The complaint

Mr C has complained that he was mis-sold a second charge mortgage by Intelligent Lending trading as Ocean. He has said that he feels Ocean recommended the mortgage that it would be paid the most for, rather than what was best for him. Mr C has said he doesn't think that he was treated fairly and his lack of experience of such matters was not considered when the recommendation was made. He believes that he should have been told to speak to his first charge lender to achieve what he needed.

What happened

In early 2024 Mr C had a mortgage with lender P for approximately £120,000 over a remaining term of around 20 years. He had taken the mortgage out in 2019 and there was a fixed interest rate product attached to it that was due to end on 30 November 2024.

Mr C had accumulated around £30,000 of unsecured debt and while he could maintain the payments to the debts, he found the fact that they were not reducing significantly each month frustrating. So, he contacted Ocean through its website about taking out a secured loan for £32,000 over six years to clear his unsecured debts. This was in March 2024.

Following this Ocean called Mr C and discussed his situation, what he wanted and why. Mr C explained that a few years earlier he had taken a job with his existing employer that meant taking a slight pay cut but which gave him a more stable income. As a result of what he described as "habitual spending", he had unsecured debts. Despite his income having gone up to its previous level, he wasn't able to reduce his debts as quickly as he wanted to. In addition, he had three loans that had been taken out to buy a car and do home improvements over the previous five years. Ocean's summary of the discussion about what Mr C wanted was to reduce his overall outgoings and to "make things tidier", by which it was meant Mr C wanted to have less payments going out.

Mr C confirmed that he was not having difficulty making the payments required by his creditors and that he was paying a lot more to his credit card than he had to. He was asked why he wanted to take action at that time and he replied that it was "As good a time as any. I haven't really got a specific reason." Ocean calculated Mr C's income and expenditure, using the credit card payment Mr C was making, rather than the minimum payment needed, and determined that his income was £354 less than his outgoings.

Ocean recommended a second charge mortgage with Lender PM. It was for £34,367.00 (including fees) over a term of six years. The fees that were added to the loan were a broker fee of £3,618 and a lender fee of £595. The mortgage had a fixed interest rate product attached to it for five years of 8.481% and then it would revert to a variable interest rate, which at the time was 11.130%. The monthly payment was £610.67. An early repayment charge (ERC) was payable if the mortgage was paid off during the first five years of the term – starting at 5% in the first two years, and then reducing by 1% for the following three years.

This loan, Ocean told Mr C, would change him from having a monthly income deficit to a surplus of around £340. During the recommendation telephone call, Ocean said it would reduce Mr C's monthly outgoings by just over £730.

Ocean responded to the complaint in a letter of 17 October 2024. It said that given Mr C's financial position and the harm that could be caused by him defaulting on his unsecured debts, it had explored a secured loan to provide for his needs. It was satisfied that consolidating his debts into one payment would make it much easier for him to manage and took him from a negative to a positive disposable income. Ocean also highlighted that it had made Mr C aware of the costs associated with its advice and the mortgage it was recommending. Furthermore, it calculated that had Mr C asked his existing lender to extend the term of the mortgage to his retirement date, it would have only reduced the monthly payment by £338, which was less than the shortfall in his income at the time of £354. As such, Ocean was satisfied that the recommendation it made was suitable for Mr C's needs.

Mr C was not satisfied with Ocean's response and asked the Financial Ombudsman Service to consider his complaint.

Mr C re-mortgaged his home in December 2024, once there was no longer an ERC payable on his main mortgage. The re-mortgage consolidated the first and second charge borrowing and in order to do so, Mr C had to pay an ERC of £1,592.63 on the second charge mortgage.

One of our Investigators considered the complaint, and he recommended that it be upheld. He was not satisfied that Ocean had given suitable advice and so he recommended it reimburse Mr C with the broker and mortgage fees, and the amount of the ERC paid to Lender PM. Interest was to be added to these amounts from the date the second charge mortgage was repaid to the date of settlement.

Mr C accepted the Investigator's conclusions and recommendation. Ocean did not. It said that Mr C had approached it for a secured loan and that his indebtedness was at that time increasing on a monthly basis. It said that Mr C would not have been able to extend his first charge mortgage as it would have been unaffordable given his income and expenditure. Furthermore, it was aware that Lender P did not offer additional borrowing for the purposes of debt consolidation. Ocean also highlighted that the guide to its services that it sent to Mr C mentioned that an existing lender might be able to offer a more appropriate re-mortgaging option. Overall, it said that the recommendation had been suitable for Mr C as it moved him from a position where he was spending more money than he had coming in, to one where his outgoings were affordable.

As agreement couldn't be reached, the complaint has been passed to me.

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.

Before selling Mr C the second charge mortgage, Ocean completed a fact-finding exercise. The purpose of such an exercise is to establish a consumer's circumstances, needs and priorities. This allows a financial business to determine what the right thing for its potential customer is, and if it is able to provide them with any assistance, or if they need to seek help elsewhere. I have listened to the relevant telephone conversation and I am not persuaded that Ocean was in a position to do this.

