complaint

Mr and Mrs S complain they were mis-sold a mortgage by an appointed representative of Sesame Limited.

background

Mr and Mrs S complain about an interest-only mortgage they took out in 2007, having received advice from Sesame's representative.

Mr and Mrs S say the mortgage wasn't right for them. They already had a repayment mortgage of around £60,000. Following the re-mortgage, they had an interest only mortgage of £160,000 – the increased balance was to repay the existing mortgage, as well as various debts associated with Mrs S's business.

Mrs S had a business loan with the same lender as the previous mortgage. And Mrs S has also explained that there were various other debts – credit cards and loans – that had mostly been run up in supporting her business. She says she was experiencing financial difficulty at the time. She'd invested in refurbishing her business premises, which had been more expensive than she'd anticipated. And her business was running at a loss, and she wasn't taking a wage. So as a result her debts had run up. She says her accountant recommended she get some financial advice and referred her to Sesame – but it didn't give her wider financial advice; it just sold her a mortgage that wasn't right for her and Mr S.

Mr and Mrs S say the mortgage was unsuitable because it was unaffordable. It ran into their retirement. Both the lender and Sesame have since been fined by the regulator for how they treat their customers. They should have been given other options – such as bankruptcy or an arrangement with their creditors. They've struggled to afford the mortgage ever since.

Sesame said it didn't have any records of the advice that was given at the time because of the passage of time. But based on what it knew of Mr and Mrs S's circumstances it didn't think the mortgage was unsuitable. It said their main priority was to pay off their other debts, and this was achieved. It said they couldn't afford a repayment mortgage, so an interest only mortgage was recommended. And their credit history, and the amount they wanted to borrow relative to their income, would have restricted the choice of lenders open to them. It said they had no other option but to remortgage at the time.

Our investigator didn't recommend upholding the complaint, so Mr and Mrs S asked for an ombudsman to review it.

my findings

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

This complaint is about mortgage advice that was given in 2007 – although that's more than six years ago, Sesame has consented to us looking at the complaint. But it's explained that because of how long ago the advice happened, it doesn't have any records from the time of the sale anymore. Neither do Mr and Mrs S.

This means there are significant gaps in the documentary evidence available to me. I've discussed the case with Mrs S and she's told me what she's able to remember of their situation at the time. But she doesn't have any surviving paperwork, for example statements, which might show their finances or give details of the debts added to the mortgage.

Our investigator has managed to get evidence of Mrs S's business loan in the form of the original facility letter. It was for £35,000, taken out around a year before the mortgage. The loan was secured over Mr and Mrs S's home. Mrs S says that by a year later she had missed some payments and borrowed further money, so the loan balance was nearer £50,000. But she doesn't have any documentation to confirm that.

The rest of the additional mortgage balance was, Mrs S says, made up of various other debts – loans and credit cards – taken out to fund the business, or to spend on the home or the cost of living. All this debt was unsecured. Again, there's no documentation to confirm that still surviving.

This makes it difficult to decide whether or not a suitable recommendation was made. When giving mortgage advice, an advisor should have – at this time – understood Mr and Mrs S's needs and circumstances. They should then have recommended a mortgage that was affordable and appropriate to their needs and circumstances, and the most suitable of those available – including recommending not to go ahead if there was no suitable mortgage available. And where the purpose of the mortgage is to consolidate other debts, the adviser should take into account whether it is appropriate to secure unsecured debt, the extra costs of adding debt to a mortgage, and whether other alternatives – such as making an arrangement with creditors – are more appropriate.

The difficulty I have is that there is no surviving record of what advice was given, the reasons for it, or the underlying factual circumstances on which it was based. Mrs S says that she was referred to Sesame by her accountant, who recommended taking financial advice because she was in difficulties while her business wasn't making any money and she had to meet its costs.

I don't think Sesame could have been expected to advise Mrs S about her business, or about whether or not it was viable, or whether she should have shut it down at this point. But where she was a sole trader, and the debts she'd run up for the business were in her own name or joint names with Mr S, there's inevitably an overlap with giving personal financial advice.

Mrs S now says Sesame should have advised her to go bankrupt, or try to come to some arrangement with her creditors. But I'm not persuaded that this is something she would have wanted to consider at the time.

I don't think bankruptcy would have necessarily been the best option – since in addition to the previous mortgage, she had a business loan of at least £35,000 (perhaps up to £50,000) secured on the family home. If she'd gone bankrupt, there would have been a very real risk that the business loan lender would have called in the security and Mr and Mrs S would have lost their home.

When I spoke to Mrs S, she explained that she eventually sold the business in 2009. In 2007 she was still trying to make a go of it. She had invested significant capital in refurbishing the premises which she wouldn't get back unless she completed it and made a success of the business on an ongoing basis. I think she was still committed to making it work at this time.

As she was a sole trader, if Mrs S had defaulted on her unsecured debts (which were at least £50,000) or entered into an arrangement with her creditors, it would have been very difficult for her to continue with her business – for example, by preventing her from getting credit from suppliers.

I think at the point Mr and Mrs S spoke to Sesame, Mrs S was still committed to making her business work. In getting to this point, she'd incurred significant debts which they were beginning to struggle with. I don't think Sesame could or should have advised her about the viability of her business. Given that it was still ongoing, and Mrs S was still committed to making a success of it, a way needed to be found to make the debt commitments more affordable without jeopardising that. In that light – and recognising that the limitations of the evidence available to me – I'm not persuaded that remortgaging to consolidate the debt at a lower interest rate and with lower outgoings was an unsuitable thing to do.

In fact, things didn't work out. The business did fail a couple of years later, and Mr and Mrs S struggled with the mortgage because she still wasn't able to take an income from the business. They're now in a difficult position, left with an interest only mortgage that means the business debts are still outstanding and secured to their property. With the benefit of hindsight, I can see that it may well have been better – in light of what happened later – to have cut their losses in 2007.

But I can't consider this complaint with the benefit of hindsight; I can only look at what was known and knowable at the time of the advice. As I say, the evidence is incomplete and all I have to work with is Mrs S's recollections of her financial position, and the fact of the mortgage that was arranged. But based on that evidence, I'm not persuaded that Sesame made an unsuitable recommendation in the circumstances as they seem to have been at the time.

my final decision

For the reasons I've given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 13 February 2020.

Simon Pugh
ombudsman