DRN-5091011

The complaint

Mr W has complained that Aro Finance Limited mis-sold him a second charge mortgage in 2021. Mr W has said that the mortgage was unaffordable, has made his situation worse, and he considers Aro took advantage of him when he was desperate for help.

What happened

Mr W contacted Aro in July 2021, as since his divorce in 2019 he had run up a significant amount of debt – around £80,000 in loans, credit cards and overdrafts. Some of this borrowing was taken to pay the divorce settlement and costs, but not all. The amount of debt meant that while he was generally managing to make the monthly payments, he was then struggling to find money to live on. As such, Mr W wanted to consolidate his debts into one monthly amount. He told Aro that he wanted £75,000 to clear all of his debts and wanted to repay it over around seven years.

At that time, based on the information Mr W gave about his cost of living outgoings (based on the figures Aro gave to the lender), existing mortgage, secured loan and unsecured debts, his outgoings were around £450 per month more than the net income he received from his employment. Mr W's net income took account of deductions for his occupational pension scheme contributions and £125 to a sharesave scheme. Mr W confirmed that he expected to retire at 65, which is the normal retirement age for his occupational pension scheme. During the initial conversation, Aro informed Mr W that it had to highlight the option of him seeing if he could take further borrowing with his main mortgage lender. Mr W confirmed that he had looked into that, but it was not an option as he had only re-mortgaged the year before.

Aro established that Mr W was in a cycle of debt. It told him that it would not be able to consolidate all of his debts to a second charge mortgage as he didn't have enough equity in the property to do so. As such, the largest loan would remain outstanding along with a couple of very small debts. It also recommended that Mr W take the mortgage over an extended period, initially suggesting 25 years in line with his retirement plans, to reduce the outgoings as much as possible to allow him to get out of the cycle of debt he was in at that time. Aro also suggested that as Mr W was hoping to be able to re-mortgage when the fixed rate ended on his main mortgage, to consolidate the second charge lending, that a four-year fixed rate should be selected for the second charge mortgage so that they both ended around the same time.

Aro ultimately recommended a loan of just over £53,000 over a term of 30 years and with an interest rate of 11.855%. Of that advance, Mr W "received" £48,100 and the remainder was used to pay the lender's arrangement fee and the broker's fee of £5,000. The mortgage cost approximately £561 per month, which reduced the amount Mr W was paying to his debts by £512.

Of the funds released for Mr W's use, most was paid directly to his creditors or Mr W was issued cheques in their names. However, as some of the outstanding balances were slightly lower than they had been when the mortgage was applied for, Mr W received £1,700 in cash from the arrangement.

When it recommended the mortgage, Aro explained that the amount of the advance was based on the maximum it could source from any of the lenders it dealt with and over the shortest term that was affordable. Aro asked Mr W if he would be able to work until 70 in the event the mortgage remained in place for the full term – Mr W said he thought he probably could. Aro also explained to Mr W that it had recommended a five-year term for the fixed rate, rather than the four-year term discussed, as the application would fail the lender's affordability check with a four-year term, as the lender would have to build in a stress test to ensure the mortgage was affordable in the medium term.

It was explained that the term change on the interest rate product meant that if Mr W was in a position to re-mortgage and consolidate his main and second charge mortgages in four years' time, he would have to pay an early repayment charge on the second charge mortgage. Alternatively, he would have to delay his plans and take out new interest rate products and align their end dates at some point in the future. Aro stressed the amount the new mortgage would save Mr W on his debt repayments, but it didn't put it into context in relation to his income and outgoings. IVAs were briefly mentioned in the conversation and Mr W said that he'd looked into the option and discounted it because of the problems it would likely cause in the future for mortgages and credit.

The mortgage application was accepted and the mortgage was advanced on 30 July 2021.

The mortgage fell into arrears in January 2022 and Mr W has said that he got into further debt after it was advanced.

Mr W complained in February 2024 that the mortgage had been mis-sold.

The mortgaged property was sold in March 2024, because Mr W has told us he could not afford it and his other debts, at which time the mortgage was repaid.

Aro responded to the complaint on 28 March 2024. It set out the discussions that had taken place, the mortgage that had been recommended and why. Aro concluded the mortgage had not been mis-sold and rejected the complaint.

Mr W was not satisfied with Aro's response and referred his complaint to this Service. One of our Investigators considered the complaint and recommended that it be upheld as she concluded the mortgage had been mis-sold. The Investigator highlighted that Aro had conclude that Mr W was in a spiral of debt, but it didn't discuss all the available options with him that might have assisted him in sorting out his finances. Furthermore, the Investigator didn't consider that Aro had completed an adequate affordability check and that, given Mr W's circumstances, the new mortgage, alongside the existing one, remaining unsecured debts and the general cost of living, would be unaffordable. The Investigator recommended that Aro reimburse the amount of the broker fee plus interest at 8% simple from the date the mortgage was repaid to the date of settlement. In addition, she recommended a payment of £300 to compensate Mr W for the distress he'd been caused due to being mis-sold the mortgage.

