DRN-4308138

The complaint

The estate of the late Mr S complains about a second charge mortgage (secured loan) Mr S took out on the recommendation of Premier Mortgages (North West) Limited trading as Mortgageable. The estate complains that the loan was mis-sold to Mr S and wasn't suitable for his needs at the time.

What happened

In 2021 Mr S took out a second charge mortgage over his property after receiving advice from Mortgageable. The loan completed in August 2021 and was used to consolidate unsecured debts, as well as replace an existing secured loan. Mortgageable originally advised Mr S to take out a loan with a lender I'll call W. But when W was unwilling to offer Mr S a loan, Mortgageable placed it with another lender I'll call E instead.

In 2022, Mr S complained to us about the sale of the loan. He said that he had experienced significant mental health issues and was unwell at the time of the sale. He said that the loan wasn't suitable for him as it was at a high interest rate – this loan replaced an existing secured loan at a lower interest rate as well as consolidating unsecured debt.

Mr S said the loan was unaffordable, and he said that Mortgageable had changed the loan and lender partway through the process without telling him or giving him further advice. Mr S said he should have been advised of other options – such as reaching an arrangement with his creditors – rather than taking out this loan which put his home at risk.

At the time he brought the complaint, Mr S was unwell. Sadly he has since passed away. After obtaining letters of administration, the complaint is now being progressed by the executors of his estate.

Mr S, and then his estate, also complained about E. Our investigator concluded that E had lent irresponsibly. He said that E should remove all interest and charges from the loan, treating all payments as being towards the capital, and allow a one year grace period for Mr S's executors to resolve the estate's finances before requiring payment of the debt. E accepted that outcome.

Separately, our investigator also looked into this complaint against Mortgageable. He concluded that Mortgageable had mis-sold the loan because it hadn't handled Mr S's application properly and the loan wasn't suitable for him or appropriate for his circumstances. He noted that Mr S borrowed around £97,000 – of which around £40,000 was to consolidate unsecured debt with the remainder being used to pay off an existing secured loan. The investigator said that Mortgageable ought to have considered whether it would have been more appropriate for Mr S to reach an arrangement with his creditors rather than secure the debt over his home. He said that if Mr S had received that advice, he may well have ended up reaching an arrangement that left him no longer liable for those debts. To reflect that, the investigator said Mortgageable should:

- Pay Mr S's estate 50% of the value of the unsecured debt consolidated (but not interest, as that had been removed by E);

- Refund the £3,995 broker fee which was added to the loan balance (again, without interest removed by E);

- Pay Mr S's estate £500 compensation to reflect the distress the advice caused to Mr S before he passed away.

Mortgageable did not accept that. It said it had given appropriate advice to Mr S. He needed to reduce his outgoings and wanted to consolidate his debts to do so, and the loan achieved that. There was nothing to suggest that the loan was unaffordable or that there was any other reason it shouldn't have been arranged. It didn't think Mr S would have taken alternative action such as declaring himself bankrupt because of the implications of doing so. It said the loan met Mr S's needs and circumstances at the time – though it accepted it hadn't given formal advice about the loan with E because of an oversight due to the individual Mr S dealt with leaving the firm. As a gesture of goodwill to resolve the complaint it offered to refund the £3,995 broker fee and pay Mr S's estate £5,000. But it didn't agree it should do anything further than that.

As no agreement could be reached, the case comes to me for a final decision to be made.

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.

At the outset, I express my sincere condolences to Mr S's executors – who are also close family members – for their loss.

At the relevant time, sales of second charge mortgages such as this one were covered by the rules of mortgage regulation, known as MCOB, and I've taken those into account, as well as the wider circumstances, in deciding what's fair and reasonable in all the circumstances.

It's already been decided, in a complaint against the lender, that this loan was irresponsibly lent. The lender has agreed to remove all interest, and the fees it charged, from the loan balance so that Mr S's estate only has to repay the capital he borrowed.

That being the case, in this decision I'll focus on the role of Mortgageable. As the firm giving Mr S advice, and arranging this loan for him, it was required to take account of his needs and circumstances and recommend the most suitable loan for him – or, if no suitable loan was available, advise him not to proceed. Among other factors, therefore, Mortgageable should have considered whether the loan was appropriate for him based on his credit history (MCOB 4.7A.6 R (8)), and – as it involved debt consolidation – should have taken account of the costs of increasing the repayment period, the appropriateness of securing previously unsecured debt, and whether it would have been more appropriate for Mr S to negotiate an arrangement with his creditors rather than take this loan (MCOB 4.7A.15 R). And in advising Mr S, Mortgageable was entitled to rely on information he gave it, unless, on common sense grounds, there was reason to doubt it.

