DRN-5197780

The complaint

Mr T and Mrs F complain that they were given unsuitable advice by Contractor Friendly Mortgages Limited (an appointed representative of Openwork Limited). They feel it incorrectly advised them to take a 'tracker' instead of a fixed interest rate product.

What happened

Mr T and Mrs F were looking to purchase a larger home due to their expanding family. So, they approached Contractor Friendly Mortgages Limited ('CFML') in or around May 2021 to seek mortgage advice. CFML was at the time of the advice an appointed representative of Openwork. This means that Openwork is responsible for the advice CFML gave and is the appropriate respondent to this complaint. But for ease and because it was the firm Mr T and Mrs F dealt with, I'll refer to CFML in what follows.

Due to the property market at the time of their application, Mr T and Mrs F have said it was difficult to find a suitable property. Their options were also limited because of Mrs F's credit history. By October 2021 they found a property they were looking to purchase and CFML, after completing its research, made an application on Mr T and Mrs F's behalf to a mortgage lender I'll refer to as "Lender P". Lender P is a specialist lender, and the application was made through a third-party packager. Following this, in October 2021, Lender P offered Mr T and Mrs F a mortgage with a two-year fixed rate. This mortgage offer had an expiry date of 16 January 2022 and was based on a two-year fixed rate of 3.30% and a proposed loan amount of just under £244,000.

Unfortunately, the purchase of the first property didn't proceed so Mr T and Mrs F continued their search for a suitable property. CFML told Mr T and Mrs F that the maximum amount Lender P would lend on a two-year fixed rate would be £285,000. Mr T asked for some further information about this, including what the interest rate and monthly payment would be for that amount of borrowing. As a new property would require a new mortgage application, and Lender P's interest rates had changed since the last application, CFML said Lender P's two-year fixed rate products now started at 3.80% and said the monthly payment based on that rate would be £1,984.

CFML told Mr T and Mrs F that Lender P had issued a Decision in Principle and that they now needed to select a product. It provided Mr T and Mrs F with two available two-year fixed rate options. These were a rate of 3.80% with a product fee of £1,295 and a rate of 3.90% with a fee of £995, with monthly payments of £1983.35 and £1,997.69 respectively. On 6 January 2022 CFML applied to Lender P for the two-year fixed rate of 3.80%.

There were some issues with the purchase of the property due to it being marketed by two estate agents and this mortgage application also didn't proceed. Mr T and Mrs F found a third property they wanted to purchase and, on 28 January 2022, Mr T and Mrs F emailed CFML and asked it to proceed with their application for a two-year fixed rate.

CFML started the application process again and the packager provided it with updated product details – interest rates having changed again in the meantime. On 31 January 2022, CFML emailed Mr T about a tracker interest rate product which was available. It said:

> “I have spoken to the packager and [Lender P] has another product which you are eligible for, it is a 2 year tracker. The rate is 3.80% and it will track the Bank of England base rate. There is a still a penalty to come out of it within the 2 years like there is with the fixed product, but it is a lower rate and there is no product fee. The monthly payment would be £1,983.35.
>
> The 2 year fixed is 3.90% with a £995 fee. Monthly payment is £1,997.69.
>
> I wanted to discuss with you if you would be interested in considering the tracker over the fixed.
>
> Let me know your thoughts.”

Following this the broker asked the packager to proceed with the two-year tracker product. And Lender P issued a mortgage offer, including interest at the tracker rate, on 11 February 2022.

Due to some complications with the property chain Mr T and Mrs F needed more time to complete their purchase, so Lender P extended their mortgage offer on 11 May 2022. On 18 May 2022 CFML contacted the packager enquiring about the current two-year fixed rate products. The broker said Mr T and Mrs F were worried about rate rises and may look to change their product from the tracker product. The packager said that Lender P was offering a two-year fixed rate of 4.40% with a fee of £995. However, just over a month later at the end of June 2022, Mr T and Mrs F’s mortgage completed on the two-year tracker product that had been offered in February 2022.

Mr T and Mrs F complained to CFML in June 2024. They felt CFML’s advice for them to take out a tracker rate product in February 2022 was unsuitable. They also felt CFML ought to have reviewed the available products prior to completion of the mortgage, when considering changes in the economy at the time, and advised them to take a fixed rate. And, that CFML’s advice had led to the difficulties they have since faced, including payment arrears accruing on their mortgage, because of increases in interest rates in the meantime. They would like CFML to compensate them as if their mortgage had been taken out on a two-year fixed rate instead of a tracker product.

