Financial Ombudsman Service

complaint

Mrs I complains that she was mis-sold an interest only mortgage by Virgin Money Plc in 2004.

Mrs I was sold a mortgage by Northern Rock, although this borrowing transferred to Virgin Money Plc during the mortgage term. It's Virgin Money who have responded to this complaint.

Mrs I's complaint has been brought by her son, Mr A, acting as her representative.

background

In 2004 Mrs I and her late husband Mr I, applied for a mortgage with Northern Rock to buy their council house. They took out an interest only mortgage for around £30,000 over 15 years. The mortgage was on a fixed interest rate of 5.79% for the entire 15 year mortgage term. Mr I passed away in 2008.

In 2015 Virgin Money wrote to Mrs I to ask how she planned to repay the mortgage at the end of its term. Mrs I said she planned to sell her property to repay the loan. In 2016 Virgin Money sent a further reminder that the mortgage was expiring in 2019 and asking how Mrs I planned to repay the mortgage. Again, Mrs I said she planned to repay the mortgage by selling her home.

In 2017 Mr A became aware that there was an interest only mortgage on Mrs I's home. He has helped Mrs I to arrange a way to repay the loan because she no longer wanted to sell her home. Mrs I has recently paid around £14,000 towards the outstanding balance of the mortgage using savings and has switched the mortgage to capital repayment and extended the term.

At the same time as rearranging the mortgage, Mr A complained to Virgin Money about the sale of the mortgage. Mr A's said that the mortgage sold to Mr and Mrs I in 2004 was unsuitable for a number of reasons. He's said:

- Northern Rock didn't offer a capital repayment mortgage but Mr A knows they could have afforded this;
- Northern Rock didn't show the difference in costs between a capital repayment and interest only mortgage and it didn't complete an affordability assessment;
- Mr and Mrs I were unaware that the mortgage they took out was interest only, and that a capital balance would need to be paid at the end of the term; and
- it wasn't explained to Mr and Mrs I that they may have to switch back to capital repayment, rather than relying on house prices increasing to repay the loan.

Virgin Money didn't uphold the complaint. It said it didn't consider the mortgage sold to Mr and Mrs I had been unsuitable at the time it was sold. The mortgage they'd been sold offered fixed, relatively low monthly payments, which were affordable on their pension income. And Virgin Money said Mr and Mrs I knew that the mortgage was interest only.

Mr A disagreed and brought the complaint to us. Our investigator looked into the complaint but she didn't think it should succeed. She gave a detailed explanation as to why she didn't think that the mortgage had been mis-sold to Mr and Mrs I.

Mr A didn't accept out investigator's findings. He responded to the investigator's view to say, in summary:

- the fact that mortgage regulation came into force after the sale of his parents' mortgage doesn't excuse the "improper selling of an unsuitable product to my parents";
- there's no evidence they were offered anything else;
- he thinks Mr and Mrs I could have afforded a capital repayment mortgage;
- there is absolutely no way that Mr and Mrs I would have taken on a product that would leave them without their home at the end of the term;
- Mrs I is now in poor health and has faced the prospect of losing her home in her old age because Northern Rock mis-sold an interest only mortgage.

Mr A asked that an ombudsman consider the complaint again.

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, I've reached the same conclusion as our investigator, for broadly the same reasons. I'll explain why.

First, I'd like to reassure Mr A that I don't underestimate his strength of feeling about this complaint. I've taken note of everything that he's said about his parents' position in 2004, as pensioners buying their council house. I agree that they would have relied heavily upon the advisor and their recommendation at the time the mortgage was sold. I've also thought about the way the mortgage has been conducted over the years, and the recent agreement of new terms as part of my consideration of the wider circumstances of this complaint.

I've looked at all the evidence from the time the loan was taken out in early 2004 to establish what Mr and Mrs I were trying to achieve through the financing and whether the mortgage they were sold was unsuitable. I've also thought about whether this mortgage could be considered irresponsible lending by Northern Rock.

As our investigator has explained, mortgage advice became a regulated activity in October 2004 which is after this mortgage was sold. However, Northern Rock was a member of the Mortgage Code which pre-dated mortgage regulation. I've thought carefully about whether Northern Rock acted in accordance with this code, and industry best practice at the time.

When Mr and Mrs I met with Northern Rock they wanted to take out a mortgage to enable them to buy their council house at a discount to the market value. This meeting happened 14 years ago, and the passage of time makes it more difficult for me to establish exactly what happened. I've relied on the records made by the advisor from the time of the sale to try to build a picture of what Mr and Mrs I might have discussed and what the reasons might have been for them to take out an interest only mortgage.

I think the crux of Mr A's complaint is that Northern Rock made a mistake not to sell Mr and Mrs I a capital repayment mortgage, and that giving them an interest only mortgage was irresponsible. Mr A's said that he thinks a capital repayment mortgage would have been affordable for Mr and Mrs I and this would have been more suitable as a product.

