DRN-5033943

The complaint

Ms H complains that TCOT Financial Services Limited trading as Circle Trust recommended a two-year fixed rate when a five-year fixed rate was more suitable for her.

What happened

In April 2021, Circle Trust recommended that Ms H should take a mortgage with an interest rate of 1.31% fixed until 30 June 2023.

Ms H complains that she should have been recommended a five-year fixed rate. She said:

- She was not given any information about five-year fixed rates.
- When she asked about five-year fixed rates, Circle Trust advised her against this as they were more expensive and it thought that interest rates were going to remain low in the medium to long term.
- A five-year fixed rate would have been more suitable because she planned to live in her home for at least five years, she had a conservative attitude towards risk and having consistent outgoings was important to her as she has sole responsibility for the household expenditure

Circle Trust said it proposed a two-year fixed rate based on "*the monthly payments and future flexibility*". It said that when Ms H questioned whether she should have a five-year fixed rate it explained its reasons for choosing a five-year fixed rate. It offered Ms H a payment of £709.20 as a gesture of goodwill to resolve the complaint. It said that was how much it received from the lender.

I issued a provisional decision upholding the complaint – but I thought Circle Trust's offer to settle the complaint was fair in the circumstances. My provisional findings, which form part of this decision, were:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what I consider to be fair and reasonable in the individual circumstances of this complaint I am required to take into account a number of things – that includes the relevant rules and regulations, and what I consider to have been good industry practice at the time in question.

Circle Trust was giving Ms H mortgage advice. It was required to recommend a mortgage that was suitable for her. It should have taken reasonable steps to gather all of the information it needed to do so. The mortgage should be appropriate for Ms H's stated needs and circumstances. In determining what was appropriate for Ms H, Circle Trust was required to consider a number of factors, including whether it was appropriate for Ms H to have stability in the amount of required payments, having regard to the impact on her of significant interest rates in the future.

As far as I can see the fact find does not record if Ms H had a preference for a fixed or variable rate. Nor did it ask her any questions around whether she had any preference for the length of any fixed rate or any need for stability over a particular time. In my experience that is unusual. Good practice would require a mortgage adviser to ask whether a borrower requires stability and explores the borrower's circumstances to determine if there is a need or preference for the fixed rate to last for a certain duration. I consider it is good practice to gather such information when giving mortgage advice.

Circle Trust was also required to explain why it considers the mortgage it has recommended was suitable for Ms H.

The recommendation letter said, as is relevant:

Initial Rate Type

Fixed

After considering all types of loan, and because you wish to keep your monthly payments at the same level in the early years and be aware of your exact commitment, I have recommended a Fixed Rate Loan. If variable interest rates fall below your fixed rate during the initial fixed rate period, you will continue to pay the higher monthly payments. You should be aware that at the end of the fixed rate period, your payments will revert to the lender's current standard variable rate applicable at this time, and this may mean a substantial increase in your monthly payments.

I can't see that there is any explanation why a two-year fixed rate was chosen and why a longer fixed rate was not considered.

There was a subsequent exchange of emails. Ms H said the interest rate "looks very attractive" but she "wondered" if she should consider a five-year fixed rate. But "maybe not if [she] can transfer from one good rate to another with [the lender] after 2 years without further fees?"

Circle Trust responded to say:

We would recommend against a 5 year rate as they are more expensive.

Whilst a 5 year rate offers more certainty of payment, this needs to be considered against the current climate where it looks as though rates are going to remain low for the medium to long term.

Yes, you are correct, we will be back in touch at the 18 month point to look at what Halifax will offer compared to the wider market – to make sure you are in the best place and advise accordingly at that point.

The other point we see so often with the few clients that do opt for a 5 year rate – is that circumstances change. For example if they need to borrow more, or move, or sell there are penalties to exit.

We will always assess the mortgage products with fees and without – and based on loan size we will recommend the best route for you. For information if you remained with [the lender] in two years, we would re-fix for you and charge no fee.

We only charge a fee if we move lenders – that would be built in if we can demonstrate an overall bigger saving.

Two years give much greater flexibility.

So it appears that Circle Trust thought the two-year fixed rate was suitable for Ms H because:

- *It was cheaper than the five-year fixed rates.*
- *Interest rates looked like they were going to remain low in the medium to long term.*
- *If Ms H's circumstances were to change, there would be "penalties" if she changed her mortgage.*
- *A two-year fixed rate provided greater flexibility.*

I accept that some of those things might be a good reason to recommend a two-year fixed rate. But it was based on generic assumptions about what was best for Ms H rather than finding out what her needs and circumstances actually were and recommending a mortgage that was suitable for her.

