DRN-5148746

The complaint

Mr and Mrs G complain that Intelligent Lending trading as Ocean recommended a second charge loan that was unsuitable for them.

What happened

Your In 2018, Ocean recommended that Mr and Mrs G should take took out a secured second charge loan. The loan was for £96,090 repayable over 16 years. That included a lender fee of £595 and a broker fee of £3,995. The loan had a fixed interest rate of 6.78% for five years from completion. It then changed to a variable rate of 6.268% above the "Optimum Base Rate". The purpose of the loan was primarily to repay unsecured debt.

Mr and Mrs G complain that Ocean should not have recommended the loan. They said that the loan was not in their best interests and they have struggled to maintain payments. They said that Ocean did not explore other options such as reaching arrangements with unsecured creditors.

I issued a provisional decision proposing to uphold the complaint. My provisional findings, which form part of this decision were:

I'm not making any decision on Ocean's business model or saying that it should never recommend a secured loan to consolidate unsecured debt. My decision is solely about what I consider to be fair and reasonable in the individual circumstances of this complaint.

MCOB 4.7A sets out the rules for advised mortgage sales. I have taken them into account in deciding what I consider to be fair and reasonable. Ocean should recommend a mortgage that was suitable for Mr and Mrs G – it should be appropriate for their needs and circumstances.

As the purpose of the loan was for debt consolidation, Ocean was also required to take into account the costs associated with increasing the period over which the debt was to be repaid, whether it was appropriate to secure previously unsecured debt and where the customer is known to have payment difficulties, whether it would be appropriate to negotiate with their creditors rather than take a mortgage.

If there was no suitable mortgage from the product range offered by Ocean then it should not offer any advice.

Ocean recorded that Mr and Mrs G:

- *Had taken a number of loans that year for debt consolidation and home improvements but due to the sort terms and high payments it had been difficult to manage.*

- *Mrs G had been made redundant and that had caused financial strain*

- *When the debts were cleared it will move Mr and Mrs G from £80 negative disposable income to £114 positive income. The surplus would help them manage until Mrs G gets back to work.*

- *Wanted a fixed rate because rates were going up and they preferred longer term stability so they could budget.*

Ocean recommended that Mr and Mrs G should take the secured loan:

- *Mr and Mrs G did not meet two other lenders' criteria and the lender offered the most competitive rate and payment*

- *With a five-year fixed rate to give them the longest stability because they currently had negative disposable income.*

- *Mr and Mrs G wanted to make a lump sum payment from Mr G's pension in three years and the loan allowed overpayments. That will reduce the loan amount and increase affordability.*

- *The term was the longest available without going into retirement and to keep the payments as low as possible.*

- *The income would be sustainable because it is based only on Mr G's income and Mrs G is looking for work. So affordability will increase in future.*

- *Even though some of the commitments will cost them more interest over the term the total interest saved outweighs this.*

It was clear that Mr and Mrs G's position was unsustainable. They could not afford to maintain the debt they had. So they clearly had a need to do something. Ocean's position is that consolidating the debts to a secured loan was the best option for them as it reduced their outgoings and was better for them overall than negotiating with their unsecured creditors. It also said that Mr and Mrs G's income was likely to improve in the future.

I agree with the investigator that the information available to Ocean showed that Mr and Mrs G had payment difficulties. They were over indebted in an unsustainable way. Their income was not sufficient to cover the outgoings they had, primarily because of the level of debt repayments they were required to make. It ought to have been clear that Mr and Mrs G were relying on unsecured debt to meet their expenditure.

It was not reasonable to accept that the cause of those problems was the loss of Mrs G's job. Mr and Mrs G had taken a significant amount of debt shortly before Ocean recommended the mortgage – but that was before Mrs G lost her job. That indicates that the unsustainable debt cycle was not as a result of that.

Ocean's recommendation was based in part on the affordability improving further when Mrs G found work in the short term. But it ought to have known that they still had problems when Mrs G was in work.

