DRN-4284921

The complaint

Mr I complains that Evolve FS Limited didn't update his mortgage application when he told it he wanted to take out a five-year fixed rate product. He asks for compensation.

What happened

Mr I took mortgage advice from Evolve in late 2021. He received a mortgage offer in early December 2021 with a two-year fixed rate product. Mr I asked Evolve to change to a five-year product later in December 2021. He says he only found out it didn't action his request in April 2022 when the lender agreed to extend the mortgage offer.

Interest rates increased between December 2021 and April 2022. The five-year product Mr I wanted was no longer available. While the lender had another five-year product available this had a higher interest rate than the product Mr I had wanted – and higher than the two-year product in the existing mortgage offer. Mr I decided to stay with the two-year product in his mortgage offer. Mr I says he's out of pocket because interest rates have further increased and he'll have to take out a higher interest rate product when his two-year product expires.

In March 2023, after the complaint was brought to us, Evolve offered compensation of £3,736. It said Mr I could have taken out a five-year rate in May 2022. It offered to pay compensation based on the difference between the costs of the five-year fixed interest rate products available in December 2021 and May 2022. Our investigator said this was fair in the circumstances.

Mr I didn't agree. He said, in summary:

- interest rates are increasing and likely to continue to do so. He said the amount offered by Evolve was only about 20% of his expected losses of about £21,000. He said he'd prefer to wait until his product expires so that Evolve can pay his actual loss.

- he'd sent an email to Evolve in December 2022 to confirm he wanted the five-year fixed rate and followed up with a phone call. Mr I said he's a first-time buyer and didn't know to expect a written notification of the change.

- he raised the problem with Evolve in mid-April 2022. It delayed taking responsibility, and only offered £500 in July 2022 as a good will gesture. Mr I said it's unfair to calculate his losses based on the product rate available in May 2022.

My provisional decision

I sent a provision decision to the parties in June 2023, as follows:

Did Evolve make an error?

Mr I took mortgage advice from Evolve and received a mortgage offer in early December 2021. The offer included a 2.17% two-year fixed rate product which expires on 29 February

2024. This had no product fee.

Mr I says he thinks a two-year rate was recommended because he thought, or was told, a longer rate would be more expensive. The fact find doesn't include any reasons for Mr I wanting to fix for two years. It doesn't say he wanted to avoid a product fee. Evolve's recommendation letter said Mr I chose the term as he wanted to review his situation, regarding his work visa and income.

The fact find says Mr I's income would increase as he gained qualifications in his profession, and Mr I says he expects his visa to be renewed in due course. The lender confirmed Mr I could have taken out a five-year product. It seems there wasn't anything to prevent Mr I taking out a five-year product.

Mr I contacted Evolve shortly after receiving the mortgage offer to ask if he could change to a five-year fixed rate product, which had a lower rate than the two year product. He also asked about reducing the term of the mortgage. There were several emails discussing this, and Evolve provided the interest rate, product fee and monthly payments. Mr I emailed in mid-December 2021 to confirm he wanted the five-year fixed rate product.

Evolve doesn't dispute receiving Mr I's email. It says the broker didn't see it or action it.

Evolve made an error and as a result Mr I didn't secure the interest rate product he wanted. He missed out on a product with a lower interest rate than the product he took out, and having the benefit of this lower rate for five years.

Evolve said if Mr I had told it he hadn't received notification or paperwork related to the five-year rate it would have been alerted to the issue. It says Mr I spoke to and emailed the broker a number of times after this about life assurance, but the interest rate change wasn't discussed.

Mr I says this is the first mortgage he's taken out, and didn't know to expect a new mortgage offer after the product was changed. Mr I says he called Evolve to confirm he wanted the five-year rate. Evolve says it can't provide call recordings.

There were several email exchanges between Mr I and the broker about the possible change in product and term. Mr I said he'd confirm his decision by mid-December 2021 – which of course he did. I find it unlikely, on balance, that this issue wasn't discussed on any of the calls at that time. I think, if the broker hadn't seen Mr I's email, it would be reasonable to expect him to ask Mr I what he'd decided to do.

While Mr I says he didn't know to expect a new mortgage offer, I think it would have been reasonable for Mr I to expect something in writing to confirm the change. He'd received a mortgage offer with the two-year product and he ought reasonably to have expected a new offer with the new product terms such as the interest rate, five-year term, monthly payments and the product fee. That's not to take away Evolve's responsibility for its error in not actioning Mr I's request. However, matters might have turned out differently if Mr I had asked Evolve why he hadn't received written confirmation of the change, or chased the broker to check his request had been actioned.

