DRN-4253045

The complaint

Mr and Mrs B complain that the appointed representative of Quilter Financial Services Ltd failed to ensure, when it recommended a new mortgage product to them In October 2021, that the offer from the lender would be available when their existing mortgage product expired. Mr and Mrs B say that they are paying at a higher interest rate than they should be paying and want Quilter to make up the difference.

What happened

Mr and Mrs B used Quilter as their mortgage broker on several previous occasions to source their mortgage and mortgage product. The loan with their existing mortgage provider, I shall call Lender A, had, I understand, on October 2021, 26 years and 7 months remaining. Their existing mortgage product was ending on 31 March 2022 and so, in October 2021, they asked Quilter to source a replacement.

Quilter recommended a five-year mortgage product with a different lender, I shall call Lender B, and with a slightly shorter term of 25 years. The recommendation noted that there was very little between the top three deals that Quilter had sourced, but there was a marginal preference for one lender because of its free legals and lower upfront fee. Quilter obtained a Mortgage Illustration from Lender B on behalf of Mr and Mrs B dated 19 October 2021. The Illustration sets out that the lender may be willing to offer on a loan of £475,000.00, the terms of that loan and fees and that a fixed rate of 0.99% would be available from completion until 2 January 2027. The mortgage term itself is for 25 years. The initial payments are £1,790.91. No date is given for the date of completion.

Mr and Mrs B applied, and Lender B issued a mortgage offer on 19 November 2021. But the offer said that the terms described in the Mortgage Illustration were only valid until 4 March 2022 and after that date may change in line with market conditions. So, if Mr and Mrs B wanted to avail of it they would have to pay an early repayment charge ("ERC") which wasn't their expectation. So, in November, Quilter suggested a new mortgage product with their existing lender, Lender A. This was a five-year product at an interest rate of 1.25% fixed until 31 December 2026.The initial payments were £1,775.16.

Mr and Mrs B complain that over the five years of the fixed rate product, they are going to pay £3,380,00 more because of Quilter's errors. Quilter says that in recommending the mortgage product to Mr and Mrs B it was acting in good faith based on Lender B's Mortgage Illustration which failed to identify that the product offer was only valid until 4 March 2022 rather than the expected six months.

Our investigator's view

Our investigator didn't recommend that this complaint should be upheld as she felt that at the time of the recommendation the lender didn't disclose the expiration date of the mortgage product and so Quilter couldn't have been aware of it. Mr and Mrs B disagreed and asked for a review.

My provisional decision

As my view of this complaint differed from that of our investigator, I issued a provisional decision as follows:

"*A broker's role is to consider Mr and Mrs B's preferences and needs and recommend a mortgage that meets those requirements. Central to this complaint is that Mr and Mrs B required a mortgage that would be available to them when their existing mortgage product came to an end. This was also at a time when interest rates were expected to rise. Mr B works in financial services and I've no doubt that this expectation was why they were trying to get a fixed rate offer well in advance of their existing mortgage product coming to an end.*

So, Quilter's role was to source a mortgage product that would be valid when Mr and Mrs B required it on 31 March 2022. It Quilter couldn't source a suitable mortgage, it should have told Mr and Mrs B at the time. If it was unsure whether the mortgage would be valid, it should have told Mr and Mrs B that it was unsure and checked. It appears to have assumed without checking that the mortgage product would be valid. Mr and Mrs B consider that this fell below the standard of service they would expect from their broker as do I.

I put this to Quilter which replied that as the required completion date wasn't included in the new lender's Mortgage Illustration that it was fair and reasonable for the mortgage adviser to assume that it would be available for the "usual six-month timescale ". Quilter says that this was an issue with Lender B's Mortgage Illustrations at the time and Lender B has since amended their illustrations to now disclose any required completion date at the outset.

Quilter says that this validates the fact that the completion date should have been stated in the illustration for the product the adviser originally recommended to Mr and Mrs B. Quilter says that in the absence of a completion date in the Illustration it assumed that the product would be on offer for the "usual six months". Is that a reasonable assumption? Alternatively, would the fact that there was no completion date on the Mortgage Illustration at a time of volatile interest rates alert the adviser that there might be an issue with the length of time the mortgage offer would be open for and make reasonable enquiries to ascertain how long that might be? The problem for Quilter is that it undertook to recommend a mortgage product that was suitable for Mr and Mrs B and the product that it recommended in October wasn't suitable and for that reason I will be upholding this complaint. "

I then dealt with the calculation of Mr and Mrs B's loss:

