Borrowers lent money that they had no hope of repaying may be able to claim compensation, reports Leah Milner

'There will be a lot more whose lenders may have acted irresponsibly'

Tens of thousands of borrowers could be eligible for compensation for bad mortgage advice and irresponsible lending that led to them taking out home loans that they could not afford, Times Money has learnt.


ADAM GRAY / SWNS

Last month the chief City watchdog fined a former mortgage lender that specialised in home loans for borrowers who could not prove their income or who had a bad credit history.

DB Mortgages, part of Deutsche Bank, was hit with the first ever fine by the Financial Services Authority (FSA) for "irresponsible lending" and ordered to pay redress to customers. The FSA found that many clients, having been offered mortgages that they could not afford, were hit with unfair and excessive charges when they missed payments.

The bank was ordered to pay a fine of £840,000 and approximately £1.5 million in redress to customers, although this figure could vary depending on how detriment to customers is assessed.

Brunel Franklin, a claims management company, believes that tens of thousands of mortgages may have been mis-sold in a similar way, but says it is too early to understand fully how many people may be eligible for compensation. It has launched a mis-sold mortgage refund service to assess whether borrowers have a potential claim and understand the full scale of their problems. The company operates on a no-win no-fee basis, but charges 25 per cent plus VAT on successful claims.

Jonathan Cornell, of the mortgage broker First Action Finance, also believes that many more borrowers could have claims. He says: "There will undoubtedly be a lot more people out there whose lenders may have acted irresponsibly. With DB we are just scratching the surface. There could be tens of thousands of people out there.” But he adds that many customers must take some responsibility for borrowing beyond their means.

The Financial Services Authority does not regulate products individually, so it is not possible to say only by looking at the mortgages on offer whether there is a case for irresponsible lending. Eligibility for redress would depend on whether the lenders made the required checks when assessing whether the mortgage was affordable and whether they documented this. It would also depend on whether the borrower suffered any measurable detriment.

In the case of DB Mortgages, the FSA found that some customers were offered mortgages that extended into their retirement, without the lender checking whether they would still be able to afford repayments after a probable drop in income at pension age.

In other cases, customers who applied for self-certified mortgages were not offered cheaper options that they might have qualified for. Other borrowers were given mortgages on which they had to repay only the interest, but DB Mortgages failed to ensure that they had thought about where they would live if they failed to pay off their capital at the end of the term.

Borrowers could also make a claim against a mortgage broker if it failed to assess whether a mortgage was affordable. If the company rejects the complaint, customers can contact the Financial Ombudsman Service, which will decide whether there is a case and award compensation if necessary. If a mortgage lender or broker has gone out of business, customers may still be able to make a claim under the Financial Services Compensation Scheme. The FSA has banned more than 100 brokers since December 2006. Many cases related to mortgage fraud failings. In some instances the borrowers themselves would have inflated their income on applications, which is why the FSA has not ordered the firms to pay redress.

Before the credit crunch a number of lenders were offering similar products to those of DB, which were targeted at borrowers who had previously missed payments on bills or rent or who had county court judgments against them.

Some offered mortgages to borrowers who could not prove their income and who could put down only a 5 per cent deposit. Others offered mortgages to borrowers who had previously entered into an Individual Voluntary Arrangement to avoid bankruptcy.

The rates often started relatively low, but later reverted to a much higher rate, leaving many borrowers stranded when lending dried up and they no longer qualified for deals with other lenders.

Many large international investment banks had UK mortgage lending subsidiaries that offered these types of mortgages. Lehman Brothers had a number of “specialist” lending brands, including Southern Pacific Mortgages and Preferred, as did Merrill Lynch, Morgan Stanley and Bear Stearns. Bradford & Bingley also offered self-certification mortgages through the Mortgage Express brand before the bank was bailed out by the Government.

Building societies such as Skipton and Britannia, which later merged with the Co-operative Bank, offered similar types of mortgage products through their brands Amber Homeloans and Platform respectively. Kensington Mortgages and GMAC-RFC were also active in this sector and have both been fined by the FSA over their treatment of borrowers in arrears. Sources say that they are unlikely to face action for irresponsible lending because the regulator has already looked for evidence.

Hugh Wade-Jones, of the mortgage broker Enness Private Clients, says: “I can imagine there are quite a few nervous lenders now as DB Mortgages traded for a relatively short period of time and dealt in the main part with smaller loans, so customer horror stories with some of the other predatory lenders will make DB look small-time.”

Aaron Strutt, of the mortgage broker Trinity Financial, says: “The FSA is not in the mood to tolerate banks putting excess pressure on borrowers in arrears and wants to see banks being nicer to struggling customers.

“More borrowers in arrears are likely to complain about their banks if they feel that they are not being treated fairly and, judging by the amount of adverse credit mortgages that were issued, there are likely to be more fines handed out.”

Mr Strutt adds: “Many of the adverse credit mortgages offered were to customers in already difficult financial situations, and some banks lent more money to borrowers so that they could pay off debts or move up the property ladder. If the base rate increases it will only add pressure to those in arrears.”

Campbell Robb, the chief executive of Shelter, the homeless charity, says: “Every day our advice services help struggling homeowners pick up the pieces after being irresponsibly lent money they had no hope of paying back in the first place. Reckless lending over the last few years, which saw some lenders giving out loans of more than 100 per cent and up to seven times people’s salaries, helped to fuel the rise in arrears and repossessions, not to mention an unsustainable house price bubble.”

Shelter says that it is shocking that the banks are not supporting the FSA’s plans for new rules under the Mortgage Market Review, although the proposals have come under heavy criticism, including from Grant Shapps, the Housing Minister, for excluding too many borrowers from the housing market.

Ray Boulger, of the mortgage broker John Charcol, says: “It would be a shame if claims chasers use [the DB case] to stimulate unjustified complaints. There has been an element of irresponsible borrowing as well.”

But industry bodies deny that the DB Mortgages case sets any precedent for future compensation claims. Robert Sinclair, the director of the Association of Mortgage Intermediaries, says: “DB Mortgages were fined for failing to follow their own internal policies and processes, as well as FSA principles. This does not set an industry-wide precedent for self-cert and interestonly mortgages, as the vast majority of lenders and brokers will have acted in line with their own procedures and in line with FSA principles and rules.”

Bernard Clarke, of the Council of Mortgage Lenders, adds: “The FSA statement related to a single company. Any other claims will have to be decided by the appropriate authorities, depending on the circumstances.”

Before using a claims management company, check that it is authorised by the Ministry of Justice and make sure that you understand whether it will charge an advance fee or take a share of any redress if your case is successful.