Ocean asked quite in-depth questions about Mr C's existing unsecured debts, but not in relation to his first charge mortgage. The first charge mortgage was mentioned quite early in the conversation about the debts and Ocean asked if Mr C had any penalties associated with it. Mr C said he wasn't sure. Ocean's response was that it didn't really matter as "we're not looking to re-mortgage." This would indicate two things. The first was that Ocean didn't have an adequate picture of Mr C's circumstances to be able to assess what the right advice for him was, and the second was that it entered into the discussion having already decided that it was selling him a second charge mortgage, rather than looking at all of the options available to him.

I have noted Ocean's comment that Mr C's existing lender did not provide further advances for the purposes of debt consolidation. The implication being that there was no point in it advising Mr C to speak to his existing lender to see if it could help him. That is true if Mr C was looking to consolidate his unsecured debts, but there may have been alternative options available with that lender. While I note that Ocean has said extending the term of the existing mortgage would not have been affordable, this assessment took into account the higher than necessary payment Mr C was making to his credit card. However, even if Mr C's existing lender could not have helped him, it doesn't mean he didn't have alternative options that would have achieved his goal of tidying up his payments, in a more effective and less costly way with a different lender. Indeed, potentially something that Ocean could have helped with. However, Ocean didn't suggest to Mr C that he might have alternative options to a second charge mortgage, other than further unsecured borrowing, as the Mortgage Code of Business required it to.

I note that the '*who we are and what we do*' document Ocean provided to Mr C at the time of the advice mentioned re-mortgaging:

'*If you are remortgaging and borrowing additional money, it's worth remembering that your existing lender may be able to offer you other deals, or a further advance from your existing lender may be possible and more appropriate for you than remortgaging. We don't arrange further advances on existing mortgages.*'

The context of this statement is entirely relating to where Ocean is recommending a re-mortgage. which in this case it was not. Indeed, within 20 minutes of its first conversation with Mr C it said that this was not what was going to happen. Furthermore, as I am sure Ocean is aware, a consumer will primarily rely on the oral information and advice they are given, rather than information contained in documentation that they don't have to read and very often don't.

So, at the point Ocean gave advice, for all it knew, Mr C didn't have an ERC associated with his first charge mortgage and he could have re-mortgaged at that point. However, it doesn't appear that Ocean was looking at Mr C's circumstances overall to determine what his options were, and which would be best for him, but rather it was focussed on selling him a second charge mortgage from the outset.

I am satisfied that given Mr C was not in financial difficulties, he just wasn't satisfied with his financial situation, he would have been open to alternative options, and in a position that meant he didn't need to take action immediately. Indeed, when asked why he had started looking at his options, Mr C said that there was no specific reason he was doing it at that point – it was as good a time as any. As I have noted above, Mr C's income and expenditure exercise was showing a shortfall because the amount he chose to pay to his credit card was factored in, rather than the amount he had to pay to it. This was supported by the fact that there was nothing adverse recorded on his credit file – all payments were being made on time and in full (or more).

Overall, I am not satisfied that Ocean established Mr C's circumstances adequately when it initially spoke to him. It follows that I don't, therefore, consider it was able to adequately assess his needs, circumstances and priorities to provide suitable advice.

Where a financial business has made an error, we look to establish what position the consumer would have been in, had the error not occurred. In this case, that would be the situation of Ocean having established that Mr C would be free to re-mortgage in around six months, that he was not struggling financially and had no immediate need to take action. I am satisfied that had these facts been considered appropriately, the option of Mr C waiting a few months until he was able to apply for a re-mortgage, and likely consolidate his unsecured debts at a lower interest rate, would reasonably have been suggested. Given that Mr C re-mortgaged when the ERC on his first charge mortgage ended, I think it likely that he would have taken up that option.

Putting things right

I am satisfied that had Mr C been given appropriate advice he would have maintained his unsecured loans until the end of November 2024 and re-mortgaged to a new lender, consolidating those debts, in December 2024. As such, he would not have paid the upfront costs associated with the sale and application for the Lender PM mortgage. Nor would he have needed to pay the ERC to Lender PM.

In light of this, Ocean should:

- reimburse the £3,618 broker fee;
- reimburse the £595 lender fee;
- reimburse the ERC of £1,592.63 paid on the second charge mortgage.

Interest should be paid on these sums from the date the Lender PM mortgage was redeemed, which Mr C has said was 2 December 2024. Interest should be paid at 8% simple per annum until the date of settlement.

The balance on which Mr C paid interest during the period the Lender PM mortgage was in place was higher than the balances of the debts Mr C repaid with the mortgage advance. It is not clear whether Mr C would have paid more or less interest in the months the Lender PM mortgage was in place and the calculation for this would be time consuming and complex for what is likely to be a relatively small sum. As Mr C was satisfied with the above redress to settle his complaint, and Ocean did not comment on the matter, I am satisfied Ocean completing that calculation is not necessary.

My final decision

My final decision is that I uphold this complaint. In full and final settlement of the complaint, I order Intelligent Lending Limited trading as Ocean to pay Mr C the sums detailed above in 'putting things right'.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 2 April 2025.

Derry Baxter
Ombudsman