DRN-5056053

The complaint

Mr and Mrs C complain that TaylorMade Financial Solutions (TMFS), an appointed representative of Sesame Limited, gave them unsuitable advice to take out an interest only mortgage.

What happened

In 2004 Mr and Mrs C took out an interest only mortgage. They say they were advised to take the mortgage by an adviser at TMFS. Mr and Mrs C say they were assured by TMFS they would be able to use the inheritance they'd eventually receive from Mr C's parents to repay the mortgage at the end of the term.

In 2021 Mr C's parents passed away. Upon sorting his parents' financial affairs, Mr C found they had taken out a shared appreciation mortgage on their home some years before TMFS had arranged his and Mrs C's mortgage. He says that has resulted in there being very little equity left in his parents' property and therefore there won't be sufficient funds to repay his and Mrs C's mortgage at the end of its term in 2029. He said the adviser at TMFS ought to have known that would be the case when he gave them advice about their mortgage, as he had arranged his parents' mortgage too. He said as a result, the mortgage advice TMFS gave him and Mrs C was unsuitable.

Mr and Mrs C say that because of the assurances provided by TMFS in 2004, they have made no effort to seek any alternative means of repaying their mortgage. They say had they known they would have little inheritance to rely on, they would have converted to a capital repayment mortgage a few years after taking the mortgage out when interest rates were at a record low. To resolve this complaint, Mr and Mrs C would like Sesame to put them back in the position they would have been in had their inheritance been available to them as expected. They said that would have resulted in the full mortgage balance being paid off in June 2022. They would also like to be compensated for the stress and anxiety they say Sesame has caused.

TMFS was acting as an appointed representative of Sesame in 2004 when Mr and Mrs C say the advice was given. Mr and Mrs C complained to Sesame. It said there was no record of TMFS giving Mr and Mrs C mortgage advice in 2004, and so it wasn't responsible for dealing with the complaint.

An Ombudsman at this service issued a decision which said that based on the evidence and information available, he was satisfied that TMFS was responsible for the advice given to Mr and Mrs C. And that when giving that advice, it was acting as an appointed representative of Sesame Limited. He concluded that Sesame was responsible for dealing with the complaint about that advice. The Ombudsman was also satisfied the complaint had been made within the time limits. He decided we had the power to consider the complaint.

An Investigator looked into the merits of the complaint. Having weighed up the information and evidence provided, she didn't think the complaint should be upheld.

Mr and Mrs C disagreed, and so the complaint's been passed to me to issue a decision.

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.

Unfortunately, there is very little contemporaneous evidence available from the time Mr and Mrs C's mortgage was taken out in 2004. We only have copies of the mortgage application form and offer document, but there doesn't seem to be any lasting record of the advice Mr and Mrs C were given at the time.

I will firstly summarise the facts that we know to be true. In October 2004, Mr and Mrs C applied for an interest only mortgage of around £200,000 over a 25 year term to consolidate their existing debts. They were repaying their existing mortgage of £164,000, as well as around £14,000 of unsecured debts. They also applied for an unsecured loan of £6,500 with the same lender which was attached to the mortgage. There is no mention of any intended repayment vehicle on any of the mortgage paperwork. Although the mortgage offer explains that Mr and Mrs C will need to ensure they have a plan in place to repay the mortgage at the end of the term.

Did TMFS give Mr and Mrs C advice?

Sesame has provided information that shows Mr and Mrs C had sought financial advice from TMFS on several previous occasions from 1999 onwards. TMFS had arranged mortgages for Mr and Mrs C in 1999 and 2002, and had also advised them on life and critical illness cover during that period too.

Sesame has continued to dispute that TMFS gave advice to Mr and Mrs C about the mortgage they took in 2004. But having reviewed all the evidence, I'm persuaded that on balance TMFS did provide Mr and Mrs C advice to take out this mortgage. I say that because they clearly had an established relationship, and I'm satisfied from the evidence that there was a pattern of Mr and Mrs C approaching TMFS when they felt they needed financial advice. And as TMFS was an appointed representative of Sesame, I'm also satisfied that Sesame is responsible for the advice TMFS gave.

