DRN-4927288

The complaint

Mr D and Miss G are unhappy about the advice they received from Nationwide Building Society when they took out a first-time buyer mortgage with it in 2021. They say they were mis-sold an initial two-year fixed interest rate product because a five-year (or longer) fixed interest rate product was more suitable for them.

What happened

In February 2021, Mr D and Miss G had an initial telephone discussion with an adviser at Nationwide who went on to recommend a repayment mortgage with an initial two-year fixed interest rate product. Nationwide has said this call wasn't recorded because the adviser had been working from home due to Covid-19 restrictions.

Mr D and Miss G had a follow up (virtual) meeting with the adviser on 10 July 2021. It was established that a new application was needed because the purchase price of the property had changed. During the discussion, the adviser confirmed that it was still a priority for Mr D and Miss G to have an initial set monthly payment and she recommended a repayment mortgage with an initial two-year fixed interest rate product at 1.29%. Shortly after, Nationwide offered lower interest rate product at 1.19%. A new application was submitted for this rate and a mortgage offer was issued in July 2021, which was accepted by Mr D and Miss G.

When Mr D and Miss G's initial two-year fixed term ended, interest rates had risen significantly. Mr D and Miss G took out a new two-year fixed interest rate product at 4.84%. Their contractual monthly payment (CMP) increased from £960 to £1,430.

Mr D and Miss G complained to Nationwide that it had mis-sold them the initial two-year fixed rate product because a five-year, or longer, fixed rate product was more suitable for them. They said the adviser steered them towards a two-year fixed term because of their plan to borrow more money to do an extension on the property after two years, but had the adviser told them they could have borrowed more money during a fixed rate term, they would have opted for a longer fixed rate term.

Nationwide didn't uphold the complaint. In its final response letter dated March 2024, it explained why it felt its adviser had recommended a suitable product, based on the discussions that had taken place at that time. Some of its key points were:

- During the discussion on 10 July 2021, the adviser asked Mr D and Miss G what their views were on a two-year fixed rate verses a five-year fixed rate.
- Mr D and Miss G explained they were planning to do a small extension to the property in two years' time and the adviser made them aware that they would have to wait up to six months before applying for extra borrowing. It said this was the only stipulation, so Mr D and Miss G could have come back to it during the fixed term for additional borrowing.
- The adviser pointed out that a two-year fixed rate product would allow the existing mortgage and additional borrowing to be reviewed/considered at the same time. Mr D and Miss G also thought the Loan to Value (LTV) ratio would be better after two years.

Unhappy with Nationwide's response, Mr D and Miss G complained to this Service. They reiterated their concern that they had been mis-sold the two-year fixed rate product. They pointed out that interest rates had been at a historic low in 2021 and had they been told they could have borrowed more money during a fixed term, they would have opted for a longer one.

Our Investigator didn't think the complaint should be upheld, so Mr D and Miss G asked for it to be reviewed by an Ombudsman. They expressed their concern that their initial discussion with the adviser hadn't been recorded and said the adviser's notes shouldn't be relied on as evidence of what had been discussed. They also said they felt Nationwide had an agenda to encourage two-year fixed rate products over longer ones.

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.

The adviser at Nationwide was required to take reasonable steps to find out what Mr D and Miss G's needs and circumstances were and recommend a mortgage that was suitable for them. Nationwide should also have given Mr D and Miss G clear, fair and not misleading information so that they could make an informed choice whether to go ahead or not.

The overall suitability of the advice to take out a repayment mortgage with an initial fixed interest rate product isn't in dispute. Here, Mr D and Miss G complain, more specifically, that they were mis-sold an initial two-year fixed interest rate product because a five-year, or longer, fixed rate term would have been more suitable for them. They say the adviser steered them towards a two-year term and withheld key information about them being able to get additional borrowing during a fixed rate term.

Taking into account Mr D and Miss G's needs and circumstances at the time, I don't consider the recommendation for the two-year fixed interest rate product was unsuitable for them at that time. I'll explain why.

I've considered what was discussed with Mr D and Miss G during the initial meeting in February 2021. I do appreciate Mr D and Miss G's frustration that this call wasn't recorded. However, Nationwide has provided a contemporaneous record of what was discussed during this meeting. Of course, contemporaneous notes aren't always infallible – but unless there's a persuasive reason to disregard them (which there isn't here), we'll generally attach weight to them.

This record indicates Mr D and Miss G were aware of what interest rate products were on offer at that time and they could get a longer fixed rate term than two years.

