

- Their mortgage with L was £149,459.
- They had an endowment policy tied to their mortgage with L of £100,000.
- They wanted to carry out home improvements.
- DAC recommended a re-mortgage for £220,000 over 14 years on a part repayment and part interest only basis with a fixed rate of 5.49% until 1 February 2009, reverting to the standard variable rate (SVR).
- Mr F was aged 51 in secure employment earning marginally less than £30,000 per annum.
- Mrs F was aged 47 and had been employed for two years at just short of £22,500 per annum with regular overtime of a further £1,453 per annum.
- Mr and Mrs F's joint income was £52,309 per annum gross.
- The mortgage application form records a monthly net income of £3,801 with a mortgage commitment to L of £1,000 per month.
- Mr F had unsecured debts of £14,000 (a credit card and personal loan) which the application form records would end in June 2010.
- Mrs F had unsecured debts of £25,000 which the application form records would end in August 2013.

Given the passage of time since this mortgage was advised, understandably DAC no longer have any sales documentation relating to this mortgage. The documentary evidence available to me now is therefore limited, but I have looked at the original mortgage offer dated 29 January 2007 and Mr and Mrs F's application form. There is no written record of the advice given to Mr and Mrs F by DAC, and in the absence of such DAC's representative has suggested that recollections of what was said ought not to be considered.

I've taken account of both sides' views when considering whether DAC acted fairly and reasonably. I've looked at the issues raised and considered all the available evidence. DAC has said that if there is no documentary evidence of discussions, then we cannot accept what Mr and Mrs F have said as evidence. But that is not correct. Where evidence is not complete, I'm required to decide what is more likely to have happened in the light of the evidence which is available. Whilst documentary evidence in the form of a contemporaneous note or a recording is often to be preferred over a party's unsupported statement about what happened, it does not mean that such a statement ought to be disregarded. Ultimately it is a question of the evidential weight to be given to such a statement and in turn that encompasses a consideration of other factors such any other documentation or information available as to the surrounding facts and the passage of time.

Mr and Mrs F have told this service that at the time they approached DAC they weren't struggling financially. I have seen a schedule of income and outgoings for the relevant time which corroborates that. Their net monthly income was £3,801 with a monthly household expenditure of around £1,600. They were paying £618 per month to cover the unsecured debt which left a monthly surplus of just over £600 per month.

Mr and Mrs F are clear in stating that it was DAC who advised them to consolidate their unsecured debt, rather than them asking for it to be so, and given they weren't under any financial strain at that point, I think that is probably more likely to be right than wrong.

The re-mortgage advised by DAC was for £220,000 which translated to an additional £70,000 of borrowing over their original mortgage debt, to be used for the home improvements and paying down the unsecured debt. Mrs F repaid her unsecured debt in February 2007 and I have seen evidence of that. Mr F repaid his credit card at the same time and again I have seen evidence of that. Whilst there is no documentary evidence to support the repayment of the smaller personal loan Mr F had, I am satisfied that it is more likely than not that this was also repaid at the same time, since that was the purpose of obtaining the additional finance and the other two unsecured debts were also paid off.

It is Mr and Mrs F's complaint that DAC did not advise them of the higher costs they would face by securing their unsecured debt over a longer term by way of re-mortgage. This necessitates looking at what Mr and Mrs F would most likely have been paying if they had not consolidated their debt as against what it did in fact cost them. Had they not borrowed additional money to consolidate their debt they would most likely have borrowed £186,000, not £220,000. That would have meant a new mortgage commitment of about £1,200 per month plus the £618 per month towards the unsecured debt, although that was only likely to last for around another 6 years. This means it would have cost them an additional £200 per month which they could have afforded as they had a surplus of around £600 per month.

By consolidating the debt on their mortgage, they increased the term of that debt to 14 years which means the interest they would have had to pay would have been greater than simply paying off the unsecured debt as they had been over the shorter period.

I've looked at the Mortgage Conduct of Business rules (MCOB 4.7.6) and they set out that when an adviser is dealing with a customer on an 'advised sale' basis, as was the case here, where a *firm* makes a *personal recommendation* to a *customer* to enter into a *regulated mortgage contract* where a main purpose is to consolidate existing debts, it must also take account of the following, where relevant, in assessing whether the *regulated mortgage contract* is suitable for the *customer*:

1. the costs associated with increasing the period over which a debt is to be repaid;
2. whether it is appropriate for the *customer* to secure a previously unsecured loan; and
3. where the *customer* is known to have payment difficulties, whether it would be more appropriate for the *customer* to negotiate an arrangement with his creditors than to take out a *regulated mortgage contract*.

There is no evidence to show that DAC told Mr and Mrs F about the costs they would incur by increasing the period of time over which to repay the debt. There is also no evidence of any advice given as to whether it was appropriate to secure their unsecured debt. I find that if Mr and Mrs F had been given that information they would most likely have seen that increasing the period of time over which to repay their debt, even though initially it would have costs them less per month, was likely to be significantly more when considering the increased period of time over which it had to be repaid. And as Mr and Mrs F could afford to carry on paying the unsecured debt at the time, I think they would have opted to just do that.

Putting things right

So, I agree with our investigator that DAC should put things right for Mr and Mrs F and try to put them back in the position they were. Whilst that can never be achieved exactly, I think the investigators suggestion is sensible and I shall adopt it.

My final decision

D A Calder Limited pay compensation to Mr and Mrs F, such compensation to be calculated as follows;

1. calculate the amount Mr and Mrs F paid, in interest and capital repayments, to the part of their mortgage balance concerning the debt consolidation, up to the date they repaid their mortgage (figure 1);
2. calculate the amount it would have cost Mr and Mrs F to pay the debts back had they not been consolidated (figure 2)
3. deduct figure 2 from figure 1 to arrive at figure 3
4. Interest should be added onto figure 3 at the rate of 8% simple per year from the date the mortgage was repaid to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 28 December 2021.

Jonathan Willis
Ombudsman