

complaint

Ms M and Mr S complain about the advice to consolidate their debts and take out a mortgage that was recommended to them by the appointed representative of Sesame Limited. Ms M and Mr S would like Sesame Limited to take responsibility for the debt Mr S now owes to the lender.

background

Ms M and Mr S married in 2003. Their house was already owned by Ms M in her sole name. In 2006, Ms M and Mr S got advice from an appointed representative of Sesame Limited about dealing with Ms M's debts. At that time, Ms M had a mortgage of about £74,000 and a further loan added to the mortgage of about £37,000. Ms M also had a secured loan of £14,000 from another lender. In addition she had unsecured debts of about £48,000. Ms M had tried but couldn't raise a further loan from her existing lender.

The representative advised that Ms M and Mr S could apply for a mortgage in joint names for £150,000 from a new lender. After paying off the original lender, Ms M and Mr S had about £38,000 available to pay off Ms M's unsecured debts. But, Ms M and Mr M didn't repay those debts and Ms M became bankrupt in 2013. The couple have also divorced. The house was sold in 2013 and the mortgage company is looking to Mr S for the shortfall after sale.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Sesame's representative met with Ms M and Mr S in August 2006 and completed a fact find. The fact find listed Ms M's debts. It noted that the household income was £2,900 per month but the household expenditure was £3,319. A file note records that Ms M's present lender won't give them a mortgage and that Mr S was *"advised of implications of adding himself to the mortgage i.e. debts are Ms S's and he will be liable for whole mortgage debt."*

Sesame's representative set out his recommendations in a letter dated 14 September 2006. A copy of the fact find was attached to that letter. The letter recommends consolidating all the debts except a car loan into the new mortgage in order to *"release £1,359 per month which in turn will reduce your outgoings to £1,960 leaving you with £1,000 per month disposable income"*. The letter warns about now paying the debts over a 25 year period making them more expensive and putting at risk the property if the mortgage was not repaid. I note that in that letter the representative doesn't repeat his warning to Mr S recorded in the earlier file note about adding himself to the mortgage.

Mr S agreed with the recommendations and joined in the mortgage after becoming a joint owner of the property. But although part of the purpose of the loan was to pay off the unsecured debts, it seems that a year later these weren't paid. Ms M and Mr S approached the Sesame adviser for further re-financing but at that stage he couldn't arrange any further debt consolidation.

I have looked at whether the advice in 2006 was suitable in view of the fact that Mr S did not have any debts before the debt consolidation. Although the unsecured debts were solely those of Ms M, it seems to me that in reality they would have affected the whole family

finances. So, I don't think it was unreasonable for the adviser to consider the debts as belonging to the family unit and suggesting a solution that involved the family unit dealing with the debts jointly - subject of course to Mr S agreeing to that and being fully informed of what he was agreeing to.

The fact find was completed on 30 August 2006. The Sesame representative says that Ms M and Mr S were both present at the time. They both sign the fact find. From examining this handwritten document and the way it is completed and signed, I believe it is likely that both Ms M and Mr S were present when it was signed. The fact find sets out in detail the extent of Ms M's debts. So Mr S should have known what those debts were. I also believe that the Sesame representative would have given Mr S a warning at that time about acquiring the debts of his wife as he records that in his notes.

Mr S now says that parts of the fact find are untrue. But the fact find is based on information supplied by Ms M and Mr S and they both sign it to say that it is a true record of their discussions with the mortgage adviser. They also got a copy of it attached to the letter of 14 September 2006. I believe that if Mr S disagreed with the information contained in the fact find that he would have brought it to the attention of the Sesame representative at that time. Mr S also says that he did not get the key facts illustration ("KFI") although there is a copy on the file. The adviser says he gave it to Ms M and Mr S when he met them on 4 September 2006. As the KFI explains what Ms M and Mr S are agreeing to, I would have thought it likely that the adviser brought it along to that meeting. As Ms M and Mr S then signed a mortgage application based on figures contained in the KFI and also got a mortgage offer also based on those figures, I believe that they should have been aware of what they were agreeing to when taking out the mortgage.

I believe that when the Sesame representative wrote Ms M and to Mr S on 14 September 2006 recommending the mortgage that he should have repeated his warning about Mr S taking on Ms M's debts. As I note above, he doesn't refer to it. But, I recognise that in any case, before he could join in the mortgage, Mr S would have had to acquire a share in the property. That required a transfer of the legal ownership of the property to him and his wife subject to the mortgage. Before agreeing to the legal transfer, Mr S would have had a further opportunity at that time to consider whether he wished to proceed with acquiring a share of the property subject to a mortgage of £150,000. Mr S decided to do so and for the above reasons I believe that Mr S would have been fully aware of what he was agreeing to.

Unfortunately, the debt consolidation was not the end of Ms M and Mr S's financial troubles. It seems that the money raised was not used to pay off the debts and a bankruptcy followed. The money that was raised was not used for its intended purpose but that is clearly not the fault of Sesame. My view is given the amount of debt the family unit faced in 2006 the debt consolidation recommended by the Sesame adviser appeared to be a reasonable solution. I believe that Mr S would have known of the full extent of his wife's debts and had reasonable warning of the implications of entering into a joint mortgage. For these reasons I cannot fairly uphold this complaint.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Mr S to accept or reject my decision before 6 July 2017.

Gerard McManus
ombudsman