Financial Ombudsman Service

complaint

Mr and Mrs S have complained about the sale of a mortgage by The Mortgage Warehouse (TMW) in 2006. They say the advice to take out the mortgage was unsuitable. Mrs S has dealt with the complaint throughout.

background

In 2006, after receiving advice from TMW, Mr and Mrs S took out a mortgage with a sub-prime lender. At the time they were aged 58 and 56 respectively. They borrowed £135,000 (plus £725 in fees) over a period of ten years on an interest-only basis. The mortgage was on a fixed rate of 5.59% for six months then a further fixed rate of 5.89% until 30 June 2009. After that date it would change to the lender's variable rate which is 2.44% above LIBOR. The mortgage offer says: "*The terms of this mortgage reflect past or present financial difficulties."*

This was a remortgage. Mr and Mrs S had an existing mortgage of about £80,000 (a small proportion of which was on a repayment basis) from a high street lender, plus a second charge from a sub-prime lender of about £32,000 on a repayment basis. The remortgage raised enough money to pay off those loans as well as unsecured debt of about £10,500.

In 2013 Mr and Mrs S complained to TMW about the advice. In summary they say:

- an interest-only mortgage was unsuitable;
- they had no repayment vehicle;
- selling the property was not an option they would ever have agreed to;
- the anticipated retirement age of 70 couldn't be guaranteed.

TMW didn't uphold the complaint and so it was brought to us where it was considered by an adjudicator. He didn't recommend the complaint should be upheld. Overall he was satisfied the recommendation was suitable in all the circumstances.

Mrs S asked for an ombudsman to review the complaint. Her main points of concern are discrepancies in the documents received from a Subject Access Request. Mrs S also disputes that at the time of the remortgage they were in financial difficulty and were at risk of losing their home. Mrs S says that she didn't say to TMW at any time that she was worried about having to sell the house.

Mrs S says they didn't approach TMW with the intention of taking out an interest-only mortgage. They wanted a self-certification mortgage. No consideration was given to them having part-interest only and part repayment, in line with their existing borrowing at the time. Documents from the lender show that an affordability calculation was carried out on a repayment basis but this wasn't discussed with them.

Mrs S also says that the adjudicator shouldn't have mentioned in his letter what happened in 2008, as that is not part of her complaint. Her complaint is that the advice to take out the mortgage in 2006 was unsuitable. The 2006 advice is the only issue Mrs S thinks we should be considering.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as the adjudicator, for largely the same reasons.

Mrs S's submissions are detailed, but I haven't replied to each and every point. No discourtesy is intended by this; it simply reflects the informal nature of an ombudsman service and my role within it.

I have to decide what the important issues are in a complaint – including things that happened later if I think they're like to affect the outcome. Looking at an event in isolation, without considering the wider circumstances, doesn't always give the full picture of what's actually led to the complaint being made. So to reach a fair result, it's often necessary to look at what happened later.

In this case, I think what happened after the mortgage was taken out is as important as the advice to take it out in 2006. I know Mrs S doesn't agree. But later in this decision I'll explain why I think later events are important in relation to this particular complaint.

the 2006 remortgage

TMW says there was an initial meeting in March 2006. On 26 March 2006 TMW sent Mr and Mrs S a letter about the discussions that had taken place. The letter is very detailed, and contains all the information I'd expect to see about the types of product available, the effect of consolidating unsecured debt, the need for life cover and the implications of an interest-only mortgage.

Mr and Mrs S say they didn't receive this letter and that it contains inaccurate information. But it was correctly addressed and on the balance of probabilities I think it was sent to Mr and Mrs S.

The existing mortgage had an early repayment charge (ERC) of about £2,000. It was part-repayment and part interest-only. Monthly repayments (over the four sub-accounts) were about £429 in total. The second charge, although on a high interest rate of about 13.5%, was on a repayment basis. Monthly repayments were about £465.

In 2006, as well as their mortgage and secured loan, Mr and Mrs S had a number of unsecured debts. Some of these were subject to payment arrangements as confirmed by Mrs S in an email to TMW dated 4 July 2006.

Mr and Mrs S wanted to reduce their monthly expenditure and pay off a substantial part of their unsecured debt – about £21,500. Repayments for those unsecured debts totalled about £580 per month. The debts that were in payment arrangements were to stay as they were. Because they'd been defaulted, no interest was being added to them and so Mrs S explained to TMW that it made sense to keep these going. Repayments on these other unsecured debts were about £300 per month.

So, taking into account the existing mortgage, the second charge and the unsecured debts, Mr and Mrs S were paying about £1,800 per month before they took out the new mortgage.

Monthly repayments under the new mortgage arranged by TMW were about £670, and included the £21,500 which had been costing Mr and Mrs S £580 per month. Mr and Mrs S still had the £300 per month to their other creditors, but would make a saving of over £800 per month on their previous commitments.

I've listened to a telephone conversation between Mrs S and TMW. Mrs S said that Mr S was earning about £20,000 per annum with a bonus the previous year of £4,000. His anticipated bonus for the coming year was, according to Mrs S, expected to be about £10,000. Mrs S had just started a job on £7,000 but was shortly expecting a rise to £9,000. Mrs S also explained to TMW that there were other business opportunities that she was expecting to come to fruition. So it was on these higher figures that the lender assessed the application.