CFML didn’t accept that it had acted unfairly. It said the advice it had provided met Mr T and Mrs F’s financial circumstances and objectives at the time. It said it asked Mr T and Mrs F questions about the type of rate they would prefer at the time and that their answers allowed CFML to consider fixed and variable product options. It said CFML gave Mr T and Mrs F the opportunity to consider both the fixed and tracker product options, and they selected a tracker product. It also said it wasn’t CFML’s responsibility to reconsider the advice it had given unless Mr T and Mrs F’s circumstances had changed. Finally, it said it couldn’t be expected to forecast whether interest rates would increase or decrease, nor could it know what would happen with interest rates more widely.

Mr T and Mrs F asked the Financial Ombudsman Service to look into their complaint. Our Investigator didn’t think CFML had acted unfairly. She concluded that while a fixed rate might be the preferred alternative with the benefit of hindsight, she didn’t think CFML had made an unsuitable recommendation at the time for a tracker product. So she didn’t think it would be fair to require Openwork to compensate Mr T and Mrs F.

Because Mr T and Mrs F didn’t agree with the Investigator’s findings, they asked for an Ombudsman to review their complaint. So the case has been passed to me to decide.

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'd like to reassure Mr T and Mrs F that I have taken everything they have said and all the information they have provided into account before making my decision. This includes the responses they provided to the Investigator's assessments.

Mr T and Mrs F approached CFML as they needed to secure the required funds to purchase a larger property. It appears several discussions took place after this and CFML completed a fact-finding process where it recorded details of Mr T and Mrs F's needs and objectives. This included the following questions about the product type:

> "Is stability of payments important to you"
>
> "Are you prepared to accept the risk that interest rates could go up, meaning that your payments will increase and could exceed your available budget"

CFML has said that the fact-finding process is completed prior to submission of a mortgage application to a lender. So, it was completed in 2021 prior to the first application to Lender P and again in 2022, for the final application. The recorded answers to these questions for Mr T and Mrs F's applications were "No" to the first question and "Yes" to the second.

However, Mr T and Mrs F dispute answering these questions. They say that they always wanted a two-year fixed interest rate and question why they would give these answers when considering that. They feel their position is supported further by several factors, including email correspondence between them and CFML where fixed rates are mentioned, and that all mortgage illustrations prior to February 2022 were for fixed rate products.

I've thought carefully about the available evidence and, while I accept two-year fixed rates were a product type Mr T and Mrs F wanted to consider, I'm not persuaded it was the only product type they were willing to consider at the time. I appreciate that knowing what they do now, Mr T and Mrs F say they would have chosen a fixed rate product instead of the tracker product they ended up with. But I cannot apply the benefit of hindsight to my decision. Instead, I must consider what happened – or, where the evidence is incomplete or contradictory, what is most likely to have happened on the balance of probabilities – at the time the advice was provided.

Mr T and Mrs F have questioned why CFML didn't recommend a tracker product prior to February 2022. I consider the answer to this is that Lender P didn't offer a tracker product as an option for Mr T and Mrs F until that point. When it did, CFML shared that option with Mr T and Mrs F. I do not think it was unreasonable for CFML to make them aware this product was now available.

Mr T and Mrs F don't dispute that they ultimately agreed to taking out the tracker product. Their concern is that they did so based on the advice provided to them by CFML, and they think that advice was unsuitable, and that it should have advised them to take a fixed rate instead.

The broker's advice notes from the time show that CFML recommended the two-year tracker "on the basis that they [Mr T and Mrs F] wanted to benefit from the lowest interest rate the lender could offer to them, the 2 year fixed product would have been an extra £14.34 per month and it was more important to them that they had the lowest payment". It goes on to say, "Originally when doing research the 2 year fixed was going to be the recommendation as the tracker was not an option, but after presentation the tracker was an option and it was preferred by the client…" and "They are aware of the risks involved with a tracker in that it can fluctuate based on how rates change. They are happy to take the risk."

Following CFML's advice, it sent Mr T and Mrs F a summary of its advice and recommendations. Within this document CFML set out that it had recommended a tracker product because:

> "you do not require the initial certainty of a fixed rate mortgage. Given your circumstances you will benefit from knowing that your mortgage will track a fixed economic indicator for the initial period. You are aware that your mortgage payments will fluctuate and are happy that you can sustain rate rises in the future"

It also set out that CFML had recommended the initial rate period because it "offers the lowest payment available at the time of application".

