

### **complaint**

Mrs F complained that the advice she received from Backhouse Independent Financial Services Limited (Backhouse) to make lump sum contributions to a pension plan was unsuitable as this was money raised through mortgage loans and she should have been advised to reduce her mortgage.

### **background**

The background to this complaint is set out in my provisional decision (copy attached) which I issued on 27 January 2016 and forms part of this decision.

Mrs F responded supplying significant information as to what happened to her after October 2000 when she was aged 52 and she bought her current house with 44% share of the proceeds of the former marital home. In 2001 Mrs F arranged an interest only loan of £35,000 to help repay some loans that she had taken out.

Mrs F has said that in November 2002 she remortgaged her home and her interest only mortgage increased to £75,000 as she was planning to purchase a buy to let investment property. This buy to let purchase did not proceed and the increase in the loan was placed on deposit.

In August 2004 Mrs F jointly purchased a property with her then partner. She did this by borrowing £315,000 from a bank. Mrs F and her partner lived in the new property for a year and rented out her former home.

In September 2005 Mrs F then moved back into her former home. The new home that she had bought remained unsold

In 2006 the new home was sold to a cash buyer and Mrs F placed her share of the proceeds after paying off the mortgage in a bank

In 2007 Mrs F states that she discussed with a representative of Backhouse the possibility of paying down her mortgage using some of her savings.

Between 2007 and August 2009 Mrs F was able to make payments to reduce her mortgage down to £75,000.

In August 2009 Mrs F (then aged 61) broke up with her then partner and was then made redundant. Mrs F then increased her mortgage by £25,000 to start a new business.

In 2012 Mrs F states that her accountant asked why she had such a large mortgage at age 64.

### **my findings**

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

I have considered in detail the submission made by Mrs F.

It is apparent that after the meeting on 10 August 2006 the business recorded in a file note that Mrs F was likely to realise £65,000 from the sale of a property and wanted to know what to do with the money. It is also recorded that Mrs F might move to Australia in the next three years. If this was to happen then the mortgages would have been repaid.

I also note that between 2007 and mid 2009 Mrs F paid off part of her mortgage reducing it from £100,000 to £75,000 whilst at the same time making contributions into a pension plan with the aim of improving the level of her retirement provision. At that time it was expected that the remaining mortgage would be paid off when Mrs F downsized or moved to Australia. The fact that Mrs F appears now to have changed her mind and has done neither is not the fault of the business.

It is apparent that Mrs F's plans changed as her personal circumstances changed. I consider that had Mrs F said that she did not want to downsize or move to Australia that the firm would indeed advised her to consider repaying as much of her mortgage as possible.

### **my final decision**

I do not uphold this complaint against Backhouse Independent Financial Services Limited and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 18 April 2016.

Adrian Hudson  
**ombudsman**

## **Copy of provisional decision 27 January 2016**

### **Complaint**

Mrs F has complained that the advice she received from Backhouse Independent Financial Services Limited (the firm) to make lump sum contributions to a pension plan was unsuitable as this was money raised through mortgage loans and she should have been advised to reduce her mortgage.

### **Background**

An adjudicator considered the complaint and recommended upholding it. He made the following main points:

- Although Mrs F had said the reason for the referral to the adviser was to discuss life insurance, the fact find document and adviser notes indicated pensions were the main focus of the discussions.
- It was not clear whether repaying her mortgage had been considered as an alternative to making lump sum contributions to a pension. There was little evidence to confirm it had been discussed or to discount it because there was already a suitable repayment method or plan in place.
- On the balance of probabilities he concluded that repaying the mortgage had not been discussed as an option.
- The lack of discussion might have been because of an assumption that Mrs F would be emigrating and would then sell the property.
- The adviser's notes mentioned that although her partner wanted to emigrate she did not.
- At the time of the first lump sum contribution Mrs F was nearly 59 years old and wanted to retire at age 65 and she had no repayment vehicle in place for her mortgage. In order to fulfil the 'know your customer' requirement the adviser should have discussed all of her financial arrangements including her mortgage liability.
- The advice to invest lump sums into a pension was unsuitable as there was a need to use the capital towards repaying the mortgage.

