complaint

Mr and Mrs G complain that First Choice Funding Limited mis-sold an interest only mortgage to them. Mr and Mrs G are represented by J, a solicitor.

background

Mr and Mrs G took out a 16 year interest only mortgage in 2007. They say the mortgage recommended by First Choice was not suitable as:

- Unsecured debts of about £34,000 were consolidated. First Choice did not discuss other ways to reduce their outgoings.
- There was a risk the monthly payments were not affordable and there was no repayment vehicle to repay the capital.
- It was executed on a self certified basis, even though they both had payslips and bank statements. This meant they were sold a product with a higher interest rate.
- They should have been offered products from a high street lender, not a sub prime lender.
- The fees were excessive and added to the mortgage account, increasing the cost of the mortgage and adding to Mr and Mrs G's financial problems.

The adjudicator did not recommend that the complaint should be upheld, saying she did not consider the mortgage was unsuitable for Mr and Mrs G at the time. The adjudicator said:

- First Choice was put in contact with Mr and Mrs G by a debt management company. The fact find by First Choice shows that Mr and Mrs G were struggling to meet their commitments and wanted to reduce their outgoings.
- The mortgage met Mr and Mrs G's aim to reduce their monthly debt payments.
- Mr and Mrs G told First Choice they intended to sell the property to repay the mortgage before Mrs G retired. They also said they intended to sell the property and move house after three years.
- The documents showed that Mr and Mrs G chose to self-certify their income as Mrs G worked variable shifts and her income was inconsistent. The monthly mortgage payments were affordable.
- Mr and Mrs G's credit file showed some missed payments and two defaults. There had been alterations to the property which meant it was not acceptable to some lenders, including the high street lenders. As Mr and Mrs G also wanted additional money for home improvements and to add the fees to the mortgage, it was not unreasonable for First Choice to recommend the mortgage product.

Mr and Mrs G did not agree. On their behalf J said:

- Mr and Mrs G's income could have been verified and they did not need to self certify their income. It was First Choice's decision to self certify income, not theirs. J said self certifying meant the mortgage had a 0.25% higher interest rate.
- First Choice had not informed Mr and Mrs G about the effect of consolidating unsecured debt and increasing their secured debt.
- It said First Choice did not provide illustrations for other mortgages for Mr and Mrs G to compare, did not consider whether a part repayment mortgage would have been suitable or whether the best advice would be not to proceed. It said it is for First Choice to show it met regulations and was not negligent in recommending the mortgage.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

First Choice recommended the mortgage. So the rules in the Mortgage Conduct of Business sourcebook (MCOB) for advised sales – such as obtaining all relevant information and ensuring any mortgage it recommends is suitable for the customer's needs and circumstances – apply.

I am satisfied that First Choice conducted a fact find. The fact find said Mr and Mrs G wanted to consolidate debt, reduce monthly outgoings and borrow additional money. The fact find said they wanted to keep the same term as their existing mortgage and fix the interest rate for a period of three years after which they planned to move house. It also said Mr and Mrs G wanted to self certify their income. I am satisfied that First Choice sent a record of suitability and key facts information about their services and the mortgage product it recommended to Mr and Mrs G. I am also satisfied Mr and Mrs G received a mortgage offer from the lender.

The information in the suitability letter is consistent with the fact find, including that Mr and Mrs G had chosen to self certify their income due to "variable bank work". The letter says Mr and Mrs G were aware of the disadvantages of debt consolidation, that the mortgage was interest only and they would have to repay the capital and that the term of the mortgage would go beyond Mrs G's expected retirement age.

J raised a number of specific concerns about the suitability of the mortgage.

Interest only mortgage with no repayment vehicle

Mr and Mrs G already had an interest only mortgage in place. I am satisfied that First Choice explained the nature of the mortgage – that they would have to repay the capital on maturity – and discussed how they intended to repay the mortgage.

The loan to equity ratio was about 73%. Mr and Mrs G said they intended to sell the property before the mortgage matured. As it was, at that time, reasonable to expect they would have equity in the property, I am not persuaded the recommendation was unsuitable.

J says First Choice should have considered whether a part repayment mortgage was suitable. I am satisfied from the sale documents that Mr and Mrs G's aim in re-mortgaging was to reduce their monthly outgoings. While other options were discussed, these did not meet Mr and Mrs G's aim of keeping payments as low as possible.

Consolidation of unsecured debts

Mr and Mrs G's financial situation was difficult. Their credit file showed missed payments and they had been talking to a debt management company. I am satisfied that one of their aims was to reduce their monthly outgoings and stabilise their financial position. The mortgage recommended by First Choice achieved these aims.

I am not persuaded Mr and Mrs G's position was so bad they should have been advised to enter into debt management or negotiations with their creditors. I do not consider recommending they approach their existing mortgage lender for a further advance would have been better advice, given the higher interest rate.

The fact find and suitability letter say First Choice discussed the implication of debt consolidation with Mr and Mrs G. They contain warnings that consolidating existing debt may mean they end up paying more and that they are transferring previously unsecured debts to a mortgage, secured on their home. Both these and the key facts document warn of the consequences – their home being repossessed – if payments are not maintained.

In the circumstances, I am not persuaded that recommending debt consolidation was unsuitable. I find First Choice made Mr and Mrs G aware of the disadvantages of consolidating unsecured debt.

Self-certifying Income in the application

The fact find says Mr and Mrs G chose to self certify their income. The record of suitability says Mr and Mrs G chose to self certify their income due to "variable bank work" (being Mrs G's agency work). While J says Mr and Mrs G did not choose to self certify their income, as they signed the fact find and the record of suitability, I consider it likely they agreed to do so.

The mortgage lender's product guide says there is an interest loading for self certified mortgages with certain loan to value ratios. It seems after the valuation of Mr and Mrs G's property (which was lower than they had hoped), the loan to value ratio meant loading applied to their mortgage. First Choice says it discussed this with Mr and Mrs G and made them aware of the increased interest rate. The mortgage offer sets out the interest rate. I find it more likely than not that First Choice discussed the interest rate with Mr and Mrs G and they were aware of the interest rate and the loading before agreeing to the mortgage.

Recommending a product with a sub-prime lender

Mr and Mrs G's credit file showed some missed payments and two defaults. There had been alterations to the property which meant it was not suitable for a mortgage with some lenders, including the high street lenders. Mr and Mrs G also wanted to borrow additional money for home improvements and add the fees to the mortgage. In the circumstances, I do not find it unreasonable for First Choice to recommend a product from a non-high street lender.

Fees and charges

The fees payable by Mr and Mrs G were clearly set out in the mortgage offer. The mortgage offer also set out the fee payable by the mortgage lender to First Choice. I am satisfied Mr and Mrs G were made aware of the fees before agreeing to the mortgage.

Making a recommendation

Mr and Mrs G had an interest only mortgage in place. The mortgage recommended by First Choice had the same term and a lower interest rate than this mortgage. They did not have to pay an early repayment charge and the re-mortgage meant their monthly outgoings were reduced. I find that the recommendation to re-mortgage was not, in itself, unsuitable.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs G to accept or reject my decision before 18 May 2015.

Ruth Stevenson
ombudsman