DRN-4369871

The complaint

Mr and Mrs N complain that the mortgage advice they got from a broker working for Sesame Limited wasn't suitable for them. Their mortgage offer expired before they were due to complete their purchase, and they were wrongly advised they could extend that offer.

What happened

Mr and Mrs N decided, in late 2021, to buy a new-build property. They took mortgage advice from a broker working under the umbrella of Sesame Limited. They said they were advised to move quickly, because mortgage rates were rising. They told the broker the completion date for the property was expected to be some time between June and August 2022. They said they were told at the time that the lender the broker had recommended would make an offer which would initially be valid for six months. But if the offer did expire, then the broker could ask for an extension, and as long as they could show they were still in employment, everything would stay the same.

Mr and Mrs N got a mortgage offer at 1.69% fixed until 2 March 2027, produced on 16 December 2021. That offer would expire on 31 May 2022, before their planned completion.

Mr and Mrs N said that they paid £30,000 deposit on the back of the mortgage offer, and by February 2022 they had sold their previous home, so they were committed to the purchase.

Mr and Mrs N said they spoke to their broker again a few months later, to check how a new job offer might affect their mortgage. They also sought reassurances that they still had their existing offer, and could use that to buy the house, and were told everything was fine.

Mr and Mrs N said the broker rang in May 2022, to say they needed to reapply for their mortgage, as it was about to expire. They found out then that the rate was going up considerably, and their payments would be an extra £130 a month over 5 years.

Mr and Mrs N said they now know there are lenders whose mortgage offers last longer, so they think their broker recommended the wrong mortgage. They wanted compensation for the extra £130 a month they would pay over the 5 years, which they worked out as £7,800.

Sesame said it thought the mortgage recommendation the broker made was suitable for the couple, and there was no evidence the broker had chosen this for her own financial gain. Sesame didn't think its broker had given any commitment that Mr and Mrs N could keep the rate they applied for late in 2021.

Sesame said no lender is obliged to extend a mortgage offer, and lenders can withdraw an offer at any time up to completion. The extension of the offer expiry date is at the discretion of the lender and subject to various factors. Sesame said it considers those are outside the control of the broker. So, whilst the broker could have highlighted the risks of the offer expiring to Mr and Mrs N, there was nothing she could have done to mitigate this risk. Another lender may not have extended the offer either. And rising interest rates were also outside of the broker's control.

Our investigator thought this complaint should be upheld. She said Mrs N knew about the expiry date on her offer, and raised concerns several times, but her broker said the offer could simply be extended to accommodate the property's completion date of July to August 2022. Our investigator didn't think Sesame had explained that her offer was only guaranteed until its expiry date. So our investigator said Mr and Mrs N were always unlikely to be able to complete their purchase using this offer.

Our investigator thought if Mr and Mrs N had applied for their mortgage in early 2022 instead, they could have secured an offer from the same lender. This would have been at a higher rate than they were offered in December 2021, but not as high as the one they eventually got, in June 2022. So she thought Sesame should pay the difference between the rate they could have got in early 2022, and the one they eventually got. And because of the upset this situation caused, she said Sesame should pay Mr and Mrs N £550 compensation.

Sesame didn't agree. It repeated the arguments it had advanced when it responded to Mr and Mrs N's complaint. It didn't think it was responsible for what had gone wrong, and it didn't think it should have to pay such a high compensation award. Because no agreement was reached, this case was passed to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

> I have listened to the calls Mr and Mrs N had with their broker to take out this mortgage. And, like our investigator, I do think Mr and Mrs N were alive to the issues caused by buying a new build property, and that they raised those concerns with their broker. But I don't think they could have waited until early 2022 to apply for a mortgage. They needed to have an offer in place in late 2021, so they could reserve the property they wanted. And that meant they had to get an offer a long time in advance of their likely completion.
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> Mr and Mrs N told their broker the property would be ready some time between June and August 2022. So it's clear the broker knew that Mr and Mrs N were purchasing a new build and that it might not be completed before an offer issued in late December would expire.
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> Mr and Mrs N asked what would happen – should they apply for a mortgage now, or wait. And I can hear that their broker advised them that they did need an offer now, but that most lenders will extend that offer past six months for a new build property.
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> Not all lenders will extend an offer, on the same terms as it was initially granted. There's nothing to explain why the broker thought this particular lender would extend this offer. Later internal notes make clear that other staff members within Sesame consider that the lender the broker recommended in this case won't ever extend its offers. And this lender's intermediary pages also make clear that if the product applied for is no longer available after the six month offer period has expired (as is often the case when mortgage interest rates are rising quickly) then a new product will need to be selected.
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> Mr and Mrs N then needed to reapply in May, when they realised their mortgage offer would not be extended. They secured a rate of 2.79%, fixed until 2 August 2027, instead of the rate of 1.69% which they were expecting.
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> Sesame said there was nothing their broker could have done to avoid this, and any

mortgage offer could have been withdrawn before completion anyway. But I don't think the answer here is quite that straightforward. Mortgage offers, once made, are legally binding on the lender, so they can only be withdrawn in specific circumstances. And not all mortgage offers have the same validity period. In short, I think Mr and Mrs N are paying a rather higher interest rate now, because they were wrongly advised in late 2021 by Sesame's broker.