TMW pointed out to Mrs S that an interest-only mortgage wasn't a suitable long-term solution but at the end of the fixed-rate period Mr and Mrs S would be able to transfer onto a repayment mortgage. Mrs S agreed that the only alternative was to sell the house, which was something she really wanted to avoid. She said she'd rather try to get their finances back on track.

I agree the options available to Mr and Mrs S were limited. The evidence is persuasive that in 2006 Mr and Mrs S were in financial difficulty. They'd defaulted on payments which meant they'd had to reach arrangements with some creditors and their income was insufficient to support their commitments. They needed a solution that would give them some breathing space over the short term while they got their finances back on track.

The three-year fixed rate mortgage provided them with exactly this. TMW says that it was always intended that, once the fixed-rate period had expired, another mortgage on a repayment basis would be arranged. I'm satisfied Mr and Mrs S were happy to go ahead with the mortgage and that it was also their understanding, as discussed with TMW, that they'd look to move to a repayment mortgage at the end of the fixed rate period.

I don't think a repayment mortgage was affordable. It would have cost about £1,600 per month. On top of that, Mr and Mrs S also had another £300 of payments to other creditors. This was more than they were already paying on their existing secured and unsecured debts.

The interest-only mortgage was intended to be a short-term measure. So the term of the loan could have been less than ten years, if this particular lender had allowed that. The interest payments would have been exactly the same whether it was over five or ten years. But as it was the intention to move to a repayment mortgage after three years, I don't consider it to be significant that this mortgage ran past retirement age. It wasn't unusual in 2006 for mortgages to run past normal retirement age.

But even if the mortgage had been arranged over a shorter term, I think Mr and Mrs S's position is likely to have been worse. A shorter term would already have expired and Mr and Mrs S would by now have had to find the capital to repay the loan.

Mrs S has raised concerns about discrepancies in the paperwork, such as money laundering documentation which suggested TMW had met Mr S. But any discrepancies don't affect the advice that was given about the remortgage. TMW isn't responsible for any paperwork compiled by the packager or the lender. TMW wasn't involved in any dealings between those two parties.

There was no repayment vehicle for the mortgage, other than a sale of the property. In itself, this wasn't unusual in the mid-2000s. Lenders wouldn't accept it now. The mortgage was meant to be a short-term buffer against financial difficulties which both Mr and Mrs S and TME expected would be temporary. So in all the circumstances I don't think it was unsuitable for the mortgage to be arranged on this basis.

what happened later

In January 2007 Mr and Mrs S asked TMW about another loan for bathroom refurbishment. It seems they now had unsecured debts totalling almost £25,000. Two credit cards taken out in June and August 2006 had balances of almost £10,400 by January 2007. TMW was unable to help them.

In July 2008 Mrs S asked TMW about a further advance. She explained they were looking to borrow about £45,000 over 8-10 years to clear some loans, on top of the outstanding mortgage of £135,000. Mrs S said the total income was about £48,000, but they had no proof of this. She explained that Mr S was about to start a new job in September on £25,000 with a £2,000 bonus (not guaranteed) but that he would be on six months' probation. Mr S had also started his own business, anticipating £1,200 per month, and he had £200 per month from pensions.

Mrs S said she'd been made redundant from her previous job and hadn't worked for a year after having surgery. But she was hoping to start a job soon earning about £14,000, although she would be on probation. Mrs S also explained that she had a business which was starting to take off, but with no guaranteed income. But again in July 2008 TMW was unable to help them.

I think these later events are significant. The advice in 2006 was given on the basis that Mr and Mrs S were starting new jobs. The remortgage would clear a significant proportion of their unsecured debt and reduce their monthly outgoings. This would give them some breathing space to get their finances back on track. Then at the end of the fixed-rate period, the intention was that they would remortgage onto a repayment mortgage. The 2006 arrangement meant Mr and Mrs S wouldn't have to sell the house – something Mrs S said she wanted to avoid when she spoke to TMW in 2006.

But what seems to have happened is that by 2008 Mr and Mrs S's employment positions changed, and their unsecured debt had increased to about £45,000. By 2008 the financial climate was starting to change. Lenders were becoming far more cautious about the risks to which they were prepared to be exposed, particularly in relation to self-certified loans. So all these factors – some of which were out of Mr and Mrs S's control, and all of which were beyond TMW's control – affected the chances of Mr and Mrs S being able to transfer onto a repayment mortgage, which was the original plan.

conclusions

I'm satisfied from the available evidence that the 2006 mortgage was intended to allow Mr and Mrs S to get their finances back on track. As Mrs S acknowledged, she had no other alternative but to sell the house. So on that basis I'm satisfied the advice was suitable at the time and for the purpose it was given.

If Mr and Mrs S's circumstances hadn't changed as they did, I think it's likely TMW could probably have arranged a repayment mortgage for them at the end of the fixed-term period, even in a changed financial climate.

I appreciate Mr and Mrs S are now left with an interest-only mortgage and are approaching the time when they will need to repay it. I would urge them to keep in touch with their lender about this to see what options are available. If they're experiencing financial difficulty, Mr and Mrs S might want to contact a debt advisory service such as StepChange, Citizens Advice or National Debtline. We can provide contact details for these organisations if Mr and Mrs S would like us to.

my final decision

I'm satisfied the 2006 mortgage wasn't mis-sold by The Mortgage Warehouse. This means that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs S to accept or reject my decision before 20 April 2015.

Jan O'Leary
ombudsman