

complaint

Mr and Mrs T complain that First Union Mortgages Limited (First Union) should not have advised them to consolidate unsecured debts onto their mortgage. They say they are now at risk losing their home, due to the unsuitable advice they received.

background

First Union contacted Mr and Mrs T in early 2010 to discuss re-mortgaging. It appears that First Union was given Mr and Mrs T's contact details by one of their credit card providers, after Mr and Mrs T had said they were interested in consolidating their unsecured debts.

First Union did not offer financial advice in 2010. It said its staff would have used a script when discussing re-mortgaging and consolidating unsecured debts. It has not been able to provide a recording of the telephone conversation it had with Mr and Mrs T, but has provided a copy of the script it says was used. The script says:

"We do not give advice or make recommendations. What we do is ask questions which will help us to identify your circumstances and requirements and then try to find the lenders and products that match these as closely as possible."

Mr and Mrs T proceeded with a re-mortgage and consolidated around £47,000 of their previously unsecured debts. At the time of the re-mortgage Mr and Mrs T had around £80,000 of unsecured debt, but it appears First Union was not able to find a lender willing to allow Mr and Mrs T to secure more of their unsecured debts.

In late 2014 Mr and Mrs T complained to First Union and said the advice it had given them to consolidate their unsecured debts was unsuitable. First Union did not uphold Mr and Mrs T's complaint. It said it had not given them advice. It said it had discussed the *"...various options, including a re-mortgage to raise funds to pay off part or all of your existing unsecured debts but the decision is then made entirely by yourselves based on your current circumstances and needs."*

It also said; *"... the payments you were making on your original mortgage and the unsecured debts came to £2,525pm. Whilst no lender was prepared to do a remortgage to enable you to raise £80K for consolidation of existing debts, the (lender's name) remortgage enabled you to raise £47K, which you were both happy with, and although your monthly mortgage payment increased, your overall monthly commitments were drastically reduced."*

Mr and Mrs T were not satisfied with First Union's response and brought their complaint to this service. Our adjudicator recommended that their complaint should be upheld.

She said she did not feel that Mr and Mrs T's circumstances were suitable for a non-advised sale. She said First Union should have offered them advice and directed them to seek debt advice and/or speak to their various credit card companies first, rather than proceeding straight to a re-mortgage. The adjudicator recommended that First Union should pay Mr and Mrs T a total of £3,295.39, plus interest at 8% to compensate them for the costs they had incurred as a result of the re-mortgage.

Neither Mr and Mrs T or First Union accepted the adjudicator's view.

Mr and Mrs T said the proposed redress did not take into account the worry and upset this matter had caused them, or the ongoing stress of struggling to pay their mortgage. They also said Mr T's income in the re-mortgage application was incorrect.

First Union reiterated that it did not give financial advice. It said its staff could therefore not have advised Mr and Mrs T on whether consolidating their unsecured debts was suitable for them.

my provisional findings

I considered all the available evidence and arguments to decide what was fair and reasonable in the circumstances of this complaint. Having done so, I was of the view that I would depart substantially from the conclusions reached by the adjudicator and I issued a provisional decision on 7 July 2015, a copy of which is attached to this final decision.

By way of my provisional decision, I set out why I considered the complaint should not be upheld. I invited the parties to let me have any further information or evidence, if they wished before I finally determined the complaint. I have summarised my provisional findings below.

I explained that I had considerable sympathy for Mr and Mrs T's position. But, in order to uphold their complaint I would need to be satisfied that First Union had acted incorrectly, or treated them unfairly.

First Union did not have a recording of the telephone conversations it had with Mr and Mrs T. Although this was unfortunate, there is no requirement on a business to keep call recordings so I couldn't say that First Union has acted incorrectly by not keeping a recording.

First Union said its staff were required to follow a script when discussing a customer's re-mortgage options. Having carefully considered the matter I could not safely find that its staff would not have used this script when discussing the re-mortgage options available to Mr and Mrs T. I noted that the script clearly set out;
"We cannot give advice or make recommendations."

The script also set out what the member of staff should say if the customer is considering debt consolidation:

"Script answer for Consolidate"

"You have mentioned that you are considering consolidating some loans. We would just like to point out some of the implications for doing that. Firstly have you considered that in securing more debt against your home, it does increase the risk of losing it if you can't keep up the payments on your mortgage? Please also consider that although this may reduce your monthly payments it will probably mean that the total cost, that is the interest you pay, may be greater in total because of the length of time you are paying the balance off over. The consideration is whether the amount you pay each month is most important, or how much you may pay over an extended term. You may want to consider keeping a loan that doesn't have long before it is paid off or keeping smaller loans with low monthly payments as this may be cheaper in the long run."

The records made by First Union, at the time it spoke to Mr and Mrs T about re-mortgaging, show that these points were discussed with them.

In view of this I did not feel I could safely find that First Union failed to make Mr and Mrs T aware of the risks and additional costs involved in consolidating their unsecured debts. I was also mindful that Mr and Mrs T's monthly outgoings were significantly reduced following the re-mortgage and debt consolidation.