On the 2004 mortgage application form, it is recorded that TMFS paid the lender the valuation fee. There is evidence of TMFS emailing Mr C in July 2004 about his and Mrs C's mortgage options. The mortgage that is mentioned in that email is very similar to the one Mr and Mrs C applied for in October 2004. I've also seen copies of income and expenditure assessments TMFS completed with Mr and Mrs C in both January 2004 and June 2005. As it's clear TMFS was helping Mr and Mrs C both before and after this mortgage was taken out, I think it's likely it helped them with this mortgage too. Mr and Mrs C have also told us that they only ever dealt with TMFS, and they didn't have any contact with other advisers in relation to their mortgage.

Sesame has also provided a copy of the Terms of Business document Mr and Mrs C signed in May 2002 when TMFS had previously given them mortgage advice. That document said the following:

"Under the terms of the Mortgage Code there are three levels of service available. These are:

1. Full advice and a recommendation
2. Information on different types of mortgage products available to allow you to make a choice.
3. Information on a single product only, where no advice is given.

We offer a full advice and recommendation service in all cases in order that we can make an informed decision with you about the choice of your new mortgage. We will also provide you with the information relevant to your mortgage needs, covering such items as an explanation of the main repayment methods and the implications of taking out a mortgage."

For the reasons I've already set out, I'm satisfied TMFS was involved in the sale of Mr and Mrs C's mortgage. And, whilst the Terms of Business document Sesame has provided was from 2002 and not in relation to this specific mortgage sold in 2004, that document makes it clear that TMFS offers a full advice and recommendation service in all cases. So I'm persuaded it's likely it advised Mr and Mrs C to take out the 2004 interest only mortgage.

Was the advice suitable?

The advice was given before mortgage regulation was put in place. But as Sesame was a member of the Mortgage Code Compliance Board at the time, the relevant code of practice that its advisers had to follow was the Mortgage Code.

Under the Mortgage Code, where advice is given, the adviser must ensure the mortgage fits the customer's needs. There is no surviving evidence of the advice TMFS gave Mr and Mrs C at the time, or the reasons for that advice. So I've thought about whether the mortgage was suitable for Mr and Mrs C based on the information I do have about their circumstances at the relevant time.

Mr C was made redundant in 2001, and he and Mrs C built up significant credit card debts to cover their living expenses before he started his new job. In 2002 TMFS arranged a new mortgage for Mr and Mrs C to consolidate some of their unsecured debts, but by January 2004 the income and expenditure assessment Mr and Mrs C completed with TMFS showed the credit card debt had grown again to around £120,000. There are copies of mortgage illustration documents from January 2004 that show TMFS was looking into different options for Mr and Mrs C around that time, but those mortgages didn't go ahead.

Later that year, Mr and Mrs C applied for an interest only mortgage to consolidate some of their unsecured debts with the aim of reducing their monthly outgoings. The new mortgage taken in 2004 achieved that objective. Mr and Mrs C have said that they were worried about the risks associated with taking an interest only mortgage, but they were assured by TMFS that a lot can happen in 25 years, and that Mr C was due a significant inheritance from his parents. Mr and Mrs C say they acted on those assurances provided by TMFS, and didn't do anything to ensure they had an alternative plan in place to repay the mortgage as they didn't think there was a need to. They say it's only since Mr C's parents have passed away in recent years, that they know they're not going to be able to repay the mortgage at the end of its term using their inheritance.

