complaint

Mr L complains that Carrington Carr Home Finance Ltd (formerly AWD Home Finance Ltd) – a mortgage broker and appointed representative of Legal & General Partnership Service Limited – mis-sold a mortgage to him.

background

In 2007 the broker gave Mr L mortgage advice. It recommended that he should remortgage to a new lender to raise around £28,000 for debt consolidation.

Mr L's representative considers the mortgage was unsuitable for a number of reasons, including:

- The mortgage was switched from a high street lender to a sub-prime lender.
- Mr L should have been advised to stay with their current lender.
- Short-term unsecured debt was secured over a longer term and reduced the equity in the property.
- Fees, charges and an insurance premium were added to the mortgage balance and were not properly disclosed.
- The term extends beyond Mr L's retirement age.
- The term was extended.
- A second illustration was not issued showing the true costs of the remortgage.

The adjudicator did not recommend that the complaint should be upheld. She considered the broker had established what Mr L's needs were and assessed affordability and that the fees and charges were set out in the mortgage documentation.

Mr L's representative did not accept the adjudicator's findings. It responded to re-emphasise its position that the mortgage was unsuitable and added a number of points, including:

- We should not rely on the documentation issued by the broker – the broker's internal compliance department had concerns with the sale when it was audited.
- The borrowing into retirement was not properly dealt with by the broker or set out in the suitability letter and was only covered off by the disclaimer signed at a very late stage in the sales process. This demonstrates that lending into retirement was not properly discussed.
- In view of Mr L's circumstances, it would have been preferable for him to arrange a debt repayment plan rather than consolidating debt – even if it affected his credit rating.
- We had not given proper regard to the mortgage conduct of business (MCOB) rules.
- The ten year fixed rate was unsuitable.

my findings

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

MCOB is one of the things that I take into account when determining what I consider to be fair and reasonable in the individual circumstances of this complaint. But even if I were to find that the broker had not acted in line with MCOB, it would not follow that I would uphold the complaint.

The broker should have recommended a mortgage that was suitable for Mr L's stated needs and circumstances. As it had recommended debt consolidation it should have taken into account the cost of repaying the debt over a longer term and the potential consequences of securing previous unsecured debt. If Mr L was known to have payment difficulties then the broker should have considered whether it was appropriate for him to negotiate with his creditors instead.

<u>lender</u>

I have not seen any evidence that there was a cheaper mortgage available to Mr L that he would have qualified for at the time in question – either with his existing or another lender. The mortgage offer does not state that it reflects past or present financial difficulties – so I don't agree that the broker recommended a "sub-prime" mortgage.

<u>debt consolidation</u>

The mortgage documentation states that Mr L had already carried out a previous debt consolidation exercise and that he had requested further debt consolidation. The record of suitability contains warnings about the increased cost of consolidating debt and the implications of doing so. It also goes on to say that the broker may be unable to arrange further debt consolidations for him.

It seems clear to me that the broker did consider the additional cost of consolidating debt and the implications of securing previously unsecured debt and it gave Mr L enough information to make an informed choice whether to proceed or not. I do not consider that just because debt consolidation may be more expensive overall it means that it is necessarily unsuitable. I don't see that the broker was required to issue a second illustration showing the costs not including consolidation. I accept that the broker could have explored the possibility of negotiating with Mr L's creditors – although it is not clear if Mr L would have chosen to proceed with that option if it had been explained to him.

<u>fees</u>

The fees are set out clearly and prominently in the mortgage documentation and I can't see that Mr L could have paid those fees upfront. Although Mr L incurred an early repayment charge (ERC) from his previous lender, the savings by remortgaging outweighed the cost of the ERC.

<u>lending into retirement</u>

The mortgage ran until Mr L was 69 years old. The broker did not properly assess the affordability of the mortgage into Mr L's retirement – and this was one of the things that was picked up in the audit of the sale. As a result of that Mr L signed a disclaimer to state that he intended to work past the age of 65 and that if he didn't then he would sell and downsize.

I agree with Mr L's representative that getting him to sign a disclaimer is not a substitute for advice. There was no assessment of the affordability of the mortgage into retirement or the plausibility of Mr L continuing in a manual occupation past 65. Further, there was no consideration of the likelihood of him being able to downsize.

In saying this, there is some responsibility for the lender to assess affordability. And I think it would be difficult for me to say that Mr L was not aware that the mortgage ran until he was 69 and that he was prepared to proceed on that basis. Further, bearing in mind the equity in the property and the payments Mr L would have made towards the capital balance of the mortgage, downsizing may have been realistic.

Nevertheless, I don't consider the broker has shown that it properly assessed the affordability of the mortgage past the age of 65 – and I note the sales documents show that Mr L initially said his anticipated retirement age was 65.

ten year fixed rate

Mr L's stated preference was to "avoid the uncertainty of interest rate changes" and "fixing mortgage payments for a certain period". In view of this and Mr L's circumstances, I consider that a ten year fixed rate was suitable for him.

conclusion

I don't consider the advice to consolidate was necessarily unsuitable as it met Mr L's objectives. While the broker could have done more to show that this was considered (or explained why it was not), it is not clear that if it had set out the option to Mr L to negotiate with his creditors and what that meant, that Mr L would have pursued it – or indeed whether his creditors would have agreed and on what terms. So although this is a shortcoming by the broker it does not mean the advice to consolidate was unsuitable or that Mr L has lost out because of it.

I consider there was a shortcoming in the advice from the broker. It did not properly assess whether the mortgage was affordable. I therefore need to consider what (if anything) Mr L would have done differently if he had received better advice and/or information.

I can see the argument that the correct advice would have been for Mr L not to take a remortgage because it was not affordable past age 65 – a mortgage that took Mr L up to age 65 would not have met his objective to reduce his outgoings or have been affordable. But on the other hand, it does not necessarily follow that Mr L would have accepted such advice.

Mr L accepts that at the time in question he wanted to "relieve the pressure of his debts" and the documentation states he wanted to reduce his outgoings. I am satisfied he was given sufficient information to understand the risks and additional cost of consolidating debt, that the mortgage would run until he was 69 years old and that he may have to sell his home if he could not maintain payments. Mr L signed that he was prepared to proceed with the mortgage on that basis.

After carefully considering Mr L's circumstances I am not sufficiently persuaded that if he had been given better advice he would have followed it. I consider it likely that Mr L would have pursued a mortgage that allowed him to consolidate his debts (and we know that such a mortgage was available to him). Mr L was actively looking to consolidate his debts, had consolidated previously and he had sufficient information to make an informed choice to go ahead with the consolidation, which resulted in a considerable monthly saving for him.

In any event, Mr L has subsequently experienced financial difficulties because of a change in his circumstances. While I sympathise with the difficulties he has faced, I do not think this could have been anticipated by him (or the broker) at the time in question. Further, I think it is difficult for me to say that the position Mr L is in is because of the shortcomings in the advice, rather than the unfortunate change in his circumstances. And it is not clear that he is worse off overall than he would have been had he not taken the mortgage.

my final decision

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

Ken Rose
ombudsman