Further, the secured loan that Ocean recommended was a long-term commitment. If it was reasonable for it to consider that Mrs G was likely to find work in the short-term and that would significantly improve their financial position, then it is not clear why the secured loan was necessary. If it had good reason to believe that Mrs G would find work in the short-term I could see that it might be reasonable to wait until it knew what her income would be and *whether that would make their existing commitments sustainable before recommending a long-term loan.*

Ultimately, I consider that acting reasonably, Ocean could not take into account that Mr and Mrs G's financial position would improve if Mrs G found work. It was not known when that would happen or how much she might earn. And if there was a realistic expectation she would find work in the short term then it might cast doubt on whether a long term secured loan was the right thing at that point.

I can see that reducing Mr and Mrs G's outgoings was a significant need for them. But that had to be balanced against the risk of securing previously unsecured debts against their home. It was for the lender to determine if the loan was affordable or not. But Ocean has placed a lot of weight on the secured loan improving Mr and Mrs G's financial position by moving them from a negative to a positive disposable income.

Ocean's fact find shows that several items of expenditure were lower than the Office for National Statistics (ONS) figures based on the household composition. It accepted various explanations from Mr and Mrs G for that. But if it had used the ONS figures, that increased the monthly expenditure by over £600 a month, which would leave Mr and Mrs G with a negative income even after the secured loan was in place.

I accept that there may be many people who might spend less than the average on many things – and Ocean received explanations where the expenditure was less than the ONS figures. But there were significant and material differences between the figures provided by Mr and Mrs G and the ONS figures, to such an extent that I do not consider it was reasonable for Ocean to base its advice on the information given by Mr and Mrs G. It had enough information to doubt that what Mr and Mrs G had told it about their expenditure was accurate and that the secured loan would move them from a negative to positive disposable income.

Again it was not for Ocean to assess whether the loan was affordable. But Ocean recommended the loan because it thought it would mean Mr and Mrs G could meet all their outgoings and be left with a positive disposable income. I consider it had reason to doubt that was realistic based on the information it had. Even if some of the explanations given by Mr and Mrs G were accurate, the figure for disposable income was low and I don't consider it was reasonable for Ocean to accept that the lower amounts were accurate based on the information it had or that it was sustainable in the longer term.

Overall, I don't consider that Ocean had shown that it acted fairly and reasonably when it gave Mr and Mrs G mortgage advice. It placed unreasonable weight on Mrs G finding work in the short term and it had good reason to doubt the expenditure figures given by Mr and Mrs G. Looking at the information it had, I don't consider it was reasonable for it conclude that the mortgage was affordable and sustainable to the extent required when recommending a secured loan as the right thing for Mr and Mrs G or that it adequately explored alternatives with them.

In view of the above, I consider it would be fair for Ocean to refund the broker fee of £3,995 it charged. The fee was charged to reflect that it had recommended a suitable secured loan to Mr and Mrs G. As it has not shown that it has done so, I do not consider it would be fair for it to charge a fee for that advice.

Mr and Mrs G accepted my provisional findings. Ocean responded to say that while the expenditure was below ONS figures Mr and Mrs G did receive £400 in additional income form their children that it did not us in its affordability calculations. It had no reason to believe that they wouldn’t continue to receive it.

What I’ve decided – and why

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

I’ve looked at everything again and I see no reason to reach a different conclusion than I reached on my provisional decision. The £400 was housekeeping paid by Mr and Mrs G’s adult children. I don’t agree that Ocean had any reason to believe that Mr and Mrs G would continue to receive that amount for the full term of the loan. In the circumstances, it seems unlikely that would happen. It did not take the £400 into account – and I don’t consider it would have been reasonable for it to do so for the purposes of considering affordability.

In any event, the difference between the expenditure declared by Mr and Mrs G and the ONS figures was over £600. So the £400 would not make up the full amount of the difference. I still consider that Ocean could not reasonably have concluded that the mortgage it recommended was suitable because it was not affordable – Mr and Mrs G’s declared expenditure was unreasonably and unsustainably low.

My final decision

My final decision is that Intelligent Lending Limited trading as Ocean should refund the broker fee of £3,995.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs G and Mr G to accept or reject my decision before 18 December 2024.

Ken Rose
Ombudsman