complaint

Mr and Mrs M complain that Think Loans and Mortgages Limited ("TLML") gave them unsuitable advice about a re-mortgage. Mr and Mrs M are represented in their complaint by a firm of solicitors.

background

In 2005 Mr and Mrs M met with one of TLML's mortgage advisors. They sought advice about a re-mortgage as they were considering buying a holiday home abroad. They wished to discuss financing the purchase using £30,000 that they had inherited and by releasing as much equity in their property as they could.

The advisor conducted two interviews with Mr and Mrs M. The first was to carry out a fact find. He asked questions about their financial situation and their wishes and needs in relation to the possible re-mortgage. The advisor recorded that Mr and Mrs M's objectives were to raise money for the holiday home, consolidate their debts and repair their credit file. During the second interview he delivered his recommendations to Mr and Mrs M and completed the application paperwork. We have the benefit of recordings of these interviews.

The advisor noted that at the relevant time both Mr and Mrs M were employed. They lived in a property that was mortgaged on an interest only basis with six years left to run. They had a balance outstanding of £47,500. Mr and Mrs M were paying into an endowment policy with a view to repaying the mortgage at the end of the term. Due to previous financial difficulty they had a debt management plan ("DMP"). Through this they were paying several different unsecured creditors. As part of this agreement interest and charges had been stopped on their loans. Their total unsecured debts amounted to about £28,000.

The advisor sent a letter to Mr and Mrs M to document his recommendation to re-mortgage. He said in summary;

- That they could re-mortgage for £152,000 including fees. It would be on a repayment basis to ensure that the mortgage was repaid at the end of the term.
- That a fixed interest rate for 4 years was suitable to enable easier budgeting.
- That a 25 year term was appropriate to ensure that the repayments were affordable throughout the term of the mortgage.
- That a suitable lender had been recommended considering Mr and Mrs M's circumstances.

In October 2014 Mr and Mrs M complained to TLML. They say the advisor's recommendation wasn't suitable. They say he hadn't complied with the rules laid down by the Mortgage Code of Business. In summary;

- The advisor did not conduct a thorough and detailed enough advice process.
- The advisor did not assess properly whether Mr and Mrs M could afford the mortgage and that he should have considered other options to restructure their finances.
- The advisor did not take full account of the consequences of consolidating their unsecured debt into the mortgage. This had not been explained to Mr and Mrs M.
- The broker's fee was excessive. The costs of adding this to the mortgage were not explained and illustrated.

Mr and Mrs M brought their complaint to this service in January 2015. At that time TLML had yet to send them a final response letter.

However, in May 2015 TLML did send a final response letter to this service. I don't find it useful to detail the response in detail at this stage. Suffice to say TLML rejected all elements of Mr and Mrs M's complaint, but offered £50 in compensation for the initial delay in dealing with it.

The complaint fell to our adjudicator to investigate. She didn't think the complaint should be upheld. Mr and Mrs M, via their representative, said they accepted some of the points that she made. However they still did not agree about the suitability of the debt consolidation advice. They say that as a result of the advice to consolidate their unsecured debts they were disadvantaged. This was because they were paying no interest on the loans as part of the DMP. Consolidation meant having to pay interest that they otherwise wouldn't have done over the 25 year term of the new mortgage.

They also said the debt consolidation was not a valid way of repairing their credit file. This was because their defaults would only have been visible on their credit file for six years from the date they first occurred. The only way to "repair" the file, therefore, was the passage of time.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr and Mrs M wrote, via their representative, a detailed letter of complaint. I hope that they will not take it as a discourtesy that I summarise much of what they say. I can assure them that I have taken full account of their submissions and the evidence that they have submitted.

Mr and Mrs M via their representative, say they accept some of our adjudicator's view. However they make further points for me to consider. By "accept", I take it to mean that they are prepared to concede these specific issues. For completeness though I intend to address them. For consistency I will use the same headings as our adjudicator did in her letter of 24 July 2015.

I agree with our adjudicator's opinion and I will explain why.