I also considered whether First Union should have refused to arrange the re-mortgage for Mr and Mrs T and should instead have told them to get financial advice. In 2010, when Mr and Mrs T took out the re-mortgage and consolidated some of their unsecured debts Mr T had a stable job and the opportunity to earn overtime on top of his basic salary. Mr and Mrs T also had equity in their home. Given their circumstances at the time, and their need to reduce their monthly outgoings I was of the view that re-mortgaging and consolidating some of their debts was a sensible way forward.

Mr and Mrs T were able to significantly reduce their monthly outgoings following the re-mortgage. It appears that they were able to maintain the mortgage payments until Mr T suffered from serious ill health and was unable to continue working. Although I was very sympathetic to Mr and Mrs T's current position, I did not feel I could reasonably find that First Union acted incorrectly when it arranged the re-mortgage and debt consolidation for them in 2010. Nor did I agree that the outcome would have been different if they had been given advice on a suitable way to reduce their outgoings.

I noted there was some disagreement about whether Mr and Mrs T had previously consolidated debts and whether the income stated for Mr T was correct. I accepted that Mr and Mrs T had not previously re-mortgaged to consolidate debts and that First Union was incorrect when it said they had. I also agreed that it appeared the income noted for Mr T did not tally with the pay slips he provided. As First Union explained, even if the income it recorded for Mr T was incorrect, the payslips he provided were forwarded to the lender to verify his actual income.

Having very carefully considered the matter, my provisional decision was that I could not safely find that First Union acted incorrectly when it arranged a re-mortgage and debt consolidation for Mr and Mrs T. There was nothing to suggest that its staff advised Mr and Mrs T to consolidate debt and I was satisfied that the risks involved were explained to them and that they chose to proceed with the re-mortgage.

As this was the case, my provisional view was that I did not uphold this complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr and Mrs T did not accept my provisional decision. They said, in summary, that:

- First Union cold called them as it knew their finances were vulnerable;
- it should not have allowed them to consolidate unsecured debt as they had simply borrowed their way out of a debt problem;
- they had paid over £2,500 in fees to First Union for arranging the re-mortgage;
- they should have been told to contact their creditors, and make a payment arrangement with them;
- First Union has not explained why it had overstated Mr T's income; and,
- they felt I should have upheld the adjudicator's view.

I have considered all the points that Mr and Mrs T have made. I do understand that they feel their complaint should be upheld. But, as I explained in my provisional decision, I can only uphold their complaint if I am satisfied that First Union acted incorrectly, or treated them unfairly. Having very carefully reviewed Mr and Mrs T's complaint I don't agree that First Union has acted incorrectly or treated them unfairly.

From the statement that Mr and Mrs T sent to this service, in response to my provisional decision, it appears that they were referred to First Union by their credit card provider. As this is the case I can't agree that First Union cold called Mr and Mrs T. But even if it had done so, this would not, in itself, be a reason for me to uphold their complaint.

With the benefit of hindsight Mr and Mrs T feel that they should have been told to contact their creditors and agree payment plans with them. However, at the time Mr and Mrs T took out the re-mortgage they had significant equity in their home and Mr T had a stable job with the opportunity to earn overtime. As this was the case I am not persuaded that Mr and Mrs T's creditors would have been willing to enter into payment agreements.

By consolidating some of their unsecured debts onto their mortgage Mr and Mrs T were able to significantly reduce their monthly outgoings. I must also take in to account that it appears they were able to maintain the mortgage payments until Mr T suffered from serious ill health and was unable to work. I can't reasonably say that First Union could have foreseen that Mr T would suffer serious ill health and be unable to maintain the mortgage.

As this is the case I can't agree that First Union acted incorrectly when it arranged their re-mortgage and debt consolidation in 2010. Nor can I agree that the outcome would have been different if they had been given advice on a suitable way to reduce their outgoings.

I have also considered the fees Mr and Mrs T paid for the re-mortgage, including the fee they paid to First Union. I'm satisfied these fees were disclosed to Mr and Mrs T at the time they took out the re-mortgage. And I can't agree that First Union was not entitled to charge a fee for the work involved in arranging the re-mortgage., I therefore can't require First Union to refund the fee it charged.

I have considered the points Mr and Mrs T have made about the income First Union recorded for Mr T. It is not in dispute that the income it recorded was significantly higher than Mr T's basic salary. However, as I set out in my provisional decision, even if the income First Union recorded for Mr T was incorrect; the payslips he provided were forwarded to the lender to verify his actual income.

I also note that the re-mortgage was less than four times Mr T's basic salary. This is within the income multiples that would be acceptable to most mainstream lenders. I can't agree with Mr and Mrs T's view that because First Union wasn't able to find a lender willing to allow them to consolidate more of their debts that their mortgage was unsuitable.

Having reviewed this complaint again, I can't agree that First Union acted incorrectly when it arranged a re-mortgage for Mr and Mrs T. I am satisfied that the mortgage was affordable and enabled them to significantly reduce their monthly outgoings. I am also satisfied that First Union explained the risks involved in consolidating debt.

I am very sympathetic to Mr and Mrs T's financial difficulty, but it appears they began experiencing their recent difficulties when Mr T became unable to work due to his serious ill health.

I would encourage Mr and Mrs T to contact their existing lender, if they have not already done so, to explain their current circumstances and discuss what help might be available to them.

my final decision

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs T to accept or reject my decision before 14 September 2015.

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

Suzannah Stuart
ombudsman