complaint

Mrs T complains that Mortgage Intelligence Ltd (MI) gave her unsuitable advice when it advised her to take out an interest only mortgage. Mrs T says she's now in a position where she faces having to sell her property when the mortgage expires.

Mrs T's complaint has been made through a Claims Management Company (CMC).

background

In May 2007 Mr and Mrs T took advice from MI. They had unsecured debts of around £16,000 and were struggling to afford their repayments following Mr T's retirement a month earlier.

MI advised Mr and Mrs T to refinance their unsecured debts with a £20,000 repayment mortgage over ten years. However, their application for a repayment mortgage was declined by the lender as being unaffordable. So MI advised Mr and Mrs T to take out a £20,000 interest only mortgage instead, also over ten years. The mortgage completed soon after.

In 2011 Mr T passed away. In 2014 Mrs T made her complaint, via a CMC, about the unsuitability of the mortgage sold in 2007. Mrs T is now worried that she'll have to sell her home in 2017 when her mortgage expires as she has no other way of repaying it. The CMC has also said that MI should have given Mr and Mrs T advice about life insurance when they took out the mortgage. If MI had sold Mr and Mrs T life policies in 2007, the mortgage would have been repaid when Mr T died.

MI didn't uphold Mrs T's complaint. In summary, it says it doesn't think the advice to take out an interest only mortgage was unsuitable. The mortgage gave Mr and Mrs T an affordable way of consolidating their ongoing debt commitments. MI also says that the refinance gave Mr and Mrs T a large monthly disposable income. Mr and Mrs T planned to use this "freed up" income to make overpayments to the interest only mortgage and if they had done so the loan would have been repaid over its term.

The CMC was dissatisfied with MI's response and brought Mrs T's complaint to us. Our adjudicator thought that the complaint should be upheld. He wasn't persuaded that MI's advice to take out the mortgage had been suitable for Mr and Mrs T's needs at the time it was sold. He thought that MI should refund its broker fee and pay Mrs T £4,600 –being the amount of Mr T's unsecured debts it had advised to be refinanced in the mortgage. As a result of MI's advice these debts are now secured on Mrs T's property following Mr T's death.

MI disagreed with the adjudicator's findings. It said:

- Mr and Mrs T were fully informed by the advisor about the features of an interest only mortgage before they decided to proceed with the mortgage;
- the advisor's suggestion that the interest only mortgage could be repaid by Mr and Mrs T making voluntary overpayments over the mortgage term was appropriate.

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 looked carefully at the evidence from the time of the sale to consider the suitability of the advice MI gave Mr and Mrs T at the time it was given.

When Mr and Mrs T met with MI in May 2007 they needed financial advice to help them manage their debt commitments. Mr T had only recently retired, and as a result, their joint income had fallen to around £950 per month. Mrs T had credit card borrowing of £6,000 in her own name, and Mr T had a further £4,600 of credit card debt in his name. They also had a joint personal loan with around £5,600 outstanding. Following their reduction in income they were now struggling to meet their monthly debt repayments.

I don't consider refinancing unsecured debts (such as credit cards and personal loans) with a mortgage loan to be necessarily bad advice. In fact, MI's initial advice to refinance all Mr and Mrs T's unsecured debts onto a ten year repayment mortgage, at a lower rate of interest with a more manageable monthly repayment, seems sensible. Mr and Mrs T owned their property and had no mortgage balance outstanding. A new ten year repayment mortgage would have left them 'debt free' by the end of the term.

However, the mortgage lender declined the initial application for a repayment mortgage because it had concerns about affordability. It's the advice provided by MI from this point that I consider to be less clearly in Mr and Mrs T's best interests.

MI advised Mr and Mrs T to take out a ten year interest only mortgage once the repayment mortgage was declined. An interest only mortgage meant lower monthly payments for Mr and Mrs T, but the outstanding loan balance wouldn't reduce over the loan term. MI says Mr and Mrs T understood this and they were committed to making regular overpayments to repay the mortgage balance in full over the ten year term. But Mr and Mrs T in fact made no overpayments to the mortgage.

