complaint

Mr and Mrs L complain that Firstplus Financial Group Plc (Firstplus) mis-sold them a loan that runs past Mr L's retirement age. They say Firstplus didn't explain the impact of this at the time and now they have a debt that they won't be able to afford to repay – which means they might lose their home. They say this was irresponsible of Firstplus.

background

Mr and Mrs L took out a loan secured on their house in late 2006. The loan was for £100,000 and was due to run for 25 years. The monthly payment was about £750. They used the money to re-finance existing debt – the majority of which was already with Firstplus. Mr and Mrs L say Firstplus didn't explain the impact that borrowing after Mr L's planned retirement age would have, nor was it interested in whether they would still be able to afford the loan.

Firstplus says that the loan was sold during a phone call and it would have explained the impact of the loan running into Mr L's retirement at the time.

The adjudicator recommended that this complaint should be upheld. He didn't see any persuasive evidence that Firstplus had properly explained how the loan would operate, nor that it gave Mr and Mrs L the option to take the loan over a length of time that meant it ended when Mr L is due to retire. He thought that if it had, Mr and Mrs L would probably have chosen the shorter term as the repayments weren't much higher. He recommended that Firstplus re-construct the loan as though it had been a 19 year loan – and pay Mr and Mrs L the difference in the amount outstanding, if there was one. Mr and Mrs L agreed to pay an additional £35 a month going forwards – that is, the amount they would have paid all along if they had had a 19 year loan. Our adjudicator also thought Firstplus should pay Mr and Mrs L £300 for the trouble and upset it had caused.

Firstplus initially agreed to do this, but then said that it would only reconstruct the loan – or alternately shorten the term – if Mr and Mrs L both paid the difference in instalments (or added them to the debt) for the last 9 years and passed its internal assessment that they could afford payments going forwards. In other words it was prepared to shorten the term – but not accept that it should cover the cost to Mr and Mrs L.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as the adjudicator did, for much the same reasons.

Firstplus says it would have explained the impact of borrowing after retirement to Mr and Mrs L – but it doesn't have a recording of the conversation as it was so long ago. It's also unwilling to share the information it has about how it assessed whether Mr and Mrs L could afford the loan. So I can't see this to decide whether it properly explained what would happen with a loan that ran after retirement, or if it checked that Mr and Mrs L would be able to afford it.

I'm not persuaded that it did explain either of these things properly. I say that because:

- Mr and Mrs L weren't borrowing any extra money when they approached Firstplus. They were re-financing existing debt – and about three quarters of that was already with Firstplus.
- From evidence Mr and Mrs L have sent us I can see that some of the re-finance was for a £30,000 loan from Firstplus that was due to finish in 2018. I can't see any evidence that Firstplus explained that this would cost more over a longer term.
- I don't know the terms and conditions for any of Mr and Mrs L's other debts, although I have seen a list which was part of the loan paperwork. Based on the lenders involved and the balances shown they seem likely to have been relatively short term arrangements which were also being re-financed onto a long term basis.
- They already had a mortgage on their property for just under £40,000. That mortgage remained in place after this new loan was made.
- The property in question was worth about £133,000 in 2006 – so Firstplus's new lending meant Mr and Mrs L were probably borrowing more money in total than their house was worth, but using it to secure the debt. Previously they had a mix of secured and unsecured debt, so this new loan significantly worsened their overall position. I haven't seen any evidence about how Firstplus explained the potential impact of this to Mr and Mrs L, but I do accept that it also probably allowed Mr and Mrs L to better control their outgoings each month.
- From what Mr and Mrs L have told us it's unlikely they will be able to afford to pay the loan once Mr L retires.
- The difference in monthly payments between the 25 year loan and a loan for the same amount over 19 years (up to Mr L's anticipated retirement date) was about £35. That's not so much more expensive that Mr and Mrs L wouldn't have thought it worth paying the extra in order to clear the debt 6 years early.

Overall I think Firstplus made errors when it sold Mr and Mrs L the loan. To put that right, it should now put Mr and Mrs L back in the financial position they would have been in if the errors hadn't been made.

I've considered whether that means that, if Firstplus had explained all aspects of the loan clearly Mr and Mrs L wouldn't have taken the loan at all. But I think a fairer conclusion is the one the adjudicator reached, that Mr and Mrs L would have borrowed £100,000 over 19 years. That takes into account the fact that Mr and Mrs L already had this level of debt albeit with several different lenders.

So Firstplus should re-construct the loan account as though Mr and Mrs L had paid the required amount – about £785, rather than £750 – per month from the loan start date to now. It will then have an up to date balance, and if this is less than Mr and Mrs L owe it should refund the difference – or further reduce the balance outstanding if that's what Mr and Mrs L prefer.

I don't think it fair to ask Mr and Mrs L to make up the difference in the back payments. It's an amount of money that would likely be used on day to day expenses rather than saved so I wouldn't expect them to have such a sum available now.

I can see that Mr and Mrs L have had some difficulties in paying over the years but I understand that they are now up to date and their arrears have been cleared. I do think – and Mr and Mrs L have agreed – that it's fair they pay the higher amount (about £785) going forwards.

I also agree that Firstplus should pay Mr and Mrs L £300 compensation for the distress its errors have caused. The amount is in line with other awards we've made in similar circumstances, and combined with re-constructing the account is a fair response.

my final decision

My decision is that I uphold this complaint and order Firstplus Financial Group Plc to re-construct the account and pay the compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs L to accept or reject my decision before 24 August 2015.

Susan Peters
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