I know Mr and Mrs N would like Sesame to pay the difference between the monthly payments they were expecting, on their December 2021 mortgage offer, and the payments they are now making. But I don't think it's fair and reasonable, in the circumstances of this case, to base compensation on the rate that they were offered in late 2021. That rate was only ever available for a specific time. It was no longer available when they bought their property, so they could never have got this rate.

Instead, I need to about what advice Mr and Mrs N should have been given in late 2021, and what mortgage they could have secured if they'd been given better advice.

It's not unusual for new-build properties to take longer to reach completion, so specific mortgage products do exist which are designed to deal with this issue. So Sesame's broker could have suggested a mortgage product which was specific for new build properties, and would either have rather longer validity from the outset, or could be extended whilst keeping the same rate. I think that's the advice that Mr and Mrs N should have been given in December 2021.

New-build mortgage products do tend to have slightly higher interest rates. But interest rates were rising at the time, and I can hear on the call recordings that all sides were aware of this. So, in the context of what were widely understood to be rising interest rates, I think a new build mortgage should have been offered to Mr and Mrs N. And I also Mr and Mrs N would have been likely to accept this, if it was offered. I think it's likely that they could have secured an offer from a lender who would provide a longer validity period, if they had been advised to make such an application in December 2021.

Unfortunately, Mr and Mrs N weren't offered a new-build specific loan. So we cannot be entirely sure what rate they could have secured, in December 2021, with an offer valid until their property was due to complete. We know that Santander was recommended to them, as the lowest rate they could secure at the time, so any other lender's rates which they could secure would be expected to be slightly higher anyway. And as I've explained, mortgage offers designed for new builds, with longer validity, do also tend to be at slightly higher rates.

I will consider any further evidence that Sesame wishes to submit before finalising my decision on this point, but at the moment, I think it's likely that, if Mr and Mrs N had been advised to apply for a new build mortgage rate in December 2021, they could have secured an offer which would have extended to their completion date, in late July 2022. I think they would have been likely to secure a rate around 0.25% higher than the rate they did get. And I think it would be fair and reasonable to base the compensation in this case, on the difference between the rate they did secure, of 2.79% fixed until 2 August 2027, and a notional rate of 1.94% which I think they could have secured in December 2021.

So, subject to further evidence on this point, I currently think Sesame should work out the difference in payments between the rate Mr and Mrs N are paying, until 2 August 2027, and the amount they would have paid if they'd secured a rate of 1.94%. And they should pay this amount to Mr and Mrs N as a lump sum.

> I do think Mr and Mrs N have been caused unnecessary stress and upset by what Sesame's broker has done here. But I also note that, under my proposed resolution, Mr and Mrs N will receive a lump sum, upfront. I do think there are advantages to having an upfront payment like this, which I have to take into account when I'm assessing the fairness of any outcome. For those reasons, I think a payment of £250 in compensation, in addition to this lump sum, would provide a fair and reasonable outcome to this complaint, taking account of the stress and upset this case has caused.
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> I should stress to both sides, that this decision is provisional, and may change, particularly in response to any new evidence and argument received from either side. But on what I've seen to date, this is what I currently think would provide a fair and reasonable outcome to this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

What I've decided – and why

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

Mr and Mrs N replied to say they wanted to add some further points.

Mr and Mrs N said this was a very stressful time for them, and the stress had continued for the last two years. They said there wasn't even a delay on the completion of their property, it was ready when the builder said it would be. They told us about other buyers, purchasing on the same development, at the same time, whose offer was extended. So they now knew that there were lenders available, when they applied for a mortgage, that would guarantee rates for a new build homes. And they wanted to know why they weren't offered this.

Mr and Mrs N said I'd mentioned that they would never have secured the rate they were first offered. Mrs N said that she wasn't aware of any asset transaction where the payments at the point of sale are changed at collection.

Mrs N said that, to put this in perspective, they were now paying around £2,800 a year more to live in their house than agreed, when they agreed to buy and pay a deposit. And if they hadn't gone ahead with the purchase, they would have lost a very sizeable deposit, and been homeless, as their previous home had already been sold.

Mrs N said she'd repeatedly sought reassurance from the broker for her concerns, and was repeatedly told that the existing offer could just be extended.

