DRN-3455771

The complaint

Mr and Mrs S complain that Noble James Associates Limited recommended a mortgage that was unsuitable for them.

What happened

In 2019, Noble James recommended that Mr and Mrs S should remortgage to a five year fixed rate with their existing lender. The mortgage had an early repayment charge (ERC) if it was repaid on or before 31 December 2024.

Mr and Mrs S complain that the mortgage recommended by Noble James was unsuitable for them. They said they told Noble James that it was their intention to move to a larger home in the short term. So a mortgage with an ERC wasn't suitable for them. Mr and Mrs S said that the ERC wasn't highlighted to them and it restricted their options when the moved home. They said they could have arranged more competitive terms with another lender, they could find a lender who accepted all of their circumstances, including any policies regarding acceptable properties.

Noble James said that it gave Mr and Mrs S information about the recommended mortgage, including that it was portable subject to their circumstances and the lender's criteria. It said that Mr and Mrs S had signed documentation that they had understood the implications of taking further borrowing with their existing lender.

I issued a provisional decision proposing to uphold the complaint. My provisional findings (which form part of this decision) were:

Noble James was giving Mr and Mrs S mortgage advice. That doesn't mean it should necessarily just give Mr and Mrs S what they wanted. Rather it should gather sufficient information about their needs and circumstances – and recommend a mortgage that was suitable for them based on the information provided to it.

Noble James also had a duty to give Mr and Mrs S clear, fair and not misleading information about the mortgage. That meant giving them a balanced explanation of the pros and cons of the mortgage it was recommending, tailored to their particular circumstances.

We also have a "MORTGAGE ENQUIRY FORM". It states that Mr and Mrs S "wish to keep £50k back or more for moving costs/stamp duty and improvements to new home".

In an email from Mr S to Noble James on 2 December 2019, he said:

"With our current mortgage up for renewal on 1st January, it would be good to know whether we should renew this and port it, or whether it would be better to hold off until we move and do it in one lump (I think that's how it works)" .

I can't see that Noble James ever specifically answered that question, other than recommending a fixed rate.

On 18 December 2019, Noble James sent Mr and Mrs S a "mortgage report". It said, as is relevant:

- *At a meeting it completed a detailed questionnaire to understand Mr and Mrs S's needs and objectives.*
- *Both fixed and variable rates were discussed. A five year fixed rate has been selected as most suitable to their requirements.*
- *The mortgage is portable "which means if [Mr and Mrs S] move house [they] can transfer the mortgage to [their] new home…[they] should be aware that transferring your mortgage terms will usually be subject to your own circumstances and the lender's criteria at the time."*
- *An ERC is payable if the mortgage is repaid early.*

Mr and Mrs S signed to acknowledge they had received the report.

There are no recordings available of the phone conversations that Noble James had with Mr and Mrs S.

Based on the evidence I have, I don't consider that Noble James did enough to gather all of the information it needed to understand Mr and Mrs S's needs and circumstances. As far as I can see there is no detailed questionnaire completed about their needs and circumstances.

Mr and Mrs S have provided clear, consistent and persuasive account that they told Noble James that they intended to move home in the short term. That is supported by the information recorded on the enquiry form. I consider it likely, on balance, that Mr and Mrs S told Noble James they intended to move home. They have also said that it was important to them that they had flexibility in the lender's criteria and the interest rates available to them.

I don't consider the evidence we have supports that Noble James took adequate steps to record accurately and thoroughly what Mr and Mrs S's needs and circumstances were. Further, it is not clear from the documents provided that sufficient weight was placed on their needs and circumstances (particularly their intention to move home in the short term) in either recommending the fixed rate mortgage it did or in the information it gave them.

I say that as the relevant paperwork has not been properly updated to reflect Mr and Mrs S's needs and circumstances or to demonstrate that appropriate warnings and explanations were given.

The mortgage report does not mention that Mr and Mrs S intended to move house or why a fixed rate with an ERC was the right thing for them in those particular circumstances. This was an important factor in the advice. I don't see how a broker acting reasonably would not have commented on that or explained why a fixed rate with an ERC was the right thing, while setting out all of the potential risks.

The letter does set out that the mortgage was portable subject to lending criteria. But this is a generic warning – I think this ought to have been highlighted and expanded upon bearing in mind the potential risks to Mr and Mrs S if they could not have ported their *mortgage. I consider that would have been reasonable in the circumstances here so that Mr and Mrs S could make an informed choice what to do.*

Overall I don't consider that Noble James has demonstrated that it acted fairly or reasonably. It was the "expert" here and it was reasonable for Mr and Mrs S as consumers to rely on the advice they received. The fact they signed paperwork accepting the terms of the mortgage does not remove Noble James' responsibility for the advice it gave. I accept that Noble James might not have anticipated the pandemic or that lenders might change their criteria because of it. But there have been unexpected events in the past that have caused lenders to tighten their lending criteria. So it was always a possibility – and I have found Noble James did not place sufficient weight on that or the other potential downsides in tying into a fixed rate with an ERC shortly before moving home, bearing in mind what it knew (or ought to have known) about Mr and Mrs S's needs and circumstances.

Putting things right

The starting point here is to put Mr and Mrs S back in the position they would have been in had they received the correct advice.

