

complaint

Mr and Mrs D complain via a Claims Management Company (CMC) that Cheltenham & Gloucester Plc (C&G) mis-sold them two mortgages.

background

In 2003 Mr and Mrs D met with a Lloyds Bank representative for an “account review”.

Mr and Mrs D say as a result of the meeting they applied for a mortgage of about £26,000 with C&G, which is part of the Lloyds Banking Group. This was to be on a repayment basis over a ten year term and secured against their home. They say they had a mortgage already but it was only for a nominal amount. This was so that their lender would hold the deeds for them.

The mortgage application form included a snapshot of their finances at that time. This recorded that Mr and Mrs D had unsecured borrowing on a credit card of £17,000. They were making monthly payments of £828 per month towards this debt. They indicated on the application form that they intended to repay £4,000 of their credit card debt from the mortgage advance. They also wanted to release some additional equity.

In August 2005 Mr and Mrs D borrowed a further £26,000 from C&G on an interest-only basis over 25 years. At the same time C&G also agreed to alter their existing borrowing from repayment to interest-only.

Mr and Mrs D complained to C&G that, in summary;

- they were sold the mortgage in 2003 on the basis that they would be better off, but this was not the case.
- they were not given any form of debt management advice.
- they had enough disposable income to meet all of their financial commitments before they were sold the loan and so consolidation was not necessary.
- they did not ask for the original loan nor did they know that it would be secured on their property.
- they did not know the borrowing in 2005 was on an interest-only basis or indeed what an interest-only mortgage was; and
- the loan term was extended to run until Mr and Mrs D were both aged over 80.

C&G rejected Mr and Mrs D's complaint saying that;

- Mr and Mrs D applied for the original loan in 2003 to clear existing commitments and increase their disposable income.
- they applied for further borrowing in 2005 to again consolidate further debt.
- both this and the original mortgage were placed onto an interest-only basis with an extended term of 25 years in order to relieve some short term financial pressure.
- both amounts of lending were made on a non-advised basis and there was no requirement to give debt management advice.

The complaint was passed to this service. Our adjudicator thought the complaint shouldn't be upheld for broadly the reasons that C&G outlined. However Mr and Mrs D didn't agree and asked for an ombudsman to make a final decision.

my findings

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

I've taken account of the further points raised by Mr D in his letter forwarded by the CMC on 31 July 2015. I also note the representative's email to this service on 17 September 2015. Mr and Mrs D gave further evidence to suggest C&G's debt consolidation advice was inadequate. They say their disposable income didn't increase by as much as C&G claim. They also say they are considering other complaints against C&G about separate loans and insurance.

These separate issues should be put to C&G as new complaints to allow it to respond. It's not appropriate to deal with them here. I've considered the suggestion that C&G gave poor advice in relation to debt consolidation and improving Mr and Mrs D's disposable income. I'm aware that Mr and Mrs D's representative is seeking further information from them about which debts were settled with the mortgage advance in 2003. But this hasn't changed my mind about this complaint for reasons that I'll explain.

At the time Mr and Mrs D applied for the two mortgages, lenders were free to offer loans on either an "advised" or "non-advised" basis.

Lenders offering a non-advised service would offer a menu of loans from which a borrower selected the one they wanted. A lender wouldn't recommend a particular mortgage. It didn't need to consider suitability, just that the repayments were affordable and that the customers were eligible for it under the terms and conditions.

But, if a lender was recommending a particular mortgage, then the duty upon it was more onerous. It would be required to take account of a much wider range of factors to support the recommendation. A lender that had given advice could then be held responsible for a recommendation that subsequently turned out to be unsuitable.

In this case C&G say they didn't give Mr and Mrs D advice about either mortgage. I accept Mr and Mrs D say that they felt under pressure to have one of the bank's "account reviews". However, based upon what I've seen I don't think C&G gave them advice.

As this wasn't an advised sale, it was for Mr and Mrs D to ensure that they both understood and were happy with the suitability of both mortgages for their needs and circumstances at the time. If they didn't understand, then it was for them to ask questions.

I'm also satisfied that C&G considered whether both loans were affordable. I note from the information recorded at the time that C&G took account of Mr and Mrs D's income both before and after retirement. As part of this consideration of affordability C&G didn't give Mr and Mrs D debt consolidation advice. Nor was it obliged to. If Mrs and Mrs D chose not to use the funds advanced to them to clear their debt then that was their choice. But this doesn't mean C&G did anything wrong.

I'm persuaded that Mr and Mrs D most likely knew that the loans were secured on their property. The agreements they signed are headed "Mortgage Loan Agreement". Also, at the place where they signed the form is the warning "your home is at risk if you do not keep up repayments on a mortgage or other loan secured on it." If Mr and Mrs D weren't sure of what they were signing it was for them to ask or seek advice.

Mr and Mrs D say they didn't understand that their new loan in 2005 and their existing loan had been placed onto an interest-only basis. On balance, I am not persuaded of this. I say this as there are notes recorded on the "loan assessment form" completed by the C&G representative in 2005. It reads, *"I have explained to (Mr D) the consequences of an interest-only mtg (sic) however he intended to repay mtg with inheritance due from his mother in later life and may switch back to repayment once he has cleared his short term borrowing. (Mr/s D) fully understand the financial implications of this mortgage arrangement."*

Although I understand Mr and Mrs D say they didn't get this explanation, I think it's likely to be correct. I say this because it was recorded at the time and is supported by the paperwork that Mr and Mrs D signed. I think it most likely that Mr and Mrs D are mistaken or don't remember the detail of their discussion at the time.

In summary I'm satisfied that the mortgages provided to Mr and Mrs D by C&G were sold appropriately and without advice. Moreover, I think Mr and Mrs D were provided with sufficient information to be able to make their own informed choices.

my final decision

I do not uphold this complaint and make no award against Cheltenham & Gloucester Plc

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 30 October 2015.

James Hargett
ombudsman