DRN-4558640

The complaint

Mr J complains about mortgage advice he received from Torc24 – a trading name of The New Homes Group Limited, which is an appointed representative of Connells Limited.

Mr J says the adviser gave him negligent advice to take a two-year fixed interest rate on his mortgage instead of a five-year fixed rate.

What happened

Mr J was buying his first home, and in June 2021 he took mortgage advice from Torc24. He was buying a property through the help to buy scheme, which meant that he would take a help to buy loan (a type of shared equity loan) and a standard repayment mortgage.

The adviser recommended a fixed interest rate product of 1.05% until 31 August 2023. Mr J says he went ahead with this rather than a slightly higher fixed rate of 1.25% for five years because the adviser told him it would give him more flexibility to 'staircase' his help to buy loan, by taking a further advance on his mortgage at the end of the fixed rate period to repay some of the help to buy loan. He has since however found out that he could have applied for a further advance at any time, and didn't need to wait until the end of the fixed interest rate.

Interest rates have since increased significantly, and in April 2023 Mr J made a complaint after taking advice about a new interest rate deal. He has since taken a five-year fixed rate product at 4%. He wants Torc24 to compensate him for the three extra years he could have had on a lower rate if he had taken a five-year fixed rate in 2021.

In response to Mr J's complaint, Torc24 said it had done nothing wrong and that the two-year fixed rate gave Mr J the flexibility he wanted.

Mr J didn't accept that and referred his complaint to the Financial Ombudsman Service. Our Investigator didn't think the adviser had given him unsuitable advice given his needs and circumstances, so she didn't recommend that Torc24 pay any compensation.

Mr J asked for an Ombudsman's review. He still thought that the adviser had given him wrong information and misled him about how he could 'staircase' his equity loan. He also said an adviser at the same broker firm who he spoke to in March 2023 had agreed the advice he was given in 2021 was wrong, and the Investigator hadn't taken account of that.

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.

I've listened to the various calls Mr J had with the adviser in June 2021, as well as his calls with another adviser at the broker firm in March 2023. Having done so, while I realise this isn't the outcome Mr J was hoping for, I'm not upholding this complaint.

The adviser's duty was to give Mr J a suitable recommendation, based on his stated needs and circumstances. Mr J has complained that the adviser recommended a two-year fixed interest rate product for the wrong reason, and a five-year fixed rate would have been more appropriate.

Mr J was buying his first home, through the help to buy scheme. Under that scheme he could 'staircase', through repaying tranches of the equity loan. During the fact finding call with the adviser on 21 June 2021, he asked about this. The adviser said that people usually overpay on the mortgage and then refinance, and most commonly repay some of the equity loan when the fixed interest rate ends by borrowing more on their mortgage.

The adviser then asked about Mr J's plans. Mr J said he couldn't see years ahead and also hadn't thought about how long he was going to keep the property, although he had "no plans to flip it in the short term". He also said he hoped to be able to staircase before the initial five-year interest-free period on the equity loan ran out.

The adviser went on to say that he would recommend Mr J take a fixed interest rate product because the rates available at the time were so competitive and would give him certainty, and that the fixed terms available are generally for two, three and five years and, at around 42 minutes into the call:

> I would choose your fixed rate based on how long you plan to live in this property first and foremost, but also if there was kind of a window after which you wanted to be able to reassess, maybe remortgage and pay off some of your equity loan, but it all just depends around your plans really.

Mr J said he thought he probably would still be in the property in five years' time. The adviser went on to talk more about staircasing and how much flexibility Mr J wanted. In bringing this complaint Mr J has focused on a few sentences that the adviser said which he considers were wrong and misleading, and in particular, when discussing a five-year fixed rate product:

> the downside of doing it is it would come with early repayment charges if you did want to sell, move home, or pay off your equity loan any sooner than that.

Mr J has said that he now knows he could pay off a tranche of his equity loan at any time, and this wouldn't trigger an early repayment charge on his mortgage. I agree with him that some of what the adviser said about this – as in the final part of the sentence I've quoted above – was wrong. However, I don't consider that it would be fair to determine this complaint on the basis of particular sentences taken in isolation during two fact finding and advice calls lasting around two hours.

In all the circumstances and in the context of everything Mr J and the adviser discussed, I'm not satisfied that what the adviser said about staircasing the equity loan was the decisive factor in the adviser's recommendation or in Mr J's decision to take a two-year fixed rate product.

The adviser didn't say that Mr J couldn't staircase within the initial fixed rate period on the mortgage; he said that Mr J had the option of doing so using savings or, if he wanted to do it by remortgaging, "the chances are" he would need to wait until the end of the fixed rate. This was right, because if he were to remortgage during the fixed rate period (rather than take extra borrowing with his existing lender) he would have to pay an early repayment charge. Mr J and the adviser also discussed flexibility and Mr J's plans. Mr J wasn't sure how long he planned to stay in the property, although he said he didn't intend to sell it in the short term. But, as the adviser explained to him, neither the two-year nor the five-year products they were discussing was portable, so if Mr J did decide or need to move, he wouldn't be able to take the mortgage with him and an early repayment charge would be payable during the term of the fixed rate.

On the basis of his discussions with the adviser, I don't accept Mr J's argument that the only flexibility he wanted was to keep the equity loan under review. It's clear from the calls that he was unsure of his future plans. The adviser also told him that if he didn't need flexibility, a five-year fixed rate would be a good option.

The adviser said he would prepare the two-, three- and five-year fixed rate options for Mr J to consider, and went on to do so. In the next call, he gave Mr J details of the lowest available five-year fixed rate, which at the time was 1.25% (0.2% higher than the two-year rate).

Mr J chose the two-year rate. The record of advice suitability the broker produced on 22 June 2021 said:

> A 2 year benefit period is beneficial for you because you want to take advantage of cheaper monthly payments as 2 year rates are lower than the longer term rates available and you want to pay less in order to have more disposable income to maintain your lifestyle. You would also like to be able to reassess your situation after 2 years. You are aware that by re mortgaging every 2 years could cost you more over the term of your mortgage.

It's unfortunate that mortgage interest rates rose as much as they did before the two-year fixed interest rate ended, and Mr J had to take a much higher rate when he remortgaged. But that's not down to anything the adviser did wrong. In all the circumstances, I don't think the adviser's recommendation was unsuitable for Mr J.

In reaching that conclusion I've also listened to Mr J's call with another adviser in March 2023, as he requested. What that adviser based his comments about the previous advice on is unclear, and I don't think that what he said represented a change in the broker firm's position on this complaint. It also doesn't lead me to uphold the complaint, having taken account of all the relevant calls, evidence and arguments.

My final decision

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 J to accept or reject my decision before 1 August 2024.

Janet Millington
Ombudsman