

complaint

Mr R, as executor for his late father's estate, complains that Intrinsic Mortgage Planning Ltd (Intrinsic), mis-advised his father when he took out an equity release mortgage.

background

In 2010, Mr R's father, took out an equity release mortgage with Intrinsic. He complains that the mortgage was mis-sold to his father because:

- His father was ill, he had just lost his wife and wasn't in a fit state of mind to take out the lifetime mortgage;
- No fact find or suitability letter was produced;
- No alternatives were discussed;
- The property was over-valued;
- The solicitor approached the adviser to say a deed had to be set up for the shared drive way;
- The advice wasn't suitable.

The complaint was considered by our adjudicator. She considered that Mr R's father had been provided with and signed a number of documents before entering into the contract. He had taken independent legal advice and had some need for the money. She concluded that Mr R's father had been given sufficient information for him to make an informed choice as to whether to take out the mortgage.

Mr R doesn't agree so the matter has been referred to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, and I know this is not the decision, Mr R is hoping for, I'm also not going to uphold the complaint. I've been helped by the fact that the adjudicator has set out a detailed background of what happened, and I don't think it will help Mr R to understand my decision to fully repeat those details again.

I, like the adjudicator, have to reach a view as to what happened based on the evidence presented to me. It is clear that much of what was discussed regarding the arrangements for taking out the mortgage took place privately between Mr R's father and Intrinsic's representative, who was Mr R's father's neighbour. These conversations took place five years ago, and for obvious reasons, it is not possible to get an account of what was discussed from Mr R's father. So I have relied on the paperwork that was prepared at the time as that seems to me to be the most reliable evidence for me to take into account.

I'll deal with each part of the complaint in turn.

His father was ill, he had just lost his wife and wasn't in a fit state of mind to take out the lifetime mortgage:

I have taken into account what Mr R says about his father's health at the time. I haven't seen any medical evidence that supports what he says about his father's state of mind or how that would have affected his ability to agree to take out the mortgage. Mr R's son supported his

father's wish to proceed with the lifetime mortgage application and Mr R's father had received independent legal advice. Neither Mr R nor the solicitors raised concerns at the time that Mr R's father was not in a fit state of mind to take out the mortgage. I have also taken into account the fact that the adviser recorded that he believed Mr R's father had full mental capacity and understood the principles of what he was taking out.

So on balance, I can't reasonably conclude that Mr R's father wasn't in a fit state of mind.

No fact find or suitability letter was produced:

I have seen a copy of both the signed fact find document and letter of suitability which set out in some detail, why the mortgage was suitable for Mr R's father's needs given his circumstances following his wife's death. So I can't find that these documents were not produced.

No alternatives were discussed

The adjudicator has set out in some detail her reasons for concluding that alternatives were discussed. And I agree with her on this point. Page 12 of the fact find document deals with this aspect of the application in some detail, setting out why alternative means of raising capital were considered but not taken up.

The property was over-valued:

The valuation of Mr R's father's property was arranged by the lender by an independent company with no connection to Intrinsic. Regretfully, I'm not helped much by recent market valuations as they don't reflect the market at some five years ago. Mr R has provided some valuations of similar properties that he says show the property was overvalued, but the lender was entitled to rely on the valuation of a suitably qualified, independent professional. And the surveyor isn't covered by us so I can't look at their actions.

The solicitor approached the adviser to say a deed had to be set up for the shared drive way:

Intrinsic isn't responsible for the actions of the solicitors.

The advice wasn't suitable:

Intrinsic had to make sure that the equity release mortgage was suitable for Mr R's father's needs. To do this, it needed to satisfy itself that the benefit to Mr R's father outweighed any disadvantage to him and that other methods of raising funds were less suitable.

Whilst Mr R has said that his father's actions have put him in a difficult position, he hasn't said precisely how he says the advice wasn't suitable. But the illustration provided to Mr R's father was detailed and shows what the financial implications of taking out the mortgage would be. I have also taken into account the contents of the fact find document which notes: "He has no objections to his dad releasing equity and he understands the implications of him doing so".

This is consistent with the fact that Mr R signed that document confirming that he had been made aware and understood the impact of his father proceeding with the lifetime mortgage, and supported it.

In reaching my decision, I have also taken into account the contents of the solicitor's certificate. Mr R's father had received independent legal advice in which he was advised as to the implications of the agreement he was entering into and confirmed that he still wanted to go ahead. As I've already said, the solicitor said nothing that would suggest that Mr R's father wasn't capable of understanding what he was doing.

So for all the above reasons, I am satisfied that Mr R's father was aware of the implications of taking out the mortgage and that he had received independent advice which confirmed that his obligations had been explained to him. So even though I can't be 100% certain as to what was discussed, Even though the cost of the current interest only loan was low, I think it is likely that Mr R's father was aware of the cost and purpose of the equity release mortgage and chose to do so having taken legal advice and having had Mr R's support for the application.

In considering whether the mortgage was suitable for Mr R's father, I've also taken into account the fact that Mr R's father's income and savings were limited and that he wanted to raise funds to consolidate his debts and provide some additional funds to supplement his income.

I've also noted that the fact find records that the effect of the loan on Mr R's father's entitlement to benefits was considered, as were other ways of raising funds, for example, moving to smaller home, taking out a conventional loan, borrowing from family or friends. But these options were discounted.

So even though this might have been an expensive way to raise money, Mr R's father had some need for the mortgage. So I don't think, on balance that the mortgage was unsuitable for his needs. The adviser gave a clear explanation of how the mortgage would work. He looked at Mr R's father's finances, and explored and dismissed the alternatives. He ensured that Mr R's father took independent legal advice so that he'd understand how the plan worked and the cost involved.

So whilst I do sympathise with Mr R as has been left with such a large financial burden, I can't say that Intrinsic acted unfairly or unreasonably. So I'm not going to uphold the complaint.

my final decision

My final decision is that I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 February 2016.

Julian Weinberg
ombudsman