The difficulty in this case is that Mortgageable didn't give Mr S advice on this loan – even though it was required to do so. It advised him to take a loan with W, and proceeded to arrange that loan. But when W refused Mr S's application, Mortgageable told him it would try to source another lender. It managed to do so, and told Mr S that it had sourced a loan with E – albeit on more costly terms than the loan with W. But it didn't revisit its advice to take a loan with W, or give Mr S advice about the different loan with E. Mortgageable accepts it didn't do that, and says it was an oversight because the adviser Mr S was dealing with left the firm around the time of the switch to E. But it maintains the loan with E was suitable.

The advice in respect of the loan with W was for a loan of £88,000 over a 30 year term at an interest rate of 6.19% for the first five years, followed by a variable rate. This gave a monthly payment of around £570. The loan balance was later increased to around £97,000 (including fees) when a more accurate picture of Mr S's unsecured debts became available. And when the application was made to E instead, the interest rate increased to 8.75%. Mr S's previous secured loan, which was being consolidated, was at less than 5%.

There were some difficulties with the application to W. It was initially deemed to be unaffordable. Following a series of discussions between Mortgageable and Mr S, it was agreed that he would cancel his contributions to his employer's savings scheme to boost his income and that Mortgageable would reduce its broker fee to reduce the loan balance. This made the loan just about meet W's affordability criteria.

There were very many calls between Mr S and Mortgageable – I've listened to them all. It's clear Mr S was very keen for the loan to go ahead. And Mortgageable's adviser repeatedly assured him that things were on track and that the loan would complete soon. It's also clear to me that Mortgageable wasn't aware of any mental health issues Mr S may have been experiencing at the time, and I don't think it could reasonably have been aware. So I don't think Mr S's health is a factor in considering whether Mortgageable gave suitable advice.

Mr S didn't make payments on his credit cards in June 2021. This is because he was expecting the loan to complete and pay off the cards, so he didn't think he would need to. But in fact the loan hadn't been agreed by then and when W carried out a credit check in July 2021 the missed payments came to light. This resulted in W refusing Mr S's loan application.

Mortgageable didn't advise Mr S not to make those payments. There's no suggestion of that in any of the calls or emails I've seen. However, I think it did give Mr S an unrealistic expectation of how quickly the loan would complete, which may have led him to believe it wouldn't matter if he didn't make them.

As a result, the loan with W was no longer available. Mortgageable's adviser told Mr S she'd try and source a new lender. She managed to do so and called Mr S a few days later to advise him of the new loan, with E. The balance was the same. But the interest rate was significantly higher – 8.75% - which meant the monthly payments were now over £800. However, affordability wasn't an issue as E would take into account income Mr S received from taking in a lodger as well as his salary – which W hadn't agreed to do.

The phone call in which the adviser gave Mr S details of the loan with E lasted just over three minutes. She told Mr S the name of the lender, the loan balance, interest rate and term, and monthly payments. But no advice was given. Mr S agreed to go ahead, as he felt he had no option.

Mortgageable proceeded to arrange this loan. But at no stage did it actually give Mr S any formal advice. There's no advice or suitability letter for the loan with E (unlike the earlier loan with W that didn't go ahead). I've not seen anything that explains why the adviser considered this to be a suitable loan for Mr S, let alone anything in which that was communicated to him.

Mortgageable says that this was an oversight, because the adviser Mr S had been working with left the firm around this time. And that may have been the case – Mr S was told she had left on one of the phone calls. But she wasn't the only staff member Mr S was dealing with; he also spoke regularly to the adviser's manager, who continued to be involved after she left and who also didn't ensure that the loan was suitable or that Mr S had been advised of that.

Oversight or not, the mortgage rules require advice to be given – and that means advice on the specific loan being arranged. The previous advice given about the loan application to W is not enough; Mortgageable should have considered whether the loan with E was suitable for Mr S's needs and circumstances, and should have ensured he was advised accordingly. But it didn't do that.

However, it's not my role to deal with technical failings – in deciding individual complaints, I'm required to consider whether the complainant has suffered any detriment as part of considering what's fair and reasonable in all the circumstances. So I've gone on to think about whether the loan Mortgageable arranged was in fact suitable for Mr S – regardless of whether or not he received advice to that effect.

I'm not persuaded it was suitable, for reasons I'll explain.

The sole purpose of this loan was for debt consolidation. One of the debts being consolidated was an existing secured loan, at a much lower interest rate, which had around 20 years left to run. Consolidating that into a new loan over thirty years at a higher interest rate made it much more expensive overall.

