complaint

Mrs and Mr K's complaint concerns advice given to them by Finances Explained Limited to take out an equity release lifetime mortgage.

background

In 2012 Mrs and Mr K approached Finances Explained with the aim of releasing some equity from their property. They had an existing interest only mortgage and explained that they wanted to pay this off and generate some additional funds as a cash injection into their business.

A recommendation was made and a lifetime mortgage arranged for them. However, only months later the level of their unsecured debt had reached such proportions that they were forced to make other arrangements, as part of which the lifetime mortgage had to be redeemed at significant cost.

Mrs and Mr K's representatives believe that Finances Explained misadvised the couple, primarily because it failed to properly assess their debt situation at the time of the advice. They say that, had the business taken steps to confirm the level of debt, it would have been apparent that the new mortgage was of no benefit to Mrs and Mr K.

Their level of debt was so high that any savings made on their monthly outgoings, or benefits from the additional funds, were negligible and it was inevitable that alternative arrangements would have to be made. As such, the representatives consider that Finances Explained should now put Mrs and Mr K back in the position they would have been in had the mortgage not been recommended, saving them the expensive costs of redemption.

The complaint was considered by several adjudicators all of whom recommended the complaint should not be upheld. In brief, they shared the view that Mrs and Mr K should have made the business aware of the level of their debt, even in the event that they were not directly questioned about it. Without this information they felt that the recommendation made by Finances Explained was generally suitable in light of what the business knew of Mrs and Mr K's needs and circumstances.

Mrs and Mr K's representatives did not agree, maintaining that a much greater level of responsibility for confirming the circumstances sat with the business in its role as adviser. As such, the matter has been referred to me to decide.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the evidence and wider circumstances.

It is not disputed that Finances Explained were unaware of Mrs and Mr K's significant level of unsecured debt. Given that the business was therefore providing its advice solely on the basis that Mrs and Mr K wanted to pay off their existing loan and obtain additional funds for their business, the recommendation doesn't strike me as inappropriate.

Although Mrs and Mr K were in their 70s at the time they were still active with their business and having to maintain payments to their existing mortgage. With this understanding of their circumstances, recommending equity release as a means to address their needs seems reasonable.

But at the heart of this complaint is the fact that the advice was in fact provided *without* a proper understanding of Mrs and Mr K's circumstances. I'm satisfied that if Finances Explained had known the extent of Mrs and Mr K's financial difficulties it is unlikely to have made the same recommendation. It would have been clear that it was of no benefit. Conversely, it was likely to worsen their position.

So, to my mind the question here is whether, in light of Mrs and Mr K's decision (for whatever reason) not to disclose their significant level of debt, Finances Explained took reasonable steps to try and obtain the information.

The business has explained that as part of the advice process it took Mrs and Mr K through a presentation about how lifetime mortgages worked; detailing their benefits and risks. This specifically referenced the issue of debt. So, I think that even in the absence of a direct question about whether Mrs and Mr K were servicing any other borrowing besides the existing mortgage (and in the circumstances it strikes me as more likely than not that one would have been asked), it was reasonable for Finances Explained to interpret Mrs and Mr K's silence on the matter as meaning that they were not.

And in light of that silence I don't think it's reasonable to expect the business to have pressed any further on the subject, or to have examined bank statements or carried out credit checks, as has been suggested by the representatives.

In summary then, while I recognise the severity of Mrs and Mr K's situation, I am not persuaded that Finances Explained acted incorrectly. I'm satisfied it took reasonable steps to determine Mrs and Mr K's needs and circumstances and made an appropriate recommendation on the basis of what it understood their position to be.

my final decision

For the reasons given, my final decision is that I do not uphold the complaint.

James Harris
ombudsman