Has Evolve made a fair offer to put matters right?

The mortgage offer was extended in April 2022, as there were delays in Mr I's purchase completing. Mr I says he tried to contact Evolve when he received the new mortgage offer with the two-year fixed rate. He emailed Evolve on 26 April 2022 to ask what had happened, and why he hadn't heard back for two weeks.

By this time, interest rates had increased. Evolve says there was a 3.02% five-year fixed interest rate product available in May 2022. It said Mr I decided against this as he didn't want the higher rate. The available evidence supports this – Mr I said he couldn't go with the five-year rate available in May 2022 as the monthly payments were significantly higher.

Evolve says Mr I could have taken out the five-year product available in May 2022. It proposed paying compensation on the basis of the difference between the five-year rate available in December 2021 and the five-year rate available in May 2022. It offered to pay this for 36 months – in effect for the period after the two-year product Mr I took out expires.

If Evolve had offered this to Mr I in May 2022, he could have factored this into his decision whether to take out the five-year product. Most likely, I'd have considered this a fair offer to resolve the matter. But Evolve didn't offer this until March 2023, by which time the product was no longer available and Mr I was tied into his existing product. So, without a timely response to his complaint, Mr I wasn't able to decide how best to mitigate his losses. Mr I's current product has a higher interest rate than the five-year product available in December 2021 and the compensation ought to take this into account.

In fairness, I'd expect a customer to take steps to mitigate their losses. Mr I could have done this by taking out the five-year product in May 2022, even if the interest rate (3.02%) was higher than the two-year product rate (2.17%) in his mortgage offer. Since then, the Bank of England raised the bank rate eight times, from 1.0% in May 2022 to 4.5% in May 2023.

Mr I said he didn't want to change to the higher five-year rate as didn't want higher monthly payments, saying these were unaffordable. Evolve says the payments would have been affordable, based on the information it had about Mr I's circumstances. The available evidence supports what Evolve says. The fact find suggests Mr I would have had enough disposable income for the higher payments and his income was likely to increase. So while Mr I didn't want higher payments, which is understandable, I'm not persuaded this would have been unaffordable.

In hindsight, it might seem that Mr I ought to have taken out the five-year product available in May 2022. But I have to consider what Mr I knew at the time. The bank rate had increased in February, March and early May 2022 from 0.25% to 1.0%. So Mr I would have been aware of the risk of further rate rises. But he wouldn't have known that the bank rate – and mortgage rates – would increase in the way they have. Indeed, rates could have decreased before the two-year product expires. I need to take all this into account when considering the amount of compensation that's fair.

As I said, matters might have worked out differently if Evolve had offered to compensate Mr I for the difference in cost between the two five-year products in May 2022. As it didn't offer this until March 2023, I don't think that's necessarily a fair basis on which to calculate compensation.

What should Evolve do to put matters right?

Our usual approach is, as far as possible, to put a customer into the position they would have been in but for the error. That could mean Evolve compensating Mr I for his additional costs due to not securing the five-year product in December 2021.

It's not possible to do that calculation, as we don't know what interest rate Mr I will be able to secure when his product expires at the end of February 2024. Mr I says he'd be prepared to wait until then, so that his exact loss can be calculated.

I can see the benefit of this, but there are also difficulties. It would be reasonable for Evolve to want some assurance Mr I will take out the lowest cost product available at that time. I could require Evolve to pay compensation on the basis of the nearest equivalent mortgage product available to Mr I from his current lender when his product expires. But this might not be fair to Evolve if better rates are available from other lenders. Then again, Mr I might not want to re-mortgage, or be able to do so. I also think leaving the calculation of compensation to be done in future risks further disputes between the parties. And Mr I would be dependent on Evolve still trading and being in a position to pay compensation at a future date. I will consider any comments from the parties about whether this is their preferred option and how they'd expect it to work in practice.

The other option is to find an amount of compensation that feels fair taking into account my findings above. I'm currently minded to say the following, and I'd invite the parties to comment on my suggestions.

The calculation needs to take into account that the five-year product Mr I wanted had a lower interest rate than the two-year product he currently has, but did have a product fee. And the calculation needs to take into account what might happen when Mr I's current product expires.