Mr S told Mortgageable that the existing secured loan – and a previous one he'd taken out before that – were for home improvements. But it doesn't seem to me that this was in fact the case. Mortgageable has given us a copy of his credit file, and I can see that two personal loans and three credit cards all ended at the same time the existing secured loan was taken out. And three more credit card accounts ended at the same time as the first secured loan was taken out. So – notwithstanding what Mr S told Mortgageable – it seems that both his previous secured loans were, substantially if not entirely, for debt consolidation.

Mortgageable was entitled to rely on what Mr S told it – unless there were common sense grounds for doubting what he had said. Information in its possession – his credit record – suggested there were grounds for doubting it. It's likely this was the third time in four years Mr S had taken a secured loan to consolidate debt, increasing the balance substantially each time. But although it had that information, Mortgageable didn't follow up on it with Mr S to clarify his reasons for the previous loans.

That's a very relevant consideration in thinking about whether this loan was suitable for Mr S. In certain circumstances, further borrowing for debt consolidation might be the right thing to do. Although it can make the debt more expensive overall, it can also result in reduced monthly outgoings, enabling the borrower to get their finances back on track and draw a line under their debt. But there are downsides too – it is often more expensive over the long term, and there are extra risks associated with securing previously unsecured debt.

If this was the first time Mr S had taken out secured lending to consolidate unsecured debt, it's more plausible that his intention was to reduce his outgoings, get things back on track and resolve his overall indebtedness. But it's likely this was the third time within a few years not the first – suggesting that instead there was a pattern of running up debt, consolidating it, and running up further debt. And it's noteworthy that much of the debt consolidated on this loan was credit cards. Those cards might well still be available to Mr S even if he cleared the balances on completion.

In those circumstances, I think it's strongly arguable this loan wasn't suitable. It would allow Mr S to increase his secured debt to almost £100,000 (in addition to his main mortgage). And it's likely the previous pattern of going on to take out further unsecured debt in a way he couldn't sustain into the long term would be repeated (had he not passed away). It risked making Mr S's position worse.

As I say, I've listened to all the calls between Mr S and Mortgageable, as well as reviewing the written advice. None of this was discussed or considered.

Taking the calls as a whole, I think it's clear that the adviser's primary focus was on selling Mr S the loan, rather than thinking about what was suitable for him and advising accordingly.

As one example of that, in her advice, the adviser recommended a five year fixed interest rate because "*you may be able to include this loan when your mortgage is up for remortgaging*" – in other words, that in five years time Mr S may be able to consolidate this loan into his main mortgage.

I think this was an optimistic view, given Mr S's wider finances and given that further borrowing on his main mortgage was discounted as an option at this time.

In a later call, Mr S – having received the loan paperwork about the initial loan with W – was concerned about the total amount he was borrowing, the length of the term and the overall amount that would need to be repaid. In this call, the adviser went further than in her written advice – she told Mr S not to worry about the overall cost of this loan because "*that's if you keep the loan for the full term, but we're not going to be doing that*". In effect, the adviser promised that Mr S would be able to consolidate this loan into his main mortgage in five years' time, so he didn't need to worry about taking a thirty year term or the overall cost he would have to repay. This reassured Mr S, and he agreed to proceed.

I don't think this was fair and reasonable. The adviser could not have been sure that would happen – there was a substantial risk that it wouldn't – and this conversation gave Mr S a wholly unrealistic view of his position and the long term liability he was taking on.

Or again, when the loan application to W initially appeared unaffordable, the adviser didn't reassess her advice or discuss with Mr S whether taking out this loan was really a good idea. Rather, she agreed with him that he would stop contributions to an employment saving scheme and to reduce the broker fee – this would increase Mr S's income and reduce the loan amount to bring it within W's criteria. I would have expected the adviser to consider whether a loan that was so clearly on the margins of what was acceptable was really appropriate, and discuss that with Mr S. But that didn't happen.

Similarly, when W rejected the application, the adviser moved on to an application with E without a proper discussion of the difference between the two loans and without reassessing her advice – even though the two were substantially different in cost. In my view, Mr S was swept along without being given proper advice, or the chance to reflect on it, about the very different loan he was now taking. And at the same time, having previously agreed to discount the broker fee to meet W's criteria, the adviser put it back up again as part of the application to E – but merely mentioned the fee in passing to Mr S, rather than stopping to explain that the fee she would be charging to arrange the loan with E was around double the final agreed fee for the application to W.

When the adviser left Mortgageable, Mr S's application was taken over by another staff member who told Mr S at one point that he was the adviser's manager. But again Mortgageable did not pause to note that Mr S had not received fresh advice or to review whether the loan with E was suitable for him.