I've also listened carefully to the follow up discussion that took place on 10 July 2021. Towards the beginning of the call, Mr D refers to an email that he'd sent to the adviser in advance of the discussion, and he explained:

"we may have changed since the email … in the email we put down five years possibly … we've kind of gone back round full circle I think …"

This indicates Mr D and Miss G had reconsidered the length of the of the fixed rate term after initially speaking to the adviser in February 2021, appearing to change their view to possibly wanting a five-year term, but then reverting back to wanting a two-year term.

Notably, when the adviser asked what rate they were (currently) looking at, Miss G said:

"28 years, two-year fixed, 25% deposit" and explained "we've looked at so many."

In light of Mr D and Miss G's apparent reconsideration of the original recommendation, I would expect the advisor to have explored this further, and whether there had been any changes in Mr D and Miss G's needs and circumstances since their last discussion. Having listened carefully to the remainder of the conversation, I'm satisfied the adviser did do that. I say this because adviser went on to say:

"Last time we went for the two-year fixed … kind of hoping that there might be a 75% loan to value at the end of two years, so talk me through what you're now thinking about fixing for two versus five years or three even…"

Mr D explained the idea was to do a small extension after two years and the adviser said:

"…last time you were hoping you would have paid some of the mortgage down, you can borrow additional money for home improvements, you can borrow up to 85%, you've got to wait at least six months, but if you're looking to do that after two years then that's comfortably there."

I think what the adviser said about Mr D and Miss G needing to wait at least six months before applying for further borrowing makes it clear they could do this during a fixed term period, because the term they were considering (two years) was longer than six months. So, there was nothing to suggest they wouldn't be able to get further borrowing with a longer fixed rate term, had they wanted a longer term. It follows that I'm satisfied Mr D and Miss G were provided with clear, fair and not misleading information, overall, so that they could make an informed choice about whether to go ahead with the recommendation for a two-year fixed rate term or not.

The adviser went on to say:

“So, what we have on the top line then is a two-year fixed rate …I’m with you on that, it allows you to review things in two years’ time, it’s got the lowest rate…”

I don’t think it was wrong of the adviser to point out that a two-year term would allow Mr D and Miss G to review things in two years’ time. This could, potentially, have allowed their existing mortgage and additional borrowing to be reviewed at the same time, which may have been beneficial for Mr D and Miss G.

An important consideration here is that the adviser wasn’t in a position to know whether any future application for further borrowing with Nationwide would be successful. Mr D and Miss G would need to meet Nationwide’s lending requirements at the time of any future application. Being tied into a longer fixed rate product would have increased the risk of Mr D and Miss G potentially having to pay an Early Repayment Charge (ERC) if they needed or wanted to pursue their borrowing objectives elsewhere.

Also, importantly, the two-year fixed rate was slightly cheaper than the five-year fixed rate on offer at that time. It is clear from the discussion that saving was important objective for Mr D and Miss G at that time. I say this because when discussing the monthly payment, Miss G explained:

“we’re hoping to put aside savings… and for a small side extension… so that’s the reason why we kind of wanted to lower it and so we can save more money…”

It follows that I’m satisfied the less expensive two-year fixed rate product supported Mr D and Miss G’s objective to save as much money as possible towards the extension they were planning to do after two years.

Another important consideration is that it was clear from the discussion that Mr D was hoping the LTV ratio would improve by the end of the two year term, potentially allowing them to apply for a more competitive interest rate product at the end of the term. He explained to the adviser that he knew the area well and he thought the house would be worth more in two years’ time. Had the value of the property increased as they’d hoped, and interest rates remained low (as they had for so long), they may have been in a position to secure a more preferable interest rate product at the end of the initial two-year term.

It is unfortunate that interest rates increased so much during the two-year term. However, I’ve seen nothing that suggests the adviser had an ulterior motive or agenda when recommending the two-year fixed interest rate product. Interest rates had remained low for a long time, and it was unprecedented how quickly they rose.

Having carefully considered all of the information available to me, I haven’t seen anything that indicates a five-year, or longer, fixed interest rate product was more suitable for Mr D and Miss G based on their needs and circumstances at the time.

Overall, therefore, I’m satisfied the recommendation for the two-year fixed interest rate product was suitable for Mr D and Miss G at the time.

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 D and Miss G to accept or reject my decision before 30 December 2024.

Michelle Griffiths
Ombudsman