So, I suggest:

1. Evolve should calculate the amount of interest Mr I would have incurred from completion of the mortgage to 28 February 2027 (36 months after 29 February 2024) if he'd taken out the five-year 2.13% fixed interest rate product.

   For the purpose of the calculation above, Evolve should assume the £999 product fee for the five-year 2.13% fixed interest rate product would have been added to the mortgage loan.

   For all of the calculations, Evolve should assume Mr I makes his contractual monthly payments in full and on time, and that the balance reduces over time accordingly.

2. Evolve should calculate the interest Mr I will actually incur from completion of the mortgage until his current fixed interest rate product expires on 29 February 2024.

3. Evolve should calculate the amount of interest Mr I would pay for 36 months starting on 1 March 2024 and ending on 28 February 2027 on the lender's current standard variable rate (its website says this is 4.99%).

4. Evolve should add together the results of 2 and 3. It should deduct the result of 1 from this.

I suggest the result of this calculation should then be adjusted, for the following reasons.

First, Mr I will have the use of the compensation payment before he has to make the higher payments. He could, for instance, use the funds to reduce his balance, immediately if this is within his overpayment allowance or when his product expires on 29 February 2024. This would reduce the amount of interest he pays overall.

Second, Mr I will have the opportunity to look for the best available rate for when his product expires at the end of February 2024. Interest rates could increase or decrease by then.

Third, the compensation should take into account that Mr I had opportunities to mitigate his losses. He could have chased Evolve in December 2021 when he didn't receive written confirmation of the change of products. And he could have taken out a five-year product in

May 2022.

For these reasons, I think the result of the calculation should be reduced by 30%.

I've suggested what I think would be a fair compromise, which would allow the compensation to be calculated now and the matter closed. Mr I says the higher monthly payments he'd have been required to pay if he took out the 3.02% product in May 2022 were unaffordable.

As I said, I'm not persuade that was the case. But this compensation will hopefully allow Mr I to stay in his property for five years, as if he'd taken out the five-year product he'd wanted. If he can't afford payments after that, that's no different to the position he'd have been in if he had had the benefit of the five-year product.

I'd ask for the parties' comments on my suggestions. Evolve should send calculations in accordance with what I said above in response to this provisional decision. That will help the parties reach a decision about the best way forward.

Evolve offered £500 to Mr I in its final response letter. I think this matter caused Mr I inconvenience and worry, and continues to do so. I think £500 compensation is fair and reasonable for the inconvenience and worry this has caused.

How did the parties respond to my provisional decision?

Evolve didn't agree that the suggested compensation was a fair compromise. In summary, it said Mr I had opportunities to mitigate his losses, and he knew rates were rising. It said he could have questioned why he hadn't received a new mortgage offer and this would have allowed for matters to put sorted out. Evolve said it had no record of Mr I calling the broker in December 2021 about the change of product, it only has records of him discussing life assurance at that time. Evolve said Mr I originally asked for £21,000.

Evolve did provide calculations, as I'd requested. It said the lender's SVR was currently 7.99%, not 4.99% as I'd said in my provisional decision. It also said if Mr I used the compensation to reduce his mortgage balance he'd save about £60,000 in interest over the term of the mortgage and might qualify for lower loan to value products. It said this could potentially put him in a better position than if he'd taken out the five-year rate.

Mr I asked that we take into account that he did follow up his email in December 2021 with phone calls to Evolve, as evidenced by his phone bill. He says he was reassured that his request would be dealt with. Mr I said Evolve ought to have records and recordings of the calls, which would show this. Because of this, Mr I didn't think the compensation should be reduced by 30%.

Mr I also pointed out that he raised his concerns with Evolve in April 2022. So Evolve had an opportunity to advise him about rising interest rates. He says he'd have taken out the five-year rate available in May 2022 if Evolve had made an offer at that time to reduce the cost. Instead, it failed to make a substantive offer or take responsibility for its error.

Mr I said his circumstances changed in May 2022 when he had another child, which increased his expenditure and limited his ability to do extra shifts. He qualified in his profession in August 2023.

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.

Neither party provided new comments or evidence that would persuade me to change my findings about what happened. A dispute remains about what compensation is fair and reasonable.

When Mr I raised his complaint, he asked for compensation of £21,000. That was the amount he expected to be out of pocket due to Evolve's error in not acting on his request to change to a five-year product in December 2021. I don't think it's fair to hold Mr I to that amount. Evolve didn't agree to pay £21,000, and while the complaint has been on-going mortgage rates have increased. We now know Mr I's losses are likely to be greater. Rates (including the lender's SVR) have further increased since Evolve provided its calculations.