"I *have to consider what, if any, financial loss flows from that. Although Lender B's mortgage product didn't prove suitable, the Quilter adviser recommended other lenders with similar products in its recommendation of October 2021 noting that there was very little between the top three deals. My view is that if Quilter had, as it should have done, ascertained from Lender B that its product wouldn't suit Mr and Mrs B that it would then have turned to the next best alternative and recommended that. So, Mr and Mrs B would have lost out on the benefit of the lower interest rate with the next best alternative mortgage provider.*

In order to compensate Mr and Mrs B for their financial loss Quilter should calculate the amount of interest that Mr and Mrs B would have paid during the term of their fixed rate mortgage product with the next best alternative mortgage provider, and deduct that from the interest that they will pay during the same term duration to Lender A. That will be the figure for their interest rate loss. I recognise that this calculation may not be entirely like for like. Some of the alternatives suggested in October 2021 had their five-year periods beginning in January 2022 so Mr and Mrs B wouldn't have enjoyed a full five years on that product whereas they do with the re-mortgage.

There is also the issue that the different products had different fees and in order to get the next best alternative Mr and Mrs B would have paid fees to get it. Quilter should also work out the fees that applied to the next best alternative and the fees that apply to the remortgage with Lender A. If Mr and Mrs B's fees would have been greater with the next best alternative, Quilter may deduct the balance from the compensation. If Mr and Mrs B's fees would have greater with Lender A. Quilter should add the balance of the fees to the compensation. When I have these figures I will consider what interest should be paid if any.

In addition, Mr and Mrs B should be compensated for their distress and inconvenience. I recognise that they will have been disappointed with Quilter's failure to provide a suitable mortgage product, but they had clearly confidence in them to use them again, so I believe a fair level of compensation for this is £350.

So, at this stage my intention is to uphold this complaint and require Quilter to pay the compensation to Mr and Mrs B. I will consider any further evidence or submissions from Mr and Mrs B or from Quilter within the timescale set out above. As I have provisionally upheld this complaint I would ask Quilter now to provide me with their calculation of Mr and Mrs B's loss."

Quilter disagreed with the substance of my decision and questioned the calculation of the loss. Mr and Mrs B also disagreed, and I have considered the basis of these objections below.

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.

Both parties responded to my Provisional Decision. The responses were partly to the substance of my decision but also to my suggested calculation of the financial loss and Mr and Mrs B have asked me to reconsider the amount I awarded for their distress and inconvenience.

Quilter say that there was no reason for the adviser to be unsure if the recommended product would be valid when the clients existing product ended as the product details did not state there was a deadline for completion as it should have done and now does. Further that I've assumed that at times of market volatility that if there is no completion date on the Mortgage Illustration that an adviser would be expected to assume that there might be an issue with the length of time the mortgage offer would be open for and make reasonable enquiries to ascertain how long that might be. In my view the central issue here is that the broker accepted that it would recommend a product that met Mr and Mrs B's preferences and needs and the product it recommended didn't do so and that's why I'm upholding this complaint. Mr and Mrs B only became aware that the product didn't meet their needs later on by which time interest rates had increased. Mr and Mrs B suffered a financial loss because they lost the opportunity to fix their future interest rate in October 2021 rather than in December 2021.

As I understand it the broker feels that it was let down by the lender's processes. But that's a matter between the broker and the lender. This is a complaint between the customer and the broker and I'm upholding a complaint that the broker didn't do what it was asked to do and which it undertook to do. I believe that my Provisional Decision sets out clearly why I'm upholding the substance of the complaint and the further submission from Quilter has not altered my view of that.

The second issue relates to the calculation of Mr and Mrs B's financial loss in a fair and reasonable manner. As the chosen mortgage provider was unsuitable I believe that Quilter should have recommended the next best alternative. I'm mindful that the adviser said that there was very little between the top three deals he had sourced. Both parties disagree what the next best alternative would be. Mr and Mrs B say it would be the mortgage product that appears fifth on the mortgage options sheet. But there's a problem with that as the repayments that appear on the quote aren't the ones that would have applied to Mr and Mrs B.

The figures on the quote are based on a mortgage term of 25 years but that lender wouldn't lend beyond Mr B's 70th birthday and so the term would have to be shortened and the repayments increased if Mr and Mrs B wanted to avail of it. On my reading of the file, this lender was discounted because of this and although Mr and Mrs B say now that this is the alternative they would have liked and would have been prepared to pay the higher repayments, at the time there is no evidence that they wanted a shorter term and higher payments or looked for a quote as to what those repayments were. One of the reasons given for choosing Lender B was low payments and I believe that the next best alternative should be the one that clearly matches it with as low a payment as Lender B, a rate of less than 1% and free legal services.

