

complaint

Mr and Mrs M complained that the level term assurance policy sold to them in 2004 by Sesame Limited (sesame) was not suitable. They say that they were told the policy was a condition of the mortgage.

They also complained that they had pre-existing conditions, which would have resulted in the policy not being suitable.

background

An adjudicator at this service didn't feel the complaint should be upheld.

He said that when Mr and Mrs M took out their interest-only mortgage they didn't have any suitable insurance to protect this borrowing, and the recommended policy matched the size and term of the mortgage.

He acknowledged that Mr and Mrs M said the adviser told them the policy was a condition of the mortgage. But as there were no transcripts or recordings of the meeting, he didn't feel able to reach a safe conclusion about what was said.

In this context, he had relied on the information the advisor had provided during and after the meeting. This said the insurance policy was not a condition of the mortgage.

He thought it was fair to assume that Mr and Mrs M would have read through the mortgage offer, and would have raised any concerns with the advisor or his firm at the time.

He didn't feel the complaint should be upheld.

He also said Mr and Mrs M confirmed at the time that they didn't have any pre-existing conditions and had signed to confirm this.

Mr and Mrs M did not agree.

- They said the advisor took no notes during the meeting so the Fact Find cannot be relied upon
- They reiterated that the advisor told them the policy was crucial to the likely success of their mortgage application

- They believe that insurance is gambling and gambling goes against their beliefs
- They had free accommodation at the time so were only buying the property for investment purposes, as such it could've been simply repossessed if necessary
- They were always planning to sell once they had made some improvements, and the introductory mortgage rate expired
- They had enough equity in the property to cover the mortgage
- The mortgage application wrongly stated that it would be their main residence
- So would the insurer have ever paid out given this anomaly?
- The advisor was aware of Mr M's long-term medical condition and that he'd been refused cover by an insurer, and this policy didn't pay out when he was subsequently out of work for a prolonged period

As no agreement has been reached, this case has been referred to me for a final decision.

my findings

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

In this case, I agree with the adjudicator, and for substantially for the same reasons.

While I don't doubt Mr and Mrs M's recollection of what the advisor told them, I don't feel it would be fair or reasonable to reach a conclusion about what was said in the absence any supporting evidence.

I am also satisfied that the documentation does make clear that the policy was not a condition of the mortgage.

Mr and Mrs M say the Fact Find cannot be relied upon. However, the advisor does record a great number of details about Mr and Mrs M's background and circumstances included the fact that they didn't own another property, and that this would be their first mortgage.

This suggests to me that Mr and Mrs M must have had a lengthy discussion with the advisor in order for him to record so much information.

I acknowledge that if Mr and Mrs M didn't intend to live in this property, and only were only buying it as a short-term investment opportunity, there would be a doubt as to whether the recommendation was entirely appropriate – if they explained this to the advisor.

But, I've not seen sufficient evidence to safely conclude that this was their intention or, crucially, that they informed the advisor of this.

According to the Fact Find, the advisor asked Mr and Mrs M if they planned to pay off some of the mortgage in the foreseeable future, and they replied 'No'. It also records that he asked them if they were likely to move home within the mortgage term, and the answer recorded is 'At some stage if the family increases'.

These responses do not seem to indicate that Mr and Mrs M considered this purchase simply as a short-term investment proposition or that it was only view as an investment opportunity.

I recognise that Mr and Mrs M may dispute the accuracy of this record, and I do not consider these statements or the overall Fact Find conclusive evidence of Mr and Mrs M's intentions. But I feel I must fairly consider it alongside Mr and Mrs M's testimony. And with such a conflict of evidence, I do not feel it would be reasonable to conclude that the advisor definitely did something wrong.

Finally, I have considered all the information concerning Mr M's medical condition. From my reading of the documentation, the insurer didn't agree to offer Mr M the waiver of premium benefit, given his declared medical issues. This is why he didn't benefit from this aspect of the policy when he stopped work for a prolonged period.

The insurer did agree to Mr M being included on the joint life cover policy, which included terminal illness payment, and I've seen no evidence to suggest it wouldn't have paid out if either Mr or Mrs M had died or been diagnosed with a terminal illness.

my final decision

For these reasons, I do not uphold this complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 16 December 2015.

Tony Moss

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