I understand that Mr and Mrs N have been hugely disappointed, to find that the careful budgeting they had undertaken before committing to purchase this property, was all falling apart. I did take that into account in reaching my provisional view.

I don't think the analogy Mrs N makes, with the payment for goods changing between the time of sale and the time of collection, applies in the same way to the purchase of a house or flat. The payments Mr and Mrs N made to the seller, a building and development firm, didn't change because of what the broker did.

What did change, was the interest they pay each month on the money they'd borrowed to make this purchase.

It is usual for repayments on lending to change over the term of the mortgage, when the interest rate changes, and Mr and Mrs N may yet find that happens to them. But if a home buyer secures a fixed rate mortgage, then they can be confident their repayments will be the same for some time to come. Mr and Mrs N got a fixed rate offer, and budgeted on that basis. But what went wrong here, was that Mr and Mrs N were advised to take up an offer with a mortgage company which the broker should have known would not extend its offer to when they actually anticipated completing the purchase of their home.

As Mr and Mrs N said, and as I set out in my provisional decision, there are mortgage products which are designed for those who are buying new build properties. These companies usually charge a little more interest. They usually charge a little more interest, but I explained in my provisional decision why I thought Mr and Mrs N would have chosen to pay a slightly higher rate, for the security that they could have obtained from holding a fixed interest rate offer that ran for longer. That way, they could have some confidence that this would still be valid when they finally moved into their home.

That's why I reached the provisional decision I did. And I still think that.

Sesame also replied. It set out briefly its understanding of the provisional decision, which wasn't quite what I had decided. And it said it agreed Mr and Mrs N had to secure an offer in December 2021 in order for the new build plot to be reserved. So Sesame said it was always likely this offer would have expired if the build was delayed, meaning that a rate of 1.69% would never have been obtained.

Sesame said it didn't understand why I had chosen a figure of 1.94% as a probable rate. It wanted sight of the evidence used for this. It said other lenders had already declined to lend, and that when it secured a new offer for Mr and Mrs N, it got them the best rate available at the time, which was 2.79%.

I wrote back to Sesame, before issuing this final decision. In that letter, I said the 2.79% rate Sesame said was the best it could get for Mr and Mrs N, was secured in May 2022. And my view was that things went wrong well before this.

I wanted to draw Sesame's attention to some points which were central to my decision. I noted that Mr and Mrs N had said at the outset that their new-build property would take around six to eight months to be ready. So I said they should have been told at the outset - in late 2021 - about mortgages designed to meet the needs of those buying a new-build property. Some new-build specific products have offers which can run for nine months, others can be extended for twelve months.

I said that if Mr and Mrs N were correctly advised, I had concluded they would have applied for a new-build mortgage. We know Mr and Mrs N Mrs N had secured mortgage lending in December 2021, and there was nothing in this case to make me think they could not have secured alternative offers at this time.

I said I'd based the rate in my provisional decision on my understanding of the additional cost of new-build rates which are generally a little higher than the rates on "ordinary" mortgages (where the offer typically won't be extended for more than six months). But I said if Sesame wanted to offer alternative evidence of new-build mortgage interest rates that Mr and Mrs N would have been able to secure in December 2021, then I would of course consider that before reaching any final view.

Sesame has now replied to say it continues to disagree. It says there was no guarantee that Mr and Mrs N could have obtained alternative lending with a longer extension period. And it still thought the broker tried her best to obtain the next best rate for Mr and Mrs N, once it was clear that the property would not be built on time.

Sesame said there was also no evidence to suggest that Mr and Mrs N were led to believe, should the property not be completed by the time the mortgage offer expired in June 2022, that this lender would extend their mortgage offer for a further period of time

I've listened again to the relevant call, and reviewed the evidence once more, and I still don't think the evidence is as Sesame has recently represented it. Mr and Mrs N were clear at the outset when they expected their property to be ready. This is recorded on the mortgage advice call that Sesame sent to our service. The problem here wasn't caused by delayed completion on their property. The problem dates from December 2021, when Mr and Mrs N were advised to take a mortgage where the offer was always going to expire by the end of May 2022, although they'd already said their property wouldn't be ready until June 2022 at the earliest. It's clear on the call that Mr and Mrs N were alive to this. And I can hear they were told then that the lender would extend its offer.

For the above reasons, I haven't changed my mind in this case. So I'll now make the decision I originally proposed.

My final decision

My final decision is that Sesame Limited must calculate the total difference between the monthly payments Mr and Mrs N will make on their mortgage, from its inception to 2 August 2027, at the fixed interest rate of 2.79% that Mr and Mrs N secured, and the notional rate of 1.94% which I think they could have secured in December 2021. Sesame Limited must pay this amount to Mr and Mrs N as a lump sum.

Sesame Limited must also pay Mr and Mrs N £250 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 9 November 2023.
Esther Absalom-Gough
Ombudsman