The options available for Noble James to recommend to Mr and Mrs S were:

- *Recommend the fixed rate it did of 1.69% fixed until 31 December 2024, with a fee of £999. The risk was that Mr and Mrs S would be tied into a fixed rate and might have to pay an ERC if they could not port. Total interest payable over five years would be £22,080.*

- *Recommend a "flexible" fixed rate of 1.79% fixed until 31 December 2024, with a fee of £499. The lender has confirmed this interest rate product was available to intermediaries at the time in question. Total interest payable over five years would be £23,340.*

I asked Noble James why it recommended the interest rate with the ERC when there was a fixed rate available without an ERC. It said:

"The ERC product advised were cheaper than those without ERC. The client opted for the lowest interest rate payable as the ERC was not of concern due to the mortgage being ported if the possibility if a move arose."

I don't consider the evidence we have supports that Mr and Mrs S wanted the lowest interest rate possible. In any event that had to be balanced against their objective to move home and their overall objectives. The difference in total cost over the five years fixed was £760, taking into account the difference in product fees ((£23,340 – £22,080) - (£999-£499)). So Mr and Mrs S would save that amount over the full five years.

If Noble James had acted fairly, it ought to have explained there were two products that met Mr and Mrs S's needs:

1. *A fixed rate of 1.69% with an ERC. It was portable providing that they met the lender's criteria at the time in question – but that can change and there may be circumstances where the lender won't offer any other borrowing. So there is a potential risk that Mr and Mrs S might have to pay the ERC is the lender won't lend to them. They will also only be able to choose from the lender range of products for any additional borrowing, rather than the whole market.*

2. *A fixed rate of 1.79%. Over the five years it was £760 more expensive. But there was no ERC – so Mr and Mrs S would have been able to explore the market for a new rate. But that rate would not necessarily be lower than the interest rate they had or offered by their existing lender.*

So if that had been explained to them, the question is: was the flexibility of the second fixed rate more important to Mr and Mrs S than the money they could save on the first fixed rate?

Mr and Mrs S have been clear that their preference would have been to have the ability and flexibility of choosing a new mortgage provider when they moved home – so they wouldn't be limited to their lender's lending policy or interest rates. I think if the risks were laid out to Mr and Mrs S in a clear and fair way, they would have expressed a preference for no ERC, based on what they have told us and what we know about their circumstances. If Noble James had taken that into account, then I can't see why it wouldn't have recommended the flexible fixed rate product with no ERC. As far as I can see the rate with no ERC met all of Mr and Mrs S's other objectives. I'm satisfied that Mr and Mrs S relied on the advice Noble James gave them and would have accepted that advice. It's not clear why Noble James didn't identify there were fixed rate products available without an ERC.

As things stand, Mr and Mrs S have not suffered any financial loss. They will only do so if they move home and don't port their mortgage (I understand the lender is now providing new borrowing). But if they were to move home and incur an ERC before 31 December 2024 then I consider that Noble James should refund that less the savings that Mr and Mrs S have made up to the point they incur the ERC, taking into account the difference in product fees. I don't know whether the interest rate they have with their existing lender is better than that available elsewhere. I am not giving Mr and Mrs S advice. They should seek advice about whether they would be better off porting (if they are able to do so) before incurring the ERC.

I am satisfied that the shortcomings I've identified in the advice given by Noble James has caused Mr and Mrs S some distress and inconvenience. Mr and Mrs S have told us that they had to put their plans on hold as a result of the uncertainty around the ERC. That could have been avoided had Noble James recommended a product with no ERC. That has caused them worry and uncertainty. Looking at everything that happened, I consider that Noble James should pay Mr and Mrs S £300 to reflect that.

I said that Noble James should:

- Pay Mr and Mrs S £300 for any distress and inconvenience.

- If Mr and Mrs S incur an ERC in relation to the mortgage that it recommended on or before 31 December 2024, it should refund it less the savings that Mr and Mrs S have made on by being on the lower interest rate up to that point.

- Once Mr and Mrs S provide proof to Noble James that they have paid the ERC, it. must pay the compensation within 28 days of that date. If it pays later than this it must also pay interest on the compensation from the date the proof was provided to it to the date of payment at 8% a year simple.

Both Mr and Mrs S and Noble James had nothing further to add.

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.

In the absence of any further submissions, I see no reason to reach different conclusions to those set out above. I don't consider that Noble James acted fairly or reasonably in recommending the mortgage it did. If it had acted fairly and given a balanced explanation of the pros and cons of the two products, it is likely that a fixed rate without an ERC met Mr and Mrs S's needs and circumstances – and that is what they would have chosen.

I would highlight again to Mr and Mrs S that if they do decide to move home while the fixed rate is in place, they should seek advice about what to do. Potentially they will be able to port their mortgage and avoid the ERC. That might still be the best thing overall for them. But that will depend on their circumstances at the time and the interest rates available on the market.

My final decision

My final decision is that Noble James Associates Limited should:

- Pay Mr and Mrs S £300 for any distress and inconvenience.

- If Mr and Mrs S incur an ERC in relation to the mortgage that it recommended on or before 31 December 2024, it should refund it less the savings that Mr and Mrs S have made on by being on the lower interest rate up to that point – so the difference between what they paid on a fixed rate of 1.69% and what they would have paid had the interest rate been 1.79%.

- Once Mr and Mrs S provide proof to Noble James that they have paid the ERC, it. must pay the compensation within 28 days of that date. If it pays later than this it must also pay interest on the compensation from the date the proof was provided to it to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 27 May 2022.

Ken Rose
Ombudsman