



Welcome to Mortgage Audits

Specialists in forensic audits

Case Study 1

This is a shortened case study which excludes regulatory breaches, witness statements and exhibits in order to protect our clients and third parties.

Mortgage Audit

Audit date: [REDACTED]

Instructed by: [REDACTED]

Client name: [REDACTED]

[REDACTED]

[REDACTED]

Prepared by Mortgage Audits www.mortgageaudits.co.uk

[REDACTED]

<p>Summary of Principal FSA Regulatory Breaches</p>	<p>Prin 2.1.1; Prin 2.1.6; Prin 2.1.7; Prin 2.1.9;; MCOB 2.2.6</p>
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Re-mortgage only **R**

The Content of this audit will cover the following: (Refer to FSMA 2000)

The client's complaint is that the wrong product and financial advice were given causing financial loss both historically and in the future. The advice and recommendation is to be challenged with short term unsecured loans being changed by way of re-mortgage to a long term secured loan. The client should have been offered alternative financial advice: i.e. a further advance from their lender, a second charge to consolidate short term debts, debt management advice or other financial opportunities should have been considered in reflecting FSA principles "Know your customer" – "Treating customers fairly".

Mortgage network regulation

MCOB 1.5.1 **R**

Provides that "although MCOB does not apply directly to a firm's appointed representative a firm will always be responsible for the acts and omissions of its appointed representatives in carrying on business for which the firm has accepted responsibility (S39 FSMA 2000). In determining whether a firm has complied with any provision of MCOB anything done or omitted by a firm's appointed representative (when acting as such) will be treated as having been done or omitted by the firm (S39(4) FSMA 2000)"

Evidence and exhibits

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 5
- Exhibit 6
- Exhibit 7
- Exhibit 8
- Exhibit 9
- Exhibit 10
- Exhibit 11



Causation – Complaint

Auditor's comments case background challenging advice and recommendation:

The following areas will be points for discussion after auditing; the aim is to give my professional view as an experienced and qualified mortgage specialist.

Breaches of the MCOB rules are "actionable at the suit of a private person who suffers loss as a result", under Section 150 of the Financial Services and Markets Act 2000. Based on these principles we would be looking for redress/compensation on the following issues.

Had the mortgage advisor treated the customer fairly and kept adequate systems and controls in place it is of my opinion this client should have been offered a more suitable product

Issues, breaches, contention:

Documented Audited applications, fact find, mortgage offer – cause of complaint.

Looking through the documents received from the client, it is of my opinion that the lender has to have an involvement within this lending arrangement, **Under Section 4.7** of the FSA's rulebook for mortgage advisers, "Mortgage and Home Finance: Conduct of Business" (MCOB) it states that mortgage advice must be "**suitable for that customer**" and that advisers "**must make and retain a record**" of it being suitable.

It is the lenders responsibility to ensure its agents and advisors understand the regulation regarding the FSA principles, the lender has to ensure its procedures, systems and controls are robust and its customers are treated fairly.

Issues when auditing:

Clients' details & status -

These comments will be extracts from the case file:

The mortgage interview was conducted by telephone.

The Broker in my opinion has demonstrated a lack of professionalism throughout the process by ignoring it's regulatory responsibilities and giving no consideration to the clients' needs or circumstances.

The contentious issues discovered are described below and include recommending subprime lending. A further advance with the existing lender should have been the first approach at a much reduced level of interest and charges.

The contract is written on an interest only basis and the outstanding debt of £195,695 will need to be found at the end of this term.

Additionally a second charge loan has been consolidated into the remortgage and transferred from capital and interest into interest only, so will never be repaid.

Interest Only

██████████ thought this mortgage was on a repayment basis and was very shocked to learn the payment method is interest only.

The mortgage offer did state that “sale of property” would repay the debt however the clients never fully understood the implications of this as the adviser did not explain the exact details and did not provide figures or explain the importance of arranging or advising a payment method in order for them not to ultimately lose their house. No suitability letter was given to ██████████

The adviser did not tell the client what the actual true cost of repaying this mortgage on a repayment basis would be - he did not provide a Key Features Illustration either showing the interest only mortgage or the cost of a repayment mortgage.