Mr W accepted the Investigator's opinion, but Aro didn't. It explained why it considered the mortgage had been sustainable in the long term and would have facilitated Mr W's financial situation improving. As such, it did not agree that the mortgage had been mis-sold and asked that the complaint be referred to an Ombudsman for consideration.

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.

It is clear that when Mr W contacted Aro he had decided that the right thing for him to do was to consolidate his unsecured debts, and his existing second charge mortgage, into a single new second charge mortgage. However, a consumer having decided on what they want to do, doesn't negate a broker's duty of care toward them. The broker still has to ensure that any products recommended are suitable for its customer and compliant with the Regulator's rules and guidance.

Aro identified at an early stage of its dealings with Mr W that he was in a spiral of debt and that something needed to be done to stop it continuing. It also identified that if the wrong course of action was recommended to him, it would result in him taking further borrowing and end up in a worse position. Unfortunately, despite having analysed the situation quite effectively, Aro doesn't appear to have focussed on that when it made its recommendation. It seems that despite the difficulties Mr W's situation represented, Aro was determined to find a mortgage for him, rather than telling him that what he wanted to do was not the right thing for him and declining to sell him anything.

As I have noted above, at the point Mr W contacted Aro he was spending more than he had coming in, which had contributed to the £80,000 of debt he had built up since his divorce two years earlier. That was verified by the figures provided for income and expenditure, both on day-to-day living and debt maintenance. It was also confirmed by Mr W explaining that once he had paid the mortgage and debt repayments, he struggled to find the money to live, including feeding his family.

The mortgage Aro recommended to Mr W did reduce his monthly outgoings considerably – by £512 and Mr W was happy about that saving. Aro stressed this amount repeatedly in the conversation in which it recommended the mortgage. What it didn't do, however, was to put that amount in context - that most of the "saving" simply meant that Mr W would no longer be spending more than he had coming in. This would have alerted him to the fact that the mortgage would not provide him with enough money to materially improve his living situation, as Aro said it would. Nor would it allow him to save easily for emergencies and then start to make overpayments to his new debt arrangement in the relatively near future, again as Aro suggested would be possible.

Furthermore, the mortgage recommended ended after Mr W's intended retirement age. While Aro asked if he could work to 70, and Mr W said he probably could, he wasn't asked to get that confirmed. In addition, the type of work Mr W did – manual work in a factory – would make working until almost age 70 questionable.

I also note Aro's comments about recommending a longer-term interest rate product in order to avoid a stress test being done. Aro confirmed that if a stress test was done on the new mortgage it would be determined to be unaffordable. However, Aro should have been aware that a stress test would have to be done on Mr W's main mortgage as the interest rate would be changing in around four years' time. Had Aro factored this into its assessment of Mr W's situation, I am satisfied that it would have concluded that the mortgage it was proposing would not be affordable over the medium term and the affordability of it in the short-term would be a challenge (even if Mr W was told to end his membership of the sharesave scheme, which he was not).

I note that Aro has highlighted that it suggested that Mr W enquire about borrowing the money he needed from his main mortgage lender and that he had said he had looked into an IVA, but that it was not for him. As such, Aro considers it fulfilled its requirement to make Mr W aware that there were other options available to him to try to sort out his debt situation. I am not persuaded that Aro did enough in this regard. In addition, even if it had highlighted all of the possible options available to Mr W to try and sort out his situation and he had rejected them, that would not mean that it was acceptable for Aro to sell Mr W something that was not suitable and would simply exacerbate his debt situation.

Overall, I am not persuaded that the mortgage Aro recommended to Mr W was suitable for his circumstances or that it was affordable. In light of that, I am satisfied that Mr W was caused upset as a result because his spiral of debt didn't end as he was led to believe it would but rather it continued for another three years. While Mr W had to sell his home to resolve the situation, I think it is plausible that this would have happened, even if Aro had told Mr W that a new mortgage was not the right thing for him.

Putting things right

Aro should pay Mr W:

- the amount of the broker fee it received on completion of the mortgage. Interest* should be added at 8% simple from the mortgage redemption date until the date of settlement.
- £300 compensation for the upset Mr W experienced because of the unsuitable advice he received.

*If Aro considers that it's required by HM Revenue & Customs to deduct income tax from any interest due to Mr W, it should tell him how much it's taken off. It should also give Mr W documentation confirming the deduction for use with HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. In full and final settlement of the complaint, I order Aro Finance Limited to pay the sums detailed in 'Putting things right' above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 31 December 2024.

Derry Baxter
Ombudsman