

complaint

Mr and Mrs F complained that they'd been mis-sold their mortgage with Rooftop Mortgages Limited.

background

Mr and Mrs F took out a mortgage with Rooftop in early 2006. They were sold the mortgage by a broker from an organisation which I'll call A.

The mortgage offer was dated 18 January 2006. On the first page, it says "[A] recommended, having assessed your needs, that you take out this mortgage. If you have any queries about this service you should contact A. Rooftop Mortgages are not responsible for the advice or information received."

On the fourth page of the mortgage offer, it says "If you wish to discuss any issue you have with the advice you have received, please contact A". It then set out the address of limited company A.

Mr and Mrs F signed to accept the mortgage on 23 January 2006, and the mortgage completed.

In May 2016, Mr and Mrs F wrote to Rooftop. They complained about the way they were sold their mortgage. They explained that A had sold it to them at the beginning of 2006, and set out reasons why they believed it had been mis-sold. They asked Rooftop to investigate.

Rooftop replied that it couldn't comment on the points Mr and Mrs F had raised because Rooftop hadn't been involved in the sales and advice process. Rooftop set out the broker's name and address, but said it didn't appear that A was currently registered with the Financial Conduct Authority – so Mr and Mrs F might not be able to complain.

Mr and Mrs F contacted this service.

The adjudicator appreciated that Mr and Mrs F must be frustrated, but Rooftop wasn't responsible for the sale of the mortgage. He explained that when a mortgage is arranged through a broker, it's the broker's responsibility to explain what's available and recommend the most suitable product. Rooftop's role was limited to ensuring Mr and Mrs F met its lending criteria, and deciding whether or not to lend. It wasn't responsible for the sales process, or the information the broker gave Mr and Mrs F.

The adjudicator noted that A had ceased trading and was no longer authorised, so our service couldn't look into complaints against A. But he suggested Mr and Mrs F might contact the Financial Services Compensation Scheme (FSCS).

Mr and Mrs F weren't satisfied. They believed that Rooftop still had ultimate responsibility to ensure that its intermediaries were fit and proper and maintained the highest standards. They referred to the lender being responsible for irresponsible lending decisions. The adjudicator explained that mortgage brokers have to be authorised by the Financial Conduct Authority (FCA) in their own right. And although it was true that Rooftop, as the lender, was responsible for any irresponsible lending, that wasn't what Mr and Mrs F were complaining about. Irresponsible lending is where a loan shouldn't have been approved – for example when an applicant clearly can't afford a mortgage.

Mr and Mrs F were still unhappy. They complained that the adjudicator had misrepresented their complaint as against a financial adviser when they'd clearly stated they were complaining about Rooftop. They said the adjudicator had ignored the fact that the broker was linked to the lender as they both had their names on the forms. Mr and Mrs F repeated the details of their complaint and said the adjudicator hadn't looked into Rooftop's actions.

my findings

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

It's correct that when a mortgage is sold by a broker, it's the broker who is responsible for that sale. So Mr and Mrs F's complaints about mis-selling can only be made to, and about, the broker. I appreciate this must be really frustrating for Mr and Mrs F when A is no longer registered with the FCA and appears to have gone out of business. But it doesn't mean that Rooftop is liable instead.

Mr and Mrs F believe there's a link between Rooftop and A, because both names are on the mortgage forms – for example the mortgage offer. It's true that both names are on the document. But the difference in roles is set out in that document, as is clear from the sections I've quoted above.

Mr and Mrs F have also argued that it's Rooftop's responsibility to undertake due diligence on the information and actions of their business partners and associates on all applications submitted to them. But due diligence doesn't mean that the very separate roles of a mortgage lender and a mortgage broker are cancelled. Brokers are separately authorised, and as Mr and Mrs F recognised when they complained to Rooftop, it was A which sold them the mortgage. In finding a mortgage and advising them about it, the broker was acting on Mr and Mrs F's behalf as their agent – not as the agent of the lender.

As Rooftop didn't sell Mr and Mrs F their mortgage, I can't look at the detail of Mr and Mrs F's mis-selling complaint about their mortgage. The broker, A, seems to have gone out of business, so I agree with the adjudicator that Mr and Mrs F might wish to contact the FSCS.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 12 December 2016.

Belinda Knight
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