MCOB rule 4.7 and 11.3.6 states where a repayment vehicle cannot be established then they must show the client the true cost of repaying the mortgage by using a Capital and Interest KFI.

Our clients have never been comfortable with this new mortgage.

In my opinion, the adviser should have treated his customer fairly by ensuring they knew the true cost of how the mortgage could be ultimately repaid. This mortgage was never going to be affordable for these clients to pay back in full and should never have been approved or recommended.

Affordability

The clients claim is that the adviser never conducted a detailed monthly budget planner to either assess affordability of the mortgage at the time of application, in the coming months or into retirement, which would have highlighted the potential forthcoming problems when the clients retired on a low income and had a £195,000 mortgage to fund. (The fact find will evidence this).

MCOB rules If a firm arranges a regulated mortgage contract or a variation to an existing regulated mortgage contract giving a personal recommendation, it must ensure that all the questions it asks the customer about the customer’s needs and circumstances are scripted in advance.

The fact find states that the additional funds were for £40,000 home improvements and £17,000 for their son to start up his own business – this totally contradicts the mortgage application which states it was for consolidating their existing Second Charge for £27,895 plus a £1700 penalty to leave this lender, and £12,405 for home improvements which was increased by another £15,000 at a later date.

It is stated on the fact find that these clients had £24,500 in savings. However it appears no discussion ever took place as to what these funds were for and could they be better utilised rather than borrowing additional funds on a basis that they would never be repaid. The clients stated this was not true.

Their current monthly payment to ██████████ was £765 recorded on the Fact find and the monthly payment to the second charge was £276.64 - total £1041.04.

The new mortgage costs are based pm interest only at £1091 per month.

The clients were employed however the broker did not collect payslips from them to satisfy himself that the mortgage was affordable and the correct advice was being given. This application was completed over the phone and the clients claim they were not aware what income had been recorded as this case was submitted on a self certification application.

The sparse budget planning the broker shows on his fact find states the clients have £2,800 surplus per month after paying £1,000 for bills. Yet a budget planner from the lender shows the clients' affordability is over £500 shortfall per month and the income is nothing like that declared on the fact find. (See exhibits).

Had the adviser provided the clients with costs for a repayment mortgage, the payment would have been £1,492.65, or had he at least shown the clients the cost of the extra borrowing on repayment, the payment would have been £1205.99.

This was never going to be affordable as in my opinion the advisor's systems and controls were not robust and documentation was not supplied to the clients.

MCOB rules "customer's relationships of trust" states a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

They put their trust into this professional to give them best advice. This is clearly not the case and in my opinion the advisor has sold the mortgage on a monthly payment basis to make the proposition appear more attractive.

Debt Consolidation

The clients had not considered paying off their second charge however were advised to consolidate this loan of £27,895 and pay a penalty of £1,700 to redeem it and transfer it on to an interest only mortgage .

A Key Facts Illustration was never provided to show the clients that the debt will never be repaid or the cost on a repayment basis. Had it been left as it was, the loan would ultimately have been repaid.

Had the broker been concerned in giving the best advice to his clients, the first source to approach for the required funding should have been the current lender at the time, discuss utilising some savings and certainly not remortgaging a repayment debt on to interest only with clients being charged a large penalty. (Having said this, the clients stated they had no savings otherwise they would not have required advice on a re-mortgage).

A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

After speaking with the client this is a list of issues that the client was not aware of until my telephone conversation. I advised him I was issuing exhibits regarding the following items with explanation.

Exhibit 1

This is a signed statement by the clients stating that his income was £15,000 p.a. and his wife was £10,000 p.a. and that they are ordinary people working for the NHS. This was at the time of the application. Looking through the application form, exhibit 2, this contradicts the income. When I questioned Mr XX about his employment recorded on the form as heads of departments on £31,450 p.a. and £31,250 p.a., plus a second job as a private nurse [REDACTED] categorically denied these incomes and has never seen or signed to confirm these. When he advised his income to the mortgage broker he told him not to worry as he would deal with it.

On this basis, affordability was bound to have an adverse affect at a future date as the clients were remortgaged to subprime lending.

Exhibit 2

Page one – this was an advised sale. Page three – a signed document by the client facing the mortgage adviser. [REDACTED] states he did the entire mortgage facilitating through the post and this form was not signed face-to-face.

