

complaint

Mrs H complains that Express Mortgage Solutions Limited (“Express”) mis-sold her a mortgage.

background

In 2009 Mrs H decided to buy two investment properties, one in the UK, and one in Bulgaria. She was sold the second investment by a company called Blue Water International. Blue Water put her in touch with Express who arranged the mortgage for her.

The mortgage was for a total of £195,000. £80,000 of this went towards paying off her existing mortgage, around £28,000 for a deposit for the UK investment property, and £90,000 towards the Bulgarian property. Mrs H found the remaining sum herself. £80,000 (the sum of the existing mortgage) was on a repayment basis and £115,000 was interest-only.

The Bulgarian property investment wasn’t completed and Mrs H has lost her money. She now complains about the suitability of the mortgage advice.

Our adjudicator upheld the complaint. Express didn’t agree, and so the case has been passed to me for a final decision to be made.

my findings

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

Express now argue that the complaint is outside the scope of our service, but I disagree.

Firstly, although the sale of the investment was unregulated, this complaint is about the mortgage advice. And given this was partly an interest-only mortgage that was sold, a key consideration is the suitability of the repayment strategy. So if I’m satisfied that the adviser recommended a mortgage with an unsuitable repayment strategy, then it is open to me to come to the conclusion that the mortgage was mis-sold.

In coming to the conclusion that I can deal with this complaint, I have taken account of the decisions of the High Court and Court of Appeal in *Emptage v Financial Services Compensation Scheme* [2012] EWHC 2708 (Admin) [2013] EWCA Civ 729. The facts of that case are very similar to the facts of this case. The Court found that advice to enter into a mortgage backed by an investment was mortgage advice. I’m satisfied the same applies in this case.

Express argue that the facts of that case are different to the current complaint. In this case, I agree that Express didn’t sell the investment, nor do I have sufficient evidence that it knew of the investment in the Bulgarian property. Express itself accepts that this would’ve been an “unacceptable reason for capital raising”.

However, the evidence in this case suggests to me that Express didn’t pay any attention to what the reason for raising the finance, or the repayment strategy was. It seems Express never met Mrs H, nor asked the introducer enough questions about the loan. In its arguments, it relies on the fact that Mrs H herself holds a professional financial qualification,

and that the introducer was himself an Independent Financial Adviser (“IFA”). I’m afraid, however, that this doesn’t absolve Express of the obligation to make its own checks. As it advised Mrs H it was under an obligation to obtain enough information to ensure it was making a suitable mortgage recommendation. And it failed to do so.

Express also states that it was “under pressure” from the IFA to obtain the mortgage quickly. I’ve seen evidence that backs this up. However, again this doesn’t mean that it could avoid responsibility for asking the appropriate questions it needed to consider when advising on an interest only mortgage.

In one instance, it advised the lender in writing of Mrs H’s income in retirement, using figures I’m satisfied she didn’t provide to it. I think that Express was keen to ensure that the mortgage application went through as quickly as possible, and failed to provide Mrs H the necessary advice it needed to. Mrs H had already decided to buy the property, but without the mortgage, she wouldn’t have been able to afford to do so.

Because Express recommended a partly interest-only mortgage without making appropriate checks to see if there was a plausible and realistic repayment strategy, it is responsible for the losses flowing from that decision. Although I accept that Mrs H bears some responsibility for choosing to make the investment, she wouldn’t have been able to without the mortgage Express advised her to take. And it failed in its duty to advise her to take a suitable mortgage.

So I uphold this complaint. I don’t do so because the investment failed, but because Express simply didn’t take sufficient steps to consider whether this was a suitable mortgage for Mrs H.

what the business needs to do to put things right

Having come to that conclusion, I need to consider what losses arise from the errors made by Express.

I’m satisfied that Mrs H would’ve re-mortgaged her property in any event to fund the investment in the UK property. That was the reason she approached Blue Water in the first place. However that was for a much smaller sum. She was persuaded to take out a significant amount of extra money to fund the Bulgarian investment.

The Bulgarian property now has no value, and at the time represented a risky investment. I’m satisfied that the only way Mrs H could afford the property was by taking out the mortgage recommended by Express. So although the loss she’s suffered is because of the failure of the investment, it flows directly from the unsuitable mortgage that was recommended.

£90,000 of the £195,000 advance was for the property in Bulgaria. The remainder was for Mrs H’s own purposes. So Express needs to compensate her for that part of the mortgage that was used to make the investment in Bulgaria. That should be calculated as follows:

- It should pay £90,000 to Mrs H.
- Mrs H should provide details of her mortgage repayments to Express. Express should calculate the interest that Mrs H paid on the £90,000. Those interest

payments should be repaid, and 8% simple annual interest should be added from the date of payment to the date of settlement.

- Express should refund any fee it received from Mrs H in relation to the advice given. I'm satisfied Mrs H would've taken a smaller mortgage in any event, so I don't order any arrangement fees paid to the lender to be refunded.
- I am aware that Blue Water offered Mrs H a deal where it would pay her mortgage repayments up until the point of completion. Mrs H must inform Express of those payments, which Express may deduct from the overall total.

my final decision

I uphold this complaint and order Express Mortgage Solutions Limited to pay compensation as set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 2 November 2015.

Nigel Hamilton
ombudsman