One of the considerations in the mortgage rules, when advising on debt consolidation, requires Mortgageable to consider whether borrowing to consolidate debt is appropriate, including securing previously unsecured debt, or whether it would be more appropriate for Mr S to reach an arrangement with his creditors.

In its advice to Mr S, Mortgageable did not consider this. The only other options it considered were consolidating the debt to his main mortgage, or to an unsecured loan – both were ruled out. The adviser did not take into account whether it would be more appropriate for Mr S to come to some form of arrangement with his creditors. Mortgageable says it's not able to give debt advice – but it's not required to do so. It is required to consider whether taking out a loan, rather than taking other steps to deal with debt, was suitable for Mr S.

Given all the circumstances – that this was likely to have been Mr S's third secured loan to consolidate debt, with the total increasing each time; that Mr S had run up further debts, including substantial 0% credit card balances after each previous consolidation; that the loan with W was only marginally affordable; that the loan with E was significantly more expensive than Mr S's existing secured borrowing – I think Mortgageable should have given more thought to this. I'm not persuaded that further debt consolidation was the most appropriate option for Mr S. It increased his indebtedness, increased the overall cost, secured more debt to his property and risked allowing a cycle of consolidation and further borrowing to continue.

In all the circumstances, I don't think this loan was suitable for Mr S, and I'm not persuaded that Mortgageable acted fairly in arranging it for him.

Putting things right

That being the case, I think the advice Mortgageable should have given was that there was no loan which was suitable for Mr S, and that he should instead have considered taking debt advice from an independent debt adviser.

The lender has already agreed to remove all interest, and all fees charged by the lender, so that Mr S's estate will only be required to repay the capital he borrowed. That goes a long way to putting matters right. In addition, Mortgageable should refund the broker fee which was added to the loan balance.

Our investigator also recommended that Mortgageable refund half the unsecured debt which was consolidated to the loan. Mortgageable did not agree with that, as it said that Mr S benefitted from the borrowing which cleared his unsecured debts and so his estate should repay that capital. But it did offer to contribute £5,000 towards that.

This is not straightforward. In putting matters right, the starting point is that I look to put a complainant back in the position they would have been in had nothing gone wrong.

But it's not easy to determine what Mr S would have done instead. He has passed away, and it seems was unwell before he did so.

Had he taken independent debt advice about his unsecured debt, on the basis that once the 0% credit card offers ended he couldn't sustain the debt, it's likely that advice would have involved one of three options. Those are bankruptcy, an individual voluntary arrangement (IVA), or an informal arrangement with his creditors. As his debts exceeded £30,000 a debt relief order would not have been possible.

If Mr S had gone bankrupt, he would no longer have been liable for his unsecured debts. If he had entered an IVA, they may have been substantially reduced as part of the arrangement. And if he had reached an informal agreement, again it's possible some or all of the unsecured debts might have been written off in light of his health situation.

So it's possible Mr S's unsecured debt might have been reduced, or that his liability might have come to an end altogether. But it's also possible that it might not. It's not clear which option, if any, he would have taken or what the outcome of that would have been. It seems clear that if he was unable to consolidate the debt through this loan his debts would have become unsustainable, so – if he was able to do so notwithstanding his health – he may well have sought and taken advice of some kind.

All of that is to say that it's not possible to say for sure what position Mr S would have been in had Mortgageable advised him that there was no suitable secured loan available to him. But it's likely he would have had to take action of some kind, and that any of the options open to him had at least the possibility of some or all of his unsecured debt either being written off or rescheduled in a more sustainable way – and that he would have needed to take that action around the same time as receiving that advice from Mortgageable, so before he passed away around a year later.

In all the circumstances, and recognising that it's not an ideal solution, I agree that requiring Mortgageable to refund 50% of the consolidated unsecured debt is a fair way forward. That resolution takes into account that Mr S's estate would be in a better position had Mr S received appropriate advice and sought to resolve his debts in a different way – but that short of declaring himself bankrupt (which he might or might not have been willing to do) it's likely they would still exist at least in part.

Finally, I agree that Mortgageable's advice caused Mr S distress and inconvenience which led him to start this complaint before he passed away. Mortgageable should pay his estate £500 compensation in recognition of the distress caused while he was alive.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Premier Mortgages (North West) Limited to:

- Refund to Mr S's estate the broker fee charged to arrange this loan:
- Pay Mr S's estate 50% of the value of the unsecured debt consolidated to the loan with E;
- Pay Mr S's estate £500 compensation for the distress caused to Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 28 September 2023.

Simon Pugh
Ombudsman