DRN-4836197

The complaint

Miss B and Mr N complain that advice they received in 2021 from a mortgage broker working for Charles Cameron & Associates Ltd ("CCA") wasn't suitable for them. They said they now faced greatly increased payments because they were advised to take a shorter fixed rate.

What happened

Miss B and Mr N told us they got mortgage advice from CCA in mid-2021. They said they were advised to take out a two year fixed interest rate product, which expired on 30 November 2023. They said they trusted this advice at the time of receiving it, but in hindsight they thought they should have been provided with additional information relating to the interest rate levels at the time, and the benefits of taking out a longer term product.

Miss B and Mr N said CCA's recommendation was made because they were intending to pay off some of their mortgage with equity from a rental property they were hoping to sell in a couple of years. But Miss B and Mr N said they didn't need their mortgage deal to end in two years for that, they could have achieved the same thing through the overpayment facility which was available on the product they took, and would also have been available on longer term products.

Miss B and Mr N also said they didn't get the mortgage recommendation document at the time. They said the first time they saw this was in 2023, when they complained.

Miss B and Mr N said their fixed term deal had recently ended, and they'd had to take out a much more expensive fixed rate, increasing their monthly payments. But when they took out this mortgage in 2021, the Bank of England base rate was at an all-time low. So they felt the higher payments they were making now, could have been avoided for another three years if they'd been advised to take out a five year fixed rate back in 2021. They felt they should have been advised to take out this sort of longer fixed interest rate deal instead.

CCA said it thought the advice given to Miss B and Mr N was suitable for them. It said no one could have predicted the events of Autumn 2022, and the changes that caused. It said the evidence it had supported the recommendation made at the time.

CCA also said it doesn't accept that the mortgage recommendation document wasn't sent to the couple at the time. It thinks it was.

Our investigator didn't think this complaint should be upheld She said Miss B and Mr N had told us they didn't sell their other property after all, but she said that wasn't foreseen at the time. And she thought CCA had discussed Miss B and Mr N's needs and circumstances, to assess what type of term and rate would be appropriate for them. It did look as if Miss B and Mr N had wanted flexibility after a two year period, at the time, because they wanted to pay off a lump sum then with income they anticipated from their property sale. She didn't think CCA could have known that this sale wouldn't go ahead after all.

Our investigator said CCA made its recommendation based on what it knew at the time. So she didn't think it needed to do any more.

Miss B and Mr N replied to object. They said they didn't think our investigator had addressed the core of their complaint. They said they didn't complain that CCA should have foreseen that they wouldn't be able to sell their property or that rates would rise (although they implied both of these things might have been foreseeable). They said their complaint was that they weren't sent the mortgage suitability report at the time. They were only given advice orally. They said that meant they weren't able to challenge the assumptions set out in the document, in particular the assumption that they required the ability to pay a lump sum amount after two years. They said that wasn't an absolute requirement, and they thought other options, such as a longer term fix with an overpayment facility, weren't explored.

Our investigator checked with CCA, and it repeated that it thought the mortgage suitability report was sent at the time. She wrote to Miss B and Mr N again, to say she hadn't changed her mind. She said she understood there was a dispute about whether the suitability report was received, so she had considered all the other documentation and evidence of discussions our service had seen. And she thought Miss B and Mr N were given enough information to be able to make an informed decision about whether the recommended product was suitable for them or not, before accepting it.

Miss B and Mr N were adamant that the suitability report wasn't sent, and said CCA had initially admitted this, before changing its mind. And they said the fact find, the mortgage illustration and offer letter didn't refer to specific reasoning about paying off a large lump sum. They said that was only in one document, which they didn't get.

Miss B and Mr N wanted their complaint to be considered by an ombudsman, so it was passed to me for a final decision.

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 reached the same overall conclusion on this complaint as our investigator.

I don't know whether or not the mortgage suitability report was sent to Miss B and Mr N in 2021. But I don't think this case turns on that point. That's because Miss B and Mr N aren't saying that the problem here is solely that they weren't sent an important document. They say the problem is the consequences of that document not being sent. Miss B and Mr N say their mortgage is costing them more now, because of the advice CCA gave. And as part of that, Miss B and Mr N have suggested the lack of this report robbed them of a vital opportunity to challenge CCA's understanding of their needs, so they ended up with unsuitable advice.

I just don't think that's right. I'll explain why I've reached that conclusion.

As a starting point, even if Miss B and Mr N didn't receive the mortgage suitability report, I do think that the advice given to them was clear, and could have been challenged by Miss B and Mr N at the time, if they had thought then that a longer term fix might be preferable.

I note Miss B and Mr N haven't suggested that CCA was wrong about their future plans. I think they did intend, in 2021, to sell their other property within a couple of years of purchasing their new home, and to use the money towards their new mortgage. I understand that didn’t work out. But I also think it’s important to note here that Miss B and Mr N’s argument is this advice wasn’t suitable for them, even if the property had sold as they’d hoped. They said they would still have been better off, taking a longer term fix, and paying the money from the hoped-for sale into their mortgage using an overpayment facility. So they suggested that they ought to have been steered in this direction by their broker, in 2021.

Most lenders limit overpayments to 10% of the borrowed sum, otherwise an early repayment charge is incurred (“ERC”). The most Miss B and Mr N could have overpaid on their 2021 deal without paying an ERC was just under £30,000 each year. Otherwise they would lose 2% of the amount paid. (And I should note that it is quite common for longer term fixed interest deals to have a higher ERC, particularly in the first years.)

The fact-find in this case records that Miss B and Mr N told CCA they already had more than double this amount in equity in their existing property, in 2021. So if they had managed to sell the property before late 2023 for the price they wanted, a two year fixed rate would mean they could have significantly reduced the loan to value of their mortgage in 2023, before remortgaging.

On the other hand, if Miss B and Mr N had taken out a rate which was fixed for five years in 2021, and had managed to sell their property as they hoped, to put all those funds to their existing mortgage it’s likely that they would either have had to pay an ERC on their overpayment, or they would have had to slowly drip feed the money in, over a period of more than two years. So they wouldn’t see the full benefit of any reduction in their mortgage debt for over two years after their other property had sold.

With that in mind, the advice Miss B and Mr N were given, does not appear to me to have been unsuitable for them at the time.

I understand that with the benefit of hindsight, Miss B and Mr N may well have been better off choosing a five year fixed rate in 2021. I also understand that it may be possible to identify factors now which may have indicated that Miss B and Mr N’s property might not sell, or that interest rates might rise. But I don’t think it’s fair and reasonable to expect CCA’s broker to have predicted everything that happened since, in 2021, and to have made a recommendation then which would be more suited to the circumstances which unfolded well after that recommendation was made. So I don’t think it would be fair and reasonable to uphold this complaint now, because CCA’s broker didn’t do this in 2021.

I know that Miss B and Mr N will be disappointed, but I don’t think this complaint should be upheld.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss B and Mr N to accept or reject my decision before 6 August 2024.
Esther Absalom-Gough
Ombudsman