The business did not agree and replied via a third party making several comments and observations including the following main points:

- The firm was not authorised or regulated to provide mortgage advice.
- Mrs F was sufficiently astute to contact her mortgage lender and arrange capital repayments, why didn't she repay the borrowing with the capital she used for her pension contributions Despite increasing her mortgage by £25,000 Mrs F paid over £63,000 into her pension plan.
- Mrs F's recollection was that at no time did the adviser suggest using her capital to reduce her mortgage. Mrs F's recollections were flawed and this was incorrect as the adviser's meeting notes recorded "*we discussed alternatives such as reducing her mortgage*".

The adjudicator replied:

- Regardless of whether BIFS were regulated or authorised to provide mortgage advice he considered it should have advised Mrs F to use her capital towards repaying her mortgage.
- In his opinion Mrs F's ability to make capital repayments or to arrange further borrowing, as she had done previously, did not remove the onus of responsibility for the adviser to treat the customer fairly. In his view a recommendation should have been made for serious consideration of using her spare capital towards repaying liabilities before

considering investments. If that was not accepted then he would expect the adviser to document the reasons in the suitability letter. He did not consider an entry in an internal file note to be sufficient to confirm the advice or the discussion and the response.

- In his letter of 23 July 2014 he said there was *“little evidence in the fact finds or suitability letters that repaying the mortgage as an option had been discussed, or discounted as there being a suitable repayment method or plan already in place”*. He accepted there was an entry in the adviser's meeting notes regarding repayment of the mortgage, however he did not consider that to be sufficient confirmation that the option of using her capital towards repaying her mortgage was fully discussed and importantly her reasons for not doing so properly explored and documented.

The adjudicator was not persuaded to change his mind and the case has therefore been referred to me for a decision.

### **my provisional findings**

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

The business has provided detailed submissions to support the rejection of this complaint, which I have read and considered in their entirety.

It is clear that at the time of advice in 2006 Mrs F had a meeting with the business at which a Confidential Financial Fact Find was completed. This recorded that Mrs F had an outstanding mortgage at that time of £100,000 on her current property. There is a hand written note on the fact find underneath this figure saying 'To sell'. I therefore consider that the business was aware that Mrs F had an interest only mortgage and that the plans at that time were to sell this in due course.

Mrs F had recently increased the amount of her mortgage against her home by £50,000. The objective of the release of some of the equity in her house was to fund a further investment property purchase with a friend. This in my opinion would not indicate that Mrs F was at that

time interested in reducing her outstanding mortgage. However the investment property purchase did not go ahead. I consider that it would have been clear to Mrs F that she had funds on deposit in her bank account and that she had increased her mortgage with her lender. There is no evidence that she sought to return the funds to the lender to reduce the mortgage.

The firm has noted down that Mrs F was possibly considering moving to Australia and that she held a share of £65,000 in a second property.

I therefore have to agree with the business that Mrs F was aware that she had increased her mortgage and that her plans involved selling her home and/ or potentially moving to Australia in the future.

The business recognised that Mrs F had limited pension provision at that time and recommended that she invest a lump sum in a personal pension plan.

A single premium was paid into the pension plan in 2007 with two further payments in 2008. A total net investment into a pension plan of £63,030 was made by Mrs F. At no time did Mrs F worry about the interest only mortgage that she had taken out many years earlier as it is clear that she was intending to either downsize when she retired and/or move to Australia.

Whilst the adjudicator has stated that in their view Mrs F should have been advised to repay her interest only mortgage rather than invest in the pension plan I disagree. It is clear from the notes that Mrs F's plans at the time that the advice was given were to repay her mortgage involved the

selling of her current property when she retired. In my opinion many of the individuals who have interest only mortgages are planning to sell the property at a later date and then move into a smaller property.

Finally I should point out that following the introduction of Pension Freedom legislation it may be possible for Mrs F to take the value of her pension policies as a lump sum (subject to the appropriate tax being paid).

**my provisional decision**

I am therefore minded not to uphold Mrs F's complaint against Backhouse Independent Financial Services Limited.

Adrian Hudson  
**ombudsman**