[REDACTED] admitted having arrears in the past due to illness in April 2005 when he had a hip replacement operation. Professionally, should he have been advised to remortgage to a subprime lender with consolidation which later contradicts figures. I would have thought the clients should have been advised to consider debt management.

The income declaration on page six is underlined exactly stating their jobs as employed, although the clients were never asked for proof of income, they object to these figures being stated on the application form. Had the clients been receiving this type of income without any secondary income as stated, they would not have needed to have a self certificated mortgage. On this page I would question their signatures as they are quite faint in comparison to the rest of the application form. I would consider asking an expert witness to review this page.

Page seven states the clients were a head community nurse and a head chef. This has never been the case.

Page eight takes the client into retirement over five years in an interest only mortgage that was consolidating loans into long term secured interest-only borrowing. The valuation figure on this application differs by £50,000 on other forms within the exhibits.

It also mentions that the clients would sell their property in order to pay off the mortgage. The clients thought it was a repayment mortgage and after my interview this was the first time they realised it was on interest only.

With regards to savings which has been ticked, this contradicts further information within the exhibits as they have no savings.

Exhibit 3

A copy of the mortgage offer which states [REDACTED] have recommended this mortgage be taken out on an uncompetitive rate. This would differ from the previous mortgage with BM Solutions. There is no mention on this document that the clients have been charged a fee as no CIDD was issued to them. Although [REDACTED] paid [REDACTED] £3,377.07 for arranging it.

Exhibit 4

Confirmation signed by an [REDACTED] had arrears due to ill health.

Exhibit 5

Confirmation [REDACTED] are appointed representatives of [REDACTED], their FSA registration [REDACTED].

Exhibit 6

Fact find completed electronically with [REDACTED] detailing issues when audited as circled. Under your new mortgage on page 4, this shows a contradiction with the application form and the property valuation being £250,000 and not £300,000 as stated on the application. Also the consolidation was for £40,000 for home improvements and £17,000 as a gift. This also contradicts the statement as the second charge lender required £27,000 plus for consolidation. There is no mention of the son receiving a gift to start up his own business.

Credit history states three arrears in the last four months.

This was not the case as per Exhibit 4. Had this not been stated on the application the clients may have obtained a better status rate product after stating there were only two months of arrears a year ago. Under the budget planner it states the round net monthly income which our clients objects to as it states that they have between them £2,800 disposable income. The clients will testify they have never received this amount of money and their regular monthly expenses are more than what the adviser has declared. This budget planner will contradict other evidence to the lender in the following months after completion.

Page seven of the fact find states the clients have round figures between them of £24,500 in savings. As they state, if they had this amount of savings they would not have needed to remortgage the property.

Exhibit 7

A case submission sheet where issues and findings have been circled that require further checking and investigation.

Exhibit 8

Confirmation that the mortgage is transferred from [REDACTED] on 18 August 2006.

Exhibit 9

[REDACTED] welcome the clients as customers of their company.

Exhibit 10

Historic arrears accruing weekly and daily with charges - based on the information supplied this was inevitable.

Exhibit 11

Affordability calculator – [REDACTED] completed 15 March 2007, six months after the mortgage completed. On pages one and two, the clients completed this form themselves which is different hand writing to the fact find and application form, confirming that he is a support work (page 1) and the exact income being received (page 2). As you will see the outgoings outweigh his income by £661. This also shows five creditors which were not mentioned on the application form where he has obviously entered into a debt management arrangement with his creditors.

No suitability letter or statement of needs and demands

The clients were not provided with this prescribed regulatory document by the broker.

No sourcing supplied

The clients were not provided with this prescribed regulatory document by the broker – my opinion and professional experience this client could and should have had better professional advice.

Compensation

I feel the clients should be put back into the financial position had the broker recommended a further advance for the home improvements without redeeming the second charge and transferring it to an interest only mortgage , thus saving the early redemption penalties and administration charges outlined above.

Mortgage auditors:

We are a team of highly qualified and experienced mortgage specialists with over 100 years experience dealing with both subprime and prime lending.

Our experience covers whole of market and we will consider any type of regulated mortgage product.

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