Mr and Mrs C were aware of the risks of taking an interest only mortgage at the time. They had an interest only mortgage in the past, and Mr C has been clear that he was worried at the time this mortgage was agreed in 2004 about how the mortgage would be repaid. But given Mr and Mrs C's financial situation at the time, I'm not persuaded a repayment mortgage would have been affordable for them or would have achieved their financial objectives. They had a repayment mortgage in place at the time, and were struggling to manage all their monthly outgoings based on the income they were receiving. There is evidence that TMFS had previously looked at repayment mortgages for Mr and Mrs C in January 2004, but those ultimately didn't go ahead. I'm persuaded that given the amount of unsecured debt Mr and Mrs C had accrued in a short period, and how quickly they'd approached TMFS for advice after they'd arranged their 2002 mortgage, they were in financial difficulty and the monthly payments on the repayment mortgage were no longer affordable for them.

Mr C has provided a detailed testimony of the conversations he says he had with the adviser at TMFS in 2004 about how the mortgage would be repaid at the end of the term. Mr C says he was assured by TMFS that if all else failed, he would have a large inheritance coming his way. Whilst I don't doubt that Mr C remembers that conversation taking place in that way, given the conversation took place 20 years ago, human memory isn't always reliable.

I do think it's likely Mr and Mrs C did discuss their repayment strategy with TMFS at the time. Indeed – TMFS was required under the Mortgage Code to ensure Mr and Mrs C were aware of the different mortgage repayment types and the implications. I think it's likely a discussion was had about Mr and Mrs C's options to repay the mortgage at the end of the term, such as selling their home or relying on the various policies TMFS had arranged for them before. And there likely was a conversation about the fact a lot can change in 25 years as Mr C remembers. Even if TMFS had mentioned a potential inheritance Mr C was due to receive, I'm not persuaded TMFS is responsible for the position Mr and Mrs C now find themselves in.

If Mr and Mrs C were relying on their inheritance to repay this mortgage at the end of the term, to the point where they felt no need to look at other options, I'm persuaded it would have been reasonable for them to have checked that any inheritance due would have covered the outstanding mortgage. It doesn't seem they did this. Despite their mortgage lender sending several letters during the term of the mortgage asking Mr and Mrs C to check they had a suitable repayment strategy to repay the mortgage at the end of the term, Mr and Mrs C didn't take any action following those letters, or engage with the lender to tell it what their plan was.

Mr and Mrs C have also said that if they were aware they weren't going to receive the inheritance they'd planned for, they would have switched their mortgage to repayment soon after taking it out. Mr and Mrs C completed another financial review with TMFS in June 2005, and that showed that Mr and Mrs C had a negative disposable income at that time, as they were still struggling to keep on top of their unsecured debt. It's not clear what happened after that review, but there weren't any changes made to the mortgage.

Based on what I know about Mr and Mrs C's circumstances in 2005, I'm not persuaded they could have afforded to switch their mortgage to repayment. And if their circumstances did improve in subsequent years, to the point they could afford to increase their monthly payments, there was nothing preventing them from making overpayments on this mortgage to reduce the capital. Based on their own testimony, they were aware of the risks of having an interest only mortgage, and indeed were very worried about it, and so if their circumstances allowed, I think they would have at least enquired about increasing their payments so they could reduce the capital, or sought advice about switching their mortgage repayment type as they had done previously. Even if Mr and Mrs C's inheritance would have been sufficient to repay the mortgage at the end of its term when this mortgage was taken out in 2004, there would never have been a guarantee that would still be the case in 25 years' time, or that the inheritance would have been passed to Mr C by then.

Overall, whilst I appreciate this will come as a disappointment to Mr and Mrs C, I'm not persuaded that the advice TMFS gave to take out this mortgage was unsuitable. And even if there were conversations had about using Mr and Mrs C's inheritance to repay the mortgage at the end of the term, I'm not persuaded Mr and Mrs C have taken reasonable steps to mitigate their losses. So I don't uphold this complaint.

My final decision

Considering everything, for the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C and Mrs C to accept or reject my decision before 5 December 2024.

Kathryn Billings
Ombudsman