Financial Ombudsman Service

complaint

Mr and Mrs N, represented by a claims management company, complain that they were mis-sold a mortgage by Countrywide Principal Services Limited.

background

Mr and Mrs N took advice from Countrywide on a mortgage, as they were looking to buy their first property. As they had no money for a deposit, they took a mortgage from a lender which allowed up to 125% of the value of the property to be borrowed, in the form of combined secured and unsecured borrowing. The mortgage was taken over a 35 year term.

As part of the mortgage, Mr and Mrs N consolidated existing debt to the loan balance consisting of two personal loans with two and four years left to run respectively. They also consolidated some credit card debt. They also took various insurance policies protecting the loan repayments.

Mr and Mrs N's representative now complains that the loan was mis-sold. In particular, it says that debt consolidation was inappropriate, that the recommendation was not for the least expensive available mortgage, and that the insurance policies were not appropriate.

Our adjudicator didn't recommend upholding the complaint about the insurance, noting that Mr and Mrs N had rejected the adviser's recommendation and selected different policies themselves. Nor did she consider the recommended mortgage unsuitable in all the circumstances. However, she did consider consolidating short-term unsecured debt over a 35 year term to be unsuitable, taking the view that it was not necessary to do so to make the mortgage affordable.

Countrywide didn't agree. It said that it thought it likely that the lender would have required the debt to be cleared before it would lend, and that the mortgage and unconsolidated debt repayments taken together would have been unaffordable. It therefore requested an ombudsman to consider the case.

my findings

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

Having done so, I have come to the same conclusions as the adjudicator, and for much the same reasons. I'm satisfied that, in their circumstances as they existed at the time, the recommended mortgage was suitable for Mr and Mrs N and was not mis-sold. Given that the insurance policies were selected by Mr and Mrs N, in spite of a recommendation that they take different ones, I take the same view of the insurance sale.

That leaves the debt consolidation, which I agree was unnecessary. I have reviewed the income and expenditure figures taken by Countrywide as part of the application process. Prior to the mortgage, Mr and Mrs N had a disposable income of around £400 per month. Had they not consolidated, that would have gone down to around £200 per month – which I'm satisfied would not have made the mortgage unaffordable.

Countrywide says that it is likely that the lender would have required the debt to have been cleared. I note that it has neither said that the lender *did in fact* require that, nor produced any evidence to support its current belief that it would have been likely to have done so as part of its lending criteria.

It is, in my view, unlikely that a lender – especially in the lending climate of the mid-2000s – would have always required every applicant to have cleared all their debts before applying for a mortgage. It is more likely that the lender would, on a case by case basis, have considered whether the particular mortgage was affordable in light of the applicant's other commitments.

It does not appear that an application without consolidation was submitted, which is why Countryside does not have evidence that the lender in fact insisted on consolidation. I have already explained that I do not consider it likely that doing so was part of the lender's standard lending criteria. As to whether it would have required it in the specific case of Mr and Mrs N had it been asked, that cannot now be said with any certainty. It appears to me that leaving the debt unconsolidated would not have rendered the mortgage unaffordable, and so it is possible that it would not have made that requirement.

Consolidating short-term debt to a very long term mortgage made it significantly more expensive. That was a very real downside to doing so, and in my view made consolidating not a suitable course to have recommended unless it was a pre-condition of the mortgage laid down by the lender. The right course, it seems to me, was for Countryside to have recommended not consolidating the mortgage and applied for it on that basis, only then recommending consolidation if it was insisted on by the lender. That it appears did not happen, and so I cannot say that the recommendation to consolidate was suitable.

my final decision

For the reasons I have given, my final decision is that I uphold this complaint, and direct Countrywide Principal Services Limited to:

- Calculate the amount Mr and Mrs N have paid to date, in interest and capital, in respect of that part of the mortgage balance represented by the consolidated debt;
- Calculate the amount of the current loan balance represented by the consolidated debt;
- Calculate the amount Mr and Mrs N would have paid to clear the consolidated debt had it not been consolidated;
- Add together the first two figures, deduct the third, and pay the result as a lump sum to Mr and Mrs N.

Simon Pugh
ombudsman