



Welcome to Mortgage Audits

Specialists in forensic audits

Case Study 2

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

Status: Litigation

Audit date: [REDACTED]

Client name:

[REDACTED]

Risk type: High

Lender:

[REDACTED] [REDACTED]

Checked by: [REDACTED]

Prepared by Mortgage Audits www.mortgageaudits.co.uk

[REDACTED]

Statement of value counterclaim- claim costs & loss draft.

	£	
Lenders fees charged.		£ 99.00
Broker fee paid.		£ 275.00
Procuration fee given to broker.		£ 315.00
Loss of interest – wrong product		£To be assessed.
Loss of interest – short term loans to long term payments		£48,600 consolidated
Statutory interest @8%		£To be assessed.

Evidence and exhibits

Exhibit A	
Exhibit B	
Exhibit C	
Exhibit D	
Exhibit E	
Exhibit F	
Exhibit G	

Loss & enforcement action.

Recommended enforcement action base on the MCOB regulations explained:

Summary of Principal FSA Regulatory Breaches	Prin 2.1.1; Prin 2.1.6; Prin 2.1.7; Prin 2.1.9,; MCOB 2.2.6
---	--

Re-mortgage only 

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

Auditor's Initial report

My Name is [REDACTED] and I act as a senior mortgage audit investigator for Mortgage Audits of Grimsby, Lincolnshire.

The auditor and author of this report is qualified with Financial Planning Certificates 1 and 2, Full CeMap and CeRGI qualifications, and has spent 23 years as a Financial Services advisor specialising in the mortgage market

My report has been written in preparation as an expert witness, for any future Court hearings or representations as and when required, and these notes, comments and exhibits are a true reflection of my opinion based on the findings following my audit and investigation.

This report has been prepared by one of Mortgage Audits specialist senior investigators.

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

Background - Auditors comments challenging advice and recommendations.

Documents audited:

Fact Find
Sourcing
KFI
Lenders/brokers application:
Mortgage offer:
Suitability Letter

Cause of complaint:

Clients details & status.

Debt Consolidation
Affordability.
Interest only.
Term.
Age at application.

Heads of claims & costs involved.

Evidence and exhibits.

Litigation Enforcement and action.

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 [REDACTED]. 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 [REDACTED]** 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.

These comments will be extracts from the case file:

1) Short term unsecured debt consolidated into mortgage

At the time of application Mrs. [REDACTED] had 3 unsecured credit commitments that amounted to £48,600. The monthly payments in total were £1,074.

[REDACTED] advised the client to consolidate these short term unsecured debts into a 6 year mortgage, thus potentially threatening the security of the home. This is further compounded considering the short term of mortgage recommended.

In my professional opinion, advising a client aged 69 to secure unsecured borrowings and whose ability to pay her commitments was dependent on her continuing working, was extremely bad advice.

With regards knowing your customer and consolidation of short term unsecured loans into secured borrowings, it is clear that a re-mortgage was not in the best interest of the client.

This recommendation was despite the fact that the FSA state in the home conduct policy and principles with re-mortgaging a client who has debt issues. Under [REDACTED] of the FSA's rulebook for mortgage advisers, "Mortgage and Home Finance: Conduct of Business" (MCOB) where it states that mortgage advice must be "suitable for that customer" and that advisers "must make and retain a record" of it being suitable.

MCOB [REDACTED]

2) Affordability

Mrs. [REDACTED] ability to repay the mortgage amount was dependant upon her being able to continue working.

The suitability letter (Ex F) advises the client that if she can't work she will need to look to her family to support her or an Equity Release scheme. I am advised that current Equity Release schemes would only be able to provide £80,000 yet the initial loan was for £90,000.

Now that Mrs. [REDACTED] is too ill to work again, there is no family member able to pay her mortgage (there never was) and the mortgage will be required to be repaid in full later this year.

