DRN-4718880

Financial Ombudsman Service

The complaint

Mr P and Mrs P complain that New Homes Mortgage Services (NHMS), an appointed representative of Sesame Limited, gave them incorrect information about the length of the fixed rate on their mortgage.

What happened

In August 2021, NHMS gave Mr P and Mrs P mortgage advice. They wanted to raise funds to buy a new build property. NHMS recommended a fixed rate of 1.94% until 30 November 2023.

The property was not due to be built until May 2022. In March 2022, NHMS arranged an extension of the mortgage offer on the same mortgage product.

When Mr P read the offer, he noticed that the fixed rate was still due to expire on 30 November 2023. On 11 March 2022, he emailed NHMS and asked, "*Does the fixed 2 year term start from the date we draw the funds or does it end as shown in the offer?*" NHMS replied, "*Your fixed rate will begin on the release of funds to your solicitor and not the date stated on the offer*." That was incorrect, the fixed rate would end in November 2023.

Mr P and Mrs P complain that NHMS mis-sold the mortgage to them and misled them about the duration of the fixed rate.

I issued a provisional decision proposing to uphold the complaint. Subject to any further submissions, I found that Mr P and Mrs P had stated a need for a fixed rate that lasted two years. NHMS ought to have reviewed whether the product was still suitable for them when it became aware that the duration of the fixed rate was going to be less than that.

Mr P had also emailed NHMS and set out his expectation that the fixed rate would last two years. It not only gave him incorrect information about that, but it ought also to have reviewed whether the product it had recommended was still suitable as the advice it had given was six months earlier.

If NHMS had acted correctly then it would have looked at what two year fixed rates were available until it knew Mr P and Mrs P had completed on their mortgage. It knew the Bank of England base rate had gone up in February 2022 and it was well publicised that another increase was expected on 16 March 2022.

Sesame told us it could not tell us what interest rates were available at that time. I said that from publicly available information Mr P and Mrs P's lender was offering interest rates of 1.79% fixed until 31 May 2024. So not only would the duration of the fixed rate align with Mr P and Mrs P's actual needs – it would have been cheaper for them too. I said that Sesame should pay Mr P and Mrs P the difference between what they will have paid to their mortgage from the mortgage's inception until 31 May 2024 and what they would have paid had they been given an interest rate of 1.79%. Sesame should also pay interest at 8% simple per year from the date each payment was made until date of settlement. I also said Sesame should pay Mr P and Mrs P £350 for any distress and inconvenience.

Mr P and Mrs P accepted my provisional decision. Sesame did not. It said I'd placed undue emphasis on the Mr P and Mrs P's confusion, rather on what was actually discussed and agreed with them. It said the paperwork supplied to them set out the correct end date of the fixed rate.

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.

I'm sorry if my provisional decision wasn't clear. I agree with Sesame that the paperwork set out the correct position. I also agree that the email and any confusion is not the most important factor in this complaint – although it is relevant. My point is that the original advice was wrong – the product recommended was never suitable for Mr P and Mrs P's stated needs and circumstances.

NHMS was giving Mr P and Mrs P advice. It was required to recommend a mortgage that was suitable for their needs and circumstances.

NHMS knew that Mr P and Mrs P wanted a fixed rate that lasted for two years. So if it had good reason to believe the mortgage would start soon after the advice had been given in August 2021 then the product it recommended would have been suitable. But that was not the case here. NHMS knew that Mr P and Mrs P were buying a new build property and the fact find said that the property was not being built until 2022. I note Mr P and Mrs P said they told NHMS it was going to be May 2022.

So, the product that NHMS recommended was never going to give Mr P and Mrs P the full two years duration of the fixed rate. The earliest NHMS could reasonably have believed the mortgage would start was January 2022 – and I consider it more likely that Mr P and Mrs P told NHMS it was going to be May 2022. NHMS ought reasonably to have known that a fixed rate that lasted until 30 November 2023 would not meet their needs. Therefore, I don't consider NHMS recommended a product that was suitable for their needs and circumstance.

Further, I don't consider it was good practice in my experience for NHMS simply to extend the existing offer rather than reviewing whether the product was still suitable. Six months had passed, the market had changed and increases in interest rates were widely predicted. So there was a missed opportunity to review the advice and check that the product still met their needs. If it had done so, it would have been clear that the product was no longer suitable for Mr P and Mrs P.

Then Mr P emailed NHMS asking about the duration of the fixed rate. It is accepted the information was wrong. But I think a broker acting reasonably would have checked that the product still met their needs at that point.

I don't consider NHMS has treated Mr P and Mrs P fairly. I don't consider the original advice was correct. And there were missed opportunities for NHMS to recognise its initial advice was wrong – or was no longer suitable for Mr P and Mrs P.

Where a business has not acted fairly, I look to put the affected party in the position they would have been in had the business acted fairly and reasonably.

NHMS knew that Mr P and Mrs P wanted a fixed rate that lasted for two years and that they weren't able to complete their purchase until 2022. So I think that, acting fairly, NHMS ought to have known that if Mr P and Mrs P had not completed by 30 November 2021 the product it recommended was not going to be suitable for them. At least it should have reviewed whether the product was suitable shortly before the original offer expired. I should add for clarity, that I don't consider there was a general obligation for NHMS to keep its advice under review – but rather in the individual circumstances of this complaint and what it knew about Mr P and Mrs P it ought to have done so.

I'd add that that it isn't in dispute that NHMS also gave Mr P and Mrs P incorrect information in the March email. It's not a case where they were ignoring the information they were given. Mr P spotted the end date of the fixed rate was not in line with his understanding, so he quite reasonably asked NHMS to clarify – but it gave him incorrect information. If they had been given the correct information then I consider it likely that they would have asked NHMS to review the advice in any case.

In my provisional decision I set out that in the March 2022 edition of Moneyfacts the lender Mr P and Mrs P used were offering fixed rates of 1.79% fixed until 31 May 2024 with a product fee of £995 and free valuation. Sesame hasn't disputed that this interest rate product was available. In view of that, I consider if NHMS had acted fairly and reasonably it would have altered its advice and recommended that product before the original mortgage offer expired. And I see no reason why Mr P and Mrs P would not have proceeded with that.

Sesame should pay Mr P and Mrs P the difference between what they will have paid to their mortgage from the mortgage's inception until 31 May 2024 and what they would have paid had they been given an interest rate of 1.79%. Sesame should also pay interest at 8% simple per year from the date each payment was made until date of settlement.

Mr P and Mrs P said that this matter has caused them stress and mental pressure. They've also had to meet higher mortgage costs of over £500 for around six months that they would not have had to pay had they been treated fairly.

Looking at out guidance, an award of over £300 and up to around £750 might be fair where the impact of a business's mistake has caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. Typically, the impact lasts over many weeks or months, but it could also be fair to award in this range if a mistake has a serious short-term impact.

The impact of this matter has lasted several months at least. Mr P and Mrs P were making important financial decisions based on the information they'd been given. In view of that and the impact of this matter on them, I consider a payment of £350 would be fair to reflect the distress and inconvenience they have suffered

My final decision

My final decision is that Sesame Limited should:

- Find out how much Mr P and Mrs P have paid/will pay to their mortgage from its inception until 31 May 2024. Pay them the difference between what they have paid and what they would have paid had they had an interest rate of 1.79%.

- For any payments already made, pay interest at 8% simple per year from the date each payment was made until date of settlement. If Sesame considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P and Mrs P how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

- Pay Mr P and Mrs P £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 1 May 2024.

Ken Rose
Ombudsman