I had already taken into account in my provisional decision that Mr I had opportunities to mitigate the loss by taking out a five-year product in May 2022, or by asking Evolve why he hadn't had written confirmation of the new product. I'd also taken into account that I thought it was likely Mr I had confirmed he wanted the five-year product during calls with the broker. Mr I's phone bill shows he called the broker's mobile phone number six times over 20 to 23 December 2022 as well as calling his landline number. Some calls are very short, which suggests Mr I didn't always get through to the broker and might have left a message. If so, it's unclear if the broker called back, but it is clear that Mr I made efforts to get in contact with the broker. Even if Mr I didn't mention the product change (which I find unlikely) the broker could have asked him if he'd made a decision.

Evolve said if Mr I used the compensation payment to reduce the mortgage balance he'd be put in a better position than if he'd taken out the five-year rate he wanted. It says Mr I could save about £60,000 in interest over the term of the mortgage, assuming he remains on the lender's SVR, and might be able to access products with a lower loan to value ratio.

I've carefully considered what Evolve has said. It's likely that reducing the mortgage balance will save Mr I interest over the remaining term, and he'd retain the benefit of a reduced mortgage balance if he re-mortgages or moves home. I'd taken this into account when I said the compensation payment should be reduced by 30%. Evolve is saying this should be further reduced. But this compensation is for the higher payments which will start about six months after Mr I receives the compensation and continue for three years. The potential benefit in interest savings – although significant – would be spread over the remaining term of the mortgage, which is more than 30 years. And whether or not Mr I is better off would depend on what happens with interest rates in future.

I think Mr I makes a fair point that Evolve also had opportunities to mitigate the losses which resulted from its error. It could have offered compensation for the additional cost of the five-year product available in May 2022 at that time. Mr I says he'd have taken out the product if it had done so. The broker could have asked Mr I in December 2021 whether he'd made a decision about changing the product.

There was a cost to Evolve's error in not acting on Mr I's request to change to a five-year product. Both parties missed opportunities to mitigate that cost. There's nothing I can now do to reduce that cost. What I have to do is decide who bears that cost.

I appreciate that the calculation set out in my provisional decision isn't – and can't be – an exact calculation of this cost. There are too many potential variables. But having considered the further comments made by Mr I and Evolve, I think this is the fairest compromise in the circumstances.

Putting things right

Evolve should take the following steps:

1. Evolve should calculate the amount of interest Mr I would have incurred from completion of the mortgage to 28 February 2027 (36 months after 29 February 2024) if he'd taken out the five-year 2.13% fixed interest rate product.

   For the purpose of the calculation above, Evolve should assume the £999 product fee for the five-year 2.13% fixed interest rate product would have been added to the mortgage loan.

   For all of the calculations, Evolve should assume Mr I makes his contractual monthly payments in full and on time, and that the balance reduces over time accordingly.

2. Evolve should calculate the interest Mr I will actually incur from completion of the mortgage until his current fixed interest rate product expires on 29 February 2024.

3. Evolve should calculate the amount of interest Mr I would pay for 36 months starting on 1 March 2024 and ending on 28 February 2027 on the lender's current standard variable rate (as at the date of this decision).

4. Evolve should add together the results of 2 and 3. It should deduct the result of 1 from this.

The result of this calculation should then be adjusted, for the following reasons.

First, Mr I will have the use of the compensation payment before he has to make the higher payments. He could, for instance, use the funds to reduce his balance, immediately to the extent this within his overpayment allowance (which he can check with his lender) or when his product has expired. This would reduce the amount of interest he pays overall.

Second, Mr I will have the opportunity to look for the best available rate for when his product expires at the end of February 2024. Interest rates could increase or decrease by then.

Third, the compensation should take into account that Mr I had opportunities to mitigate his losses. He could have chased Evolve in December 2021 when he didn't receive written confirmation of the change of products. And he could have taken out a five-year product in May 2022.

For these reasons, I think the result of the calculation should be reduced by 30%.

Evolve offered £500 to Mr I in its final response letter. I think this matter caused Mr I inconvenience and worry, and continues to do so. I think £500 compensation is fair and reasonable for the inconvenience and worry this has caused.

My final decision

My decision is that I uphold this complaint and order Evolve FS Limited to pay compensation to Mr I as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr I to accept or reject my decision before 20 October 2023.

Ruth Stevenson
Ombudsman