

complaint

This complaint is about a mortgage Mr V took out with Bank of Scotland plc trading as Birmingham Midshires (BM) in 2005. Mr V (who is represented by a third party I shall refer to as "W") considers the mortgage was mis-sold, because BM failed to treat it as a commercial mortgage.

background

The circumstances of this complaint, briefly, are that in 2005 Mr V consulted a third party intermediary about obtaining a mortgage. The intermediary (which I shall refer to as "Y") recommended Mr V apply for a self-certification mortgage with BM. BM agreed to lend Mr V the money. It issued an offer of advance in November 2005, specifying a six-year repayment period, and the mortgage duly completed.

In 2014, W complained on Mr V's behalf, saying that BM failed to identify that the deposit, valuation fee and, subsequently, the monthly mortgage payments, were paid from the accounts of a limited company. W says BM should have realised from this that the mortgage was a commercial proposition, and should therefore not have been granted on residential terms. BM rejected Mr V's complaint that it is at fault, saying responsibility for ensuring the suitability of the mortgage for him lay with Y, as his mortgage advisor.

The adjudicator who considered the complaint did not recommend it should be upheld. He concluded that that there was no obligation on BM's part to advise on the suitability of the mortgage, and that BM's response to the complaint was fair and reasonable.

W asked for Mr V's complaint to be reviewed by an ombudsman.

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 broadly the same conclusions as the adjudicator, and for much the same overall reasons.

Where a mortgage application is made through a third party intermediary such as a mortgage broker, there is no obligation on the part of the lender to replicate the role of the intermediary. The responsibility for any advice that may be given about suitability lies with the intermediary rather than with the lender. In the case at hand, that was Y.

The lender has a duty to lend responsibly. If, in BM's commercial judgement, the information supplied about Mr V's income and the intended use of the funds was sufficient for it to approve the lending, it was within its rights to make that decision. As far as the source of the deposit, valuation fee and monthly payments are concerned, I do not share W's interpretation of this as evidence that the mortgage should have been treated as commercial.

Information recorded at Companies House shows that Mr V was one of the company's two principle officers, from which it seems reasonable to conclude that Mr V derived his income *from* the company. In my view, this was an application for a residential mortgage from an individual who was using the financial resources of his own company to pay for it, and BM was entitled to regard it as such.

The terms of the mortgage were set out in BM's offer of advance. Clearly, I cannot know how much attention Mr V paid to it, or how much of the information it contained was understood by him. Nonetheless, the offer was prepared in a form that is consistent with BM's regulatory obligations.

It must also be remembered that Mr V had access to the professional advice of his broker, Y. If Mr V did not want the mortgage BM was prepared to offer him, he was under no obligation to accept it. Insofar as he did accept it, I would be slow to conclude that BM cannot fairly hold him liable for it.

If Mr V has any concerns about how Y advised him, he would need to claim separately about the advice he received, to the business first, and then to this service if need be. In making that observation, I am making no recommendation that he *should* do so, and no inferences should be drawn on what the merits of such a complaint, if made, might be. But I cannot fairly hold BM liable for any acts or omissions there may have been on Y's part.

For the avoidance of doubt, insofar as the complaint before me is about BM, I am unable to conclude that BM was at fault in offering to lend Mr V money in good faith. It was not required to "second-guess" the advice Mr V may have received from Y about the mortgage.

my final decision

For the reasons set out above, my final decision is that I do not uphold this complaint, and make no order or award against Bank of Scotland plc trading as Birmingham Midshires.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr V to accept or reject my decision before 16 February 2015.

Jeff Parrington
ombudsman