So, I believe it's reasonable to assume that the building society that appears second on the list dated 14 October 2021 would have been the next best alternative lender recommended by the adviser. I shall call the Society Lender C. That society has two products on the list, and it seems to me that the product that appears seventh on the list with the free legals matches most closely the mortgage product that Mr and Mrs B wanted at the time.

The calculation for financial loss would be relatively straightforward if the quote for the mortgage with Lender A and the mortgage with Lender C were like for like but there are certain differences, and I must address those in the light of what is fair and reasonable in the circumstances. The quote for Lender C is based on a mortgage of 25 years but the actual mortgage with Lender A is for a longer period. I believe its fair in a calculation of loss that we look at Mr and Mrs B's actual loss between what they are paying now with Lender A and what they would have been paying if the mortgage with Lender C was based on the same mortgage term. That would give a like for like comparison.

Secondly, there is a difference between the mortgage balance that Quilter quoted for and the mortgage balance that was used to determine Mr and Mrs B repayments with Lender A. As I am asking Quilter to compensate Mr and Mrs B for the errors based on the quoted figure I believe that in compensating for the loss, Quilter should use the figure used in the quote of £475,000 as its starting point.

Mr and Mrs B, as they advise me, are now on a mortgage product lasting for 57 months from 1 April 2022. That is in fact the same term they chose with Lender B. The length of term with Lender C would run for longer – for 60 months from completion. I have to recognise that Mr and Mrs B's original choice was for a length of term of 57 months, rather than the 60-month term with Lender C. As I am compensating them for their loss its really a loss that is sustained over 57 months. After that period Mr and Mrs B will presumably look to take out another discounted rate product but of course we can't know what that would be.

My view is that its fair to compensate Mr and Mrs B for the 57-month period that they wanted this discounted rate to cover and not the further period which they had already opted not to cover. In my view, its not fair to compensate them for any further loss than the period that they originally wanted cover for, even if we could say with any certainty that there would be a loss and what that loss would be, if any. After the 57 month period ends with Lender A, Mr and Mrs B will presumably take out a further discounted rate but it's impossible to say what that would be and its mere speculation at this stage whether that rate would be higher or lower than the rate with Lender C. I also recognise that in doing the calculation and compensating Mr and Mrs B now, there is an advantage to them that they will be getting their future loss now.

Mr and Mrs B also asked me to look again at my award of £350 for their distress and inconvenience. They indicate that they were dissatisfied with Quilter but continued with the broker for essentially convenience. Mr and Mrs B say that they experienced a "*horrible*" 10 days between getting the letter from Lender B and being able to get a deal with Lender A. They say they spent a lot of time on this complaint because of Quilter's intransigence and that too low an award won't act as a disincentive to Quilter in the future. On the latter point, my role isn't to penalise Quilter but to award Mr and Mrs B a fair sum for the distress and inconvenience caused by Quilter's failures.

I appreciate that this complaint has taken time for Mr and Mrs B to process but Quilter has disagreed with Mr and Mrs B and is of course entitled to oppose this complaint although I disagree with the substance of its objection. It shouldn't be penalised for taking an active part in the complaints process. I recognise that it must have been upsetting for Mr and Mrs B to find out that Quilter had not delivered what it had promised but having considered Mr and Mrs B's further submissions, my view remains that £350 represents fair compensation for their distress and inconvenience and I will require Quilter to pay this.

So, I uphold this complaint and require Quilter to compensate Mr and Mrs B. In terms of their financial loss, I require Quilter to calculate Mr and Mrs B's financial loss as follows:

1. Based on a balance of £475,000.00 calculate the amount that Mr and Mrs B will pay Lender A over the term of the mortgage product for 57 months from 1 April 2022 to include the product fee

2. Based on the same balance and assuming the same mortgage term as with Lender A, calculate the amount that Mr and Mrs B would have paid Lender C over the same mortgage product term of 57 months from 1 April 2022. That figure should include the product fee.

3. Deduct 2 from 1 to obtain the financial loss.

Quilter should set out this calculation clearly for Mr and Mrs B and respond to any reasonable queries raised by them arising from it. Mr and Mrs B should provide Quilter with any information requested should Quilter need any from Mr and Mrs B to conduct its calculation.

Putting things right

Quilter Financial Services Ltd should pay Mr and Mrs B the amount of their financial loss calculated as above and pay them £350 for their distress and inconvenience.

My final decision

My decision is that I uphold this complaint and require Quilter Financial Services Ltd to pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 12 October 2023.

Gerard McManus
Ombudsman