Further, Ms H was clearly worried about what would happen at the end of the two-year fixed rate and it appears she was reassured by the advice that it "looked like" interest rates were going to remain "low" in the medium to long term. It is not clear what evidence Circle Trust had to support such a statement – and again in my experience it is unusual for a mortgage broker to make such a prediction and to make a recommendation based on it.

Circle Trust is wrong to say it was for Ms H to request an illustration for a five-year fixed rate. It was meant to be giving Ms H advice as set out above. It was not for Ms H simply to choose what she wanted and Circle Trust to arrange that mortgage for her. Nor was it for Circle Trust to recommend what it thought was best for Ms H without taking reasonable steps to gather information about her needs and circumstances.

Overall, I don't consider Circle Trust treated Ms H fairly or reasonably when it gave her mortgage advice It did not take adequate steps to establish what her needs and circumstances were and it did not properly explain why the mortgage was suitable for Ms H.

Where a business has not acted fairly, we look to put the affected party back in the position they would have been in had they been treated fairly. I have to take into account that there is likely to be a degree of hindsight in making this complaint. Interest rates have risen significantly since this mortgage was arranged.

When the advice was given in August 2020, Circle Trust recommended an interest rate of 1.28%. The cheapest five-year fixed rate at that time was 1.31%. But that was a with a different lender. Circle Trust has said that Ms H would not have qualified for a mortgage with certain lenders because she was self-employed and because of the way they assessed affordability. So it is not clear if she could have qualified for that interest rate.

Circle Trust had to arrange a new mortgage in April 2021 as Ms H had found a different property. The interest rate that Ms H went ahead with was more expensive than it had initially recommended (1.31%).

Circle Trust has told us that in April 2021 five-year fixed rates ranged between 1.5-2%, with an average of 1.75%. The lender that Circle Trust recommended has told us that in April 2021 it offered two five-year fixed rates that Ms H would have qualified for: one at 1.85% with a £999 product fee and one at 2.17% with no product fee.

The product that Ms H did take had a product fee of £999. So it seems likely that the fee would not have made the 1.85% rate unsuitable for Ms H. If she had taken that rate the monthly payments would have been around £1,192.18 against actual monthly payments of £1,142.41. So the five-year fixed rate was around £50 a month more expensive or around £1,200 in total over the two years.

I accept that Circle Trust did not do enough to understand Ms H 's needs and circumstances. If it had, it might have found out that longer term consistency of outgoings was important to Miss H – and it ought to have done more to explore the costs and benefits of a five-year fixed rate against a two-year fixed rate, along with a more balanced explanation about what might happen to interest rates in the future.

In saying that, Circle Trust pointed out that a five-year fixed rate was more expensive than a two-year fixed rate. Ms H did not say that the monthly cost was not important to her and that long term stability was more important. It is likely that the monthly cost is going to be a significant factor for many people. Nor did she disagree with any of the other points that Circle Trust made.

The difference in cost was significant over the two-year period. Looking at all of the circumstances and what Ms H has told us, I'm not sufficiently persuaded that her need for stability would outweigh the difference in cost between the two and five-year fixed rate. I consider it less likely, on balance, had she been given fair and reasonable advice and information about her options that she would have taken a five-year fixed rate.

It's clear Ms H has been caused unnecessary distress and inconvenience by the advice she received. It should have been straightforward for Circle Trust to show it had gathered enough information about Ms H's circumstances and recommended a mortgage that was suitable for her.

Ms H is left with the ongoing worry that she could have been protected from increases in interest rates for longer. But Circle Trust has already offered to refund the payment it received from the lender for introducing the mortgage - £709.20. That is more than I would have awarded Ms H to reflect any distress and inconvenience. So Circle Trust does not need to do anything else to settle this complaint.

Circle Trust responded to make some points, including:

- It was amending its paperwork to reflect customers' preferences in respect of the rate chosen.
- It believed had it documented things from the outset more clearly and thoroughly to reflect what was discussed with Ms H, then the complaint would not have been made.
- If Ms H thought that a five-year fixed rate was more suitable that she did not make this clear and request it.
- There were discussions about additional borrowing before the mortgage completed. Ms H indicated she was looking at properties requiring improvements.
- It believed Ms H was unhappy with the advice because interest rates had gone up – and that was supported by its interactions with Ms h in 2022 and 2023.