There is no evidence that any consideration has been made with regards to the client's ability to maintain the payments nor of the impact of circumstances such as age, retirement and ill health

MCOB [REDACTED]

3) Interest Only

There is no evidence on file to demonstrate that the client was ever given a choice of repayment methods as there are no repayment based KFIs of any description within the Lender DSAR or in the client's possession. Point 6 below)

There is also no evidence to indicate that the advisor had considered nor explained to the client the impact of having no substantial plan to repay the loan in place

In my opinion the advisor has sold the mortgage on a monthly payment basis to make the proposition appear more attractive, and has not considered the much higher overall cost to Mrs. [REDACTED] or explained that she would need to find £90,299 at the end of the short 6 year mortgage term in order to keep her property and protect her equity.

In my professional opinion the broker has recommended a product without any consideration of the impact on the client's circumstances in the future, particularly given the short length of mortgage and the client's age.

MCOB [REDACTED]

4) Aged 69 at application

Within the computer fact find (Ex A) there is no section that deals with retirement and how to fund repayments in retirement.

Accepting that Mrs. [REDACTED] was still working full time at application, the advisor should have considered the strong possibility that she may not be able to continue working until the end of the mortgage term, even though it was for 6 years only.

██████████ had a duty of care to ensure that she would be in a position to meet the mortgage payments and considered all eventualities and advised her accordingly.

In my professional opinion the Broker should have not have advised the client to remortgage at her and most certainly not advised unsecured debt consolidation (point 1)

MCOB ██████

5) No IDD/CIDD

The client does not have this document in her possession and does not recall having been provided with it although the Record of Suitability makes reference to it having been issued to her.

MCOB ██████ – Initial Disclosure Requirements

6) KFI

██████████ issued a KFI on 7th April 2005 (Ex B) which is entirely consistent with the Mortgage Offer and record of Suitability.

However, there is no Repayment based KFI within the DSAR or client's possession.

MCOB ██████ – Provision of Illustrations

MCOB ██████ Pre Application Disclosure:

7) Sourcing Results

Sourcing results have been provided (Ex E). Assuming the client's preference was for a discounted or tracker Mortgage, the sourcing appears to have been conducted fairly using minimal filtering.

The product recommended is 6th on the list sorted by total cost column, and the higher placed products have been discounted by plausible comments at the foot of the list.

8) Record of Suitability

██████████ produced a ROS on ██████████. (Ex F). There are several contradictory statements within e.g. "You are not concerned about the certainty of your mortgage being paid off at the end of the term" but also " your attitude to risk about repaying your mortgage is cautious"

The explanation for Interest only is that "you will need to look at options such as selling your home and moving to a lower priced property, obtaining family help with mortgage costs, transferring to an equity release scheme"

This contradicts the Fact Find which states that Mrs. ██████████ has no intention of moving home.

MCOB ██████

9) Fact Find

The Fact Find provided (Ex A) is not in depth enough in my opinion, and fails to gather the required level of information for such an important transaction.

It is also inadequate in that it does not include a section detailing the client's wishes, needs and preferences.

The lack of professionalism and inappropriate advice detailed elsewhere in this report only confirms that the advisor did not demonstrate the principles of "know your customer" during the process and failed in his duty of care to his client.

MCOB [REDACTED] R(1)(b)

10) Further Advance – applied direct to lender

On 26th September 2007 Mrs. [REDACTED] then aged 72 applied direct to [REDACTED] for a £120,000 further advance to redeem a secured loan of £75,000 and for home improvements.

Unbelievably, this loan was approved over a term of 5 years 10 months on an assumed valuation of £260,000. The house is now believed to be worth only £200,000 hence negative equity.

Points 1 to 4 above are exacerbated further by approving this loan and, following a serious illness, the client will not work again and is likely to lose her home.

In my professional opinion I have never seen such a bad case of negligent advice. If the original mortgage advice was not bad enough, to then pay off a secured loan but advance £45,000 cash net to the client was irresponsible in the extreme.

I have been unable to find in the DSAR any recommendation to Mrs. [REDACTED] to seek independent legal advice. This contravenes FSA best advice guidelines to clients aged 70 or older.

I believe [REDACTED] has failed entirely in its duty of care to Mrs. [REDACTED]. **MCOB [REDACTED]**

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.

Contact

0845-217-8968

www.mortgageaudits.co.uk

www.sales@mortgageaudits.co.uk