<u>affordability</u>

The advisor considered Mr and Mrs M's income and expenditure both at the time of the application and after Mr M's planned retirement age. I accept they discussed with the advisor that they expected the new mortgage payments to be around £900 per month. The advisor spent some time discussing this. He explained that this would not have been a realistic repayment amount for a mortgage large enough to achieve their goals. I don't think that just because they had this lower initial budget in mind that the subsequent recommendation was not suitable. They always had the option of withdrawing from the process and postponing their ambitions when presented with the actual costs. In any case the advisor demonstrated that Mr and Mrs M would still have a healthy amount of monthly disposable income after their new mortgage payment and other expenses.

term

This touches again on affordability. I think the advisor recommended a suitable term to give Mr and Mrs M a level of repayments that was within their means and achieved their goal. He clarified that Mr M would receive his occupational pension at his retirement age of 55 so that repayments would remain affordable. He also discussed the use of their endowment, once it matured, to reduce the debt.

quality of advice

I think that the advisor actually conducted quite a detailed evaluation of Mr and Mrs M's financial circumstances. I think that he did himself a disservice by not reflecting this in his recommendation and other documents. If it was not for the audio recording of his fact finding interviews my conclusion may have been different. That said, I am satisfied that the advisor asked enough questions to obtain relevant information. I am also satisfied that he spent time explaining options to Mr and Mrs M and ensuring that they understood before gaining consent to proceed.

consolidation of the unsecured debt

This is the crux of the complaint. Mr and Mrs M's representatives say that the advice to consolidate their unsecured debts wasn't suitable. They say this because, under the agreed DMP, interest and other charges had been frozen on the relevant debts. Consolidating them into the new mortgage meant that interest was charged at the prevailing mortgage interest rate over the term of 25 years. This would of course cost substantially more than had they remained as part of the DMP. They say that this was not mentioned in the recommendation letter.

Whilst restructuring their debts more advantageously wasn't the primary objective in itself, I think it was necessary to achieve what *was* the primary objective; i.e. buying the holiday home. It would not have been affordable to maintain both the agreed DMP repayments together with a separate mortgage with which to purchase the holiday home. I think that consolidation was the only option whereby the holiday home would be affordable.

I note that Mr and Mrs M's representatives say that there was a more suitable alternative. This was to use the £30,000 inheritance as a deposit for a holiday home. They could then fund the remaining balance of the purchase price with a buy to let mortgage. They say that Mr and Mrs M could then have re-negotiated lower repayments to their creditors with whom they had the DMP. I don't agree. These creditors were likely already voluntarily accepting lower repayments than they were contractually entitled to. They had also, apparently stopped all interest and charges. This was to help Mr and Mrs M out of financial difficulty. I think had their creditors been asked to accept even lower payments, whilst a £30,000 windfall and further borrowing was used to buy a second home, it's most likely they would have refused. I think that they would have asked that the inheritance be used to repay the debts. So I don't consider this was ever a realistic option.

I have also considered the complaint that the costs of the consolidation were not clearly illustrated or discussed in the recommendation. This may be the case. However, I am satisfied that this was brought to the attention of Mr and Mrs M during the interview with the advisor. Mr and Mrs M's objective was to raise enough funds to buy their holiday home. So I think that they would have still gone ahead with the mortgage even had these costs been illustrated in more detail. They have therefore not suffered any loss as a result. I take the same view about the size and addition of the fees to the mortgage.

<u>repair of credit file</u>

I am satisfied that the recommended mortgage was suitable notwithstanding the validity of this argument. However, I would say this. The occurrence of the initial defaults on Mr and Mrs M's unsecured loans would have dropped off of their credit files six years after they occurred. However the fact that they were in a special payment arrangement with their creditors would continue to be reflected. This would be the case for as long as the arrangements remain in place and for six years after the last payment under the arrangement had been made. The sooner Mr and Mrs M repaid the debts the sooner they would have been able to enjoy a completely "clean" credit file.

Finally, I think that the £50 offered as compensation by TLML for the delays in the handling of Mr and Mrs M's complaint is reasonable if they wish to accept it.

my final decision

For all of the reasons I've set out, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 19 October 2015.

James Hargett
ombudsman