Ms H did not accept my provisional findings. She made a number of points, including:

- The payment of £709.20 does not put her back in the position she would have been in had she been treated fairly – she would have taken a five-year fixed rate mortgage. She accepted there was a degree of hindsight in that, but there is also evidence to support this.
- There is clear evidence that stability was important to her. I'd found that she H was worried about what would happen at the end of the two-year fixed rate and that she was reassured by Circle Trust's advice that interest rates were going to remain low. She thought Circle Trust was an expert and she relied on it to act in her best interests.
- In over thirty years of being a homeowner she always fixed her mortgage for more than two years – but she does not have evidence to support that. She does have evidence that she fixed her mortgage for five years when the mortgage in question ended.
- When she received mortgage advice from Circle Trust in 2023 it gave her details of both two and five-year fixed rates and again encouraged her to take the two-year rate – but she chose the five-year fixed rate.
- The difference in cost between the two and five-year fixed rate was around £50 a month or £600 a year. That was a small amount of money relative to her income. If she'd been given the figures she could have weighed up the additional cost against the risk of the interest rate going up at the end of the two-year period.
- The difference in the payments was a price she was prepared to pay for stability. There is evidence of that as she opted for a five-year fixed rate at the end of the mortgage in question, despite her payments going up by more than £200 a month.
- Security was important to her as she planned to remain in her house for at least five years, she had sole responsibility for paying the bills and a five-year fixed rate would have ended as her pension began.
- There is a difference of over £5,000 between what she has paid and what she would have paid had she taken a five-year fixed rate. Circle Trust should compensate her for 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 reviewed everything again and have thought about what both sides have said. Having done so I am not persuaded to change the outcome I proposed in my provisional decision.

I accept that it is likely there were discussions between Circle Trust and Ms H about her preferences – and that the failure was in Circle Trust not properly keeping a record of that or the reasons why it thought the two-year fixed rate was the right thing for her.

Obviously, we are looking at things that happened a number of years ago – and we can't say for certain what Ms H would have done if she'd been treated fairly. But I must make a decision, on balance, about what I think most likely would have happened had Circle Trust acted fairly and reasonably.

I accept that Ms H had a need for stability. But that was not her only need. I think it is likely that the monthly cost and flexibility were also important factors for her. I say that as when Circle Trust set out those reasons for recommending the two-year fixed rate, Ms H did not disagree and she accepted the recommendation.

So the evidence I have suggests that Ms H wanted stability – and the two-year fixed rate provided that to some extent, albeit not for as long as she says she wanted. But there was also a need to keep the monthly cost low and for flexibility. The two-year fixed rate provided that, the five-year fixed rate did not. .

I don't consider the fact that Ms H chose a five-year fixed rate when this product ended makes any difference to my decision. While that does indicate a preference for longer term stability at that point, it does not follow that was most important to her in 2021 or that it outweighed her other preferences. And I note that in 2023 the five-year fixed rate was just under £50 a month cheaper than the two-year fixed rate. So it could be argued that it supports that the monthly cost was also a factor in Ms H's decision at that time.

Overall, I'm not sufficiently persuaded that Ms H's need for stability would outweigh the difference in cost between the two and five-year fixed rate. While Ms H does not think that was a large difference, it was a significant amount over the two-year period. And while Circle Trust overstated the likelihood that interest rates would stay the same, there was chance that would happen. So Ms H's decision would have been informed by the possibility that she could be stuck on a five-year fixed rate that might be higher than she needed to pay.

On review, I don't consider it was necessarily unreasonable for Circle Trust to recommend a two-year fixed rate. It has been unable to provide clear evidence to support that and that will have caused Ms H some avoidable distress and inconvenience. It should have been straightforward for it demonstrate that it had properly considered her needs and circumstances. But for the reasons set out above, I consider it more likely, on balance, that Ms H would still have taken a two-year fixed rate had Circle Trust acted fairly.

I consider Circle Trust's offer to refund the payment it received from the lender for introducing the mortgage - £709.20. That is more than I would have awarded Ms H to reflect any distress and inconvenience caused to Ms H as a result of this matter.

My final decision

My final decision is that TCOT Financial Services Limited trading as Circle Trust should honour its offer to pay Ms H £709.20 to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 18 October 2024.

Ken Rose
Ombudsman