I've looked at Mr and Mrs I's financial position in 2004. The mortgage application records that Mr and Mrs I were on a pension income of around £12,000 per year, and that they didn't have any other borrowing. I can see that Northern Rock asked for a letter from Mr I's private pension provider to prove what income he received from this. Mr and Mrs I had been paying rent of around £100 every two weeks, which equates to approximately £215 per month. As Mr A has pointed out, their landlord would have been responsible for maintaining the property. I'm mindful this responsibility would have transferred to Mr and Mrs I once they purchased the property.

I've thought about how affordable it would have been for Mr and Mrs I to make the transition from a long term rental arrangement to a monthly mortgage payment. Their new interest only mortgage had a payment of around £150 per month. This would have been around £65 less than the rental payment they were used to. However, if Mr and Mrs I had taken out the same mortgage (with an interest rate of 5.79% over 15 years) on a capital repayment basis it would have been increased their monthly repayments to £250. This payment is £100 more every month than the interest only mortgage payment, and an extra £35 per month more than the rent commitment Mr and Mrs I were used to. When adding to this other costs of home ownership such as maintenance, it may be that Mr and Mrs I took the decision that they would rather keep their mortgage payments at a lower level of £150 on an interest only mortgage. I'm also conscious that their ability to increase their income was limited as they were already both living on pension income.

The advisor has noted that Mr and Mrs I wanted fixed monthly mortgage payments, and that they wanted their mortgage payments to be kept low. The mortgage they were sold does meet these requirements. I appreciate that Mr A has said that he thinks a capital repayment mortgage would have been more suitable. It may well be that other products and types of mortgages could also have been suitable for Mr and Mrs I. What I have to determine is whether the mortgage that was sold was clearly unsuitable. Having looked at the recorded aims of the financing, and Mr and Mrs I's situation in 2004, I don't think it's clear that the mortgage sold was unsuitable for Mr and Mrs I's needs at the time.

Mr A's said he thinks it was irresponsible of Northern Rock to make an interest only mortgage available to pensioners. I've considered Mr and Mrs I's financial situation, and I've thought about the wider context of the mortgage lending market in 2004. At that time interest only mortgages were commonly sold by lenders without asking that repayment vehicles were set up to repay the mortgage. This is far less likely to happen today as lending appetite for interest only mortgages has reduced, and regulation has been introduced which has materially changed the mortgage lending market. But that doesn't mean it was irresponsible lending within the context of standard industry practice and regulation at the time.

I'm not persuaded that providing an interest only mortgage to Mr and Mrs I was irresponsible lending. I think it was one option for Mr and Mrs I, and it offered an affordable way for them to purchase their property. Admittedly it would have meant that, unless Mr and Mrs I set up a separate repayment vehicle, there would be a mortgage balance to refinance or repay at the end of the term. I would have liked to have seen evidence that showed that when selling the mortgage Northern Rock explored what Mr and Mrs I's plan was to repay the mortgage at the end of its term. Regrettably there is no record of this point being discussed. As a result of this, I'd be asking Virgin Money to now try to find an affordable way for Mrs I to repay her mortgage so she can stay in her home. Virgin Money and Mrs I have reached agreement about this, so I don't need to make any finding here. This issue has already been resolved.

It may be that Mr and Mrs I had thought they might want to sell their property by this time, or explore refinancing at that point. That's certainly what Mrs I says in 2015 and 2016 when asked by her lender what her plans are to repay the mortgage. But I don't think it was irresponsible for Northern Rock to lend Mr and Mrs I the mortgage on an interest only basis even though they had retired.

Mr A's said that Mr and Mrs I couldn't possibly have understood that they were taking out a mortgage that only made interest payments. I've looked at the notes the advisor made during the sale of the mortgage. The advisor has written that they discussed the fact the mortgage did not have a reducing balance. I think the mortgage offer also sets out clearly that the mortgage is on an interest only basis. We've also seen copies of the annual mortgage statements that say the mortgage is on an interest only basis, and the balance each year shows that it doesn't reduce over time.

I can see from Northern Rock's contact history that Mrs I contacts Northern Rock in 2008. She asks what her mortgage payments would reduce to if she were to make a lump sum payment (of either £15,000 or £20,000) towards the mortgage. This suggests to me that Mrs I knew that she had an interest only mortgage and that the capital balance of the mortgage wasn't reducing through her contractual monthly payments.

This is further supported by Mrs I sending back a form to Virgin Money in 2015, and again in 2016, saying that she intended to repay the mortgage through the sale of the property. I appreciate that Mrs I later changed her mind about this as the expiry date drew nearer. But this does indicate to me that she knew there would be a capital balance to be either repaid or refinanced at the end of the mortgage term.

I know that my decision will be disappointing for Mrs I and Mr A but having looked at all the evidence provided, I don't think that the mortgage provided by Northern Rock was clearly unsuitable for Mr and Mrs I at the time it was sold.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 26 August 2018.

Emma Peters
ombudsman