I'm not persuaded that the interest only mortgage recommended by MI was in Mr and Mrs T's best interests. I think MI should've questioned whether it was realistic that Mr and Mrs T could commit to overpayments over the next ten years. Mr and Mrs T were on a relatively low fixed income. And they were still adjusting to Mr T's recent retirement. They also had a track record of needing to use unsecured debt such as credit cards to meet expenditure - even though their income had previously been higher. I think these factors should have suggested to the advisor that they might not be able to manage consistently to overpay a mortgage on their lower joint pension income.

In addition, MI knew that the mortgage lender had looked carefully at Mr and Mrs T's income and expenditure. It had decided that Mr and Mrs T couldn't afford to commit to the additional amount needed to make capital repayments each month. So I think this should have led the MI to question whether an interest only mortgage, planned to be repaid through overpayments, was right for Mr and Mrs T in the circumstances.

I think the advisor could have explored other debt options with Mr and Mrs T or referred them to a debt charity for free advice. I note over £10,000 of the money owed by Mr and Mrs T was on credit cards. Other unsecured lending products – such as personal loans - may have been an affordable alternative for them. Personal loans may have been available at lower interest rates than their credit card borrowing and would have given Mr and Mrs T reassurance that the debt would've been fully repaid over the loan's term. Such borrowing wouldn't have needed to be secured on Mr and Mrs T's home, and could have been kept on a sole basis. It doesn't seem that any such options were discussed or suggested by MI when the repayment mortgage was declined.

Mr T has sadly passed away during the mortgage term. In the event of Mr T's death, his sole unsecured debts would have been payable by his estate – not by his wife, who is liable for them now they've been rolled up into the mortgage. If Mr T had no assets, other than his jointly-owned property, then these debts would've been written off after he died. I understand that Mr T had no other assets. Due to the mortgage refinancing these debts, Mr T's borrowings became rolled in with Mrs T's sole borrowing and the joint loan. As a result of Mr and Mrs T's debts being consolidated into a joint mortgage, Mrs T is still responsible for repaying these debts of around £4,600.

It is very difficult for me to try and put Mrs T back in the position she would have been in if she hadn't arranged the mortgage. Most of the mortgage was used to refinance debts either in Mrs T's name or on a joint basis with Mr T. However, I can try to get Mrs T back to the position she would've been in if she had only refinanced her sole and joint unsecured borrowing, that would still have been repayable by her following Mr T's death. For this reason I think it's appropriate that MI pay Mrs T £4,600 so she can repay the portion of the mortgage that relates to the unsecured debts of Mr T. I also think MI should refund its broker fee, as I don't think it is fair that Mrs T should have to pay for the advice given in the circumstances.

The CMC has complained that MI didn't sell life insurance to Mr and Mrs T alongside the interest only mortgage. I appreciate that if a life policy had been sold Mrs T would have had her mortgage repaid when Mr T passed away. MI's advisor says she recalls discussing life insurance with Mr and Mrs T and that they declined to take out the cover proposed. However, the written records from discussions held in 2007 don't make reference to a recommendation about life insurance, or note the reasons why Mr and Mrs T chose not to take out a policy.

On the balance of probabilities I think it likely that life insurance was discussed at the time but that it was considered too expensive to be an option for Mr and Mrs T. I say this because Mr and Mrs T were on relatively low incomes and were keen to free up additional income each month going forward. The cost of life insurance would have been high for applicants of retirement age and I don't think this would have been an attractive option to them at the time. I don't uphold this part of the complaint.

my final decision

My final decision is that I partly uphold this complaint against Mortgage Intelligence Ltd. I consider that Mortgage Intelligence Ltd's advice to take out an interest only mortgage was not suitable for Mr and Mrs T when it was given.

In settlement, I direct Mortgage Intelligence Ltd to do the following:

- refund the arranging fee/broker fee; and
- pay Mrs T £4,600 therefore enabling her to repay the portion of the interest only mortgage that relates to the unsecured debts of Mr T.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs T to accept or reject my decision before 4 March 2016.

Emma Peters
ombudsman