Having taken this, and Mr T and Mrs F's testimony about affordability being limited into account, I am persuaded having the lowest monthly payment possible was a key requirement they wanted to achieve. At the point Mr T and Mrs F had found a suitable property and had decided to proceed with their application, the broker said the lowest two-year fixed rate available was 3.90%. And so, as set out in the broker's advice notes and recommendation summary, the tracker product at 3.80% would achieve the goal of the lowest possible monthly payments. I note that the tracker product also didn't require a product fee where the fixed rate did. So, this would reduce the overall cost of the mortgage based on interest rates at the time of advice. Overall, I consider that the advice provided was appropriate when considering Mr T and Mrs F's needs and requirements at the time. Although the tracker rate has turned out to be more expensive – because interest rates have since risen – CFML could not have foreseen this at the time. I don't therefore think that it ought, acting fairly, to have advised Mr T and Mrs F to take a fixed rate even though it was more expensive at the time the mortgage was taken out. Based on what was known at the time of the advice, I'm not persuaded the tracker rate was unsuitable.

Mr T and Mrs F have said that CFML had further opportunities to review its advice and the interest rates available leading up to completion. I think it can be argued that CFML had an opportunity to revisit its advice, bearing in mind that the Bank of England base rate, for example, had increased by 0.5% by May 2022, compared to February 2022 when the initial advice for the tracker product was given.

However, the packager notes show CFML did ask about available two-year fixed rate products in May 2022 with Lender P. It's important to note that by this time the 3.90% fixed rate was no longer available. If Mr T and Mrs F were to switch, they would have to switch to rates available in May 2022 - the lowest rate available fixed rate at that time was 4.40%. I've looked at the underlying rate the tracker product is linked to (Lender P's 'Lender Managed Rate') and it appears to have broadly increased in line with the Bank of England base rate ('base rate'). When considering how the base rate had increased by May 2022, the interest rate for the tracker product would have been around 4.30% in May 2022. So, I think it's most likely the tracker product would still have provided the lowest overall interest rate and therefore, lowest monthly payment at that time. The tracker rate therefore still met Mr T and Mrs F's preference for the lowest possible monthly payment.

Mr T and Mrs F say that CFML didn't give them the option of taking a fixed rate at this point. The evidence of what was discussed around this is limited. I consider it is unlikely that CFML sought this information for Mr T and Mrs F and then didn't pass it on. But, due to the limited evidence available, I can't safely rule it out either – noting that CFML now says it wasn't required to revisit its advice at this time. Even if I accept that CFML didn't provide this information to Mr T and Mrs F, I'm not persuaded they would have done anything differently either way. And I will explain why.

Mr T and Mrs F's current property purchase had been ongoing for several months by this point and the mortgage offer had already been extended to give them more time to complete – the overall process had been ongoing for over a year. If they had chosen to select a different product, the tracker rate mortgage offer would need to be cancelled and a new application would have needed to be made and there is no guarantee Lender P would have still been able to offer Mr T and Mrs F the level of borrowing they were requesting. A new application would be subject to meeting the relevant rules and policy requirements at the time – which may have included an updated affordability assessment, based on a higher interest rate.

To switch to a fixed rate in May 2022, therefore, Mr T and Mrs F would have needed to reject the offer of a tracker rate on which they could complete imminently, and start again with a new mortgage application, for a more expensive fixed rate, with no guarantee Lender P would offer it to them. Having considered Mr T and Mrs F's testimony about their need to move to a larger property, the time already taken, and the difficulty they had in finding an affordable and suitable property, I'm not persuaded they would have chosen to take the risk of potentially losing the property at this late stage in the process.

I accept Mr T and Mrs F may disagree when thinking about this with the benefit of hindsight, but I must consider what is most likely to have happened at the time and, for the reasons I've explained above, I'm not persuaded the overall course of events would have been different – whether CFML told Mr T and Mrs F about the alternative fixed rate in May 2022 or not. I'm also not persuaded that what happened after the initial advice leading up to completion of the mortgage made CFML's overall advice unsuitable. It still provided the lowest monthly payment – based on interest rates available at the time – which is something I am persuaded was important to Mr T and Mrs F, alongside the ability to complete on their purchase as soon as possible.

I appreciate that Mr T and Mrs F have faced some financial difficulties since they took out this mortgage – which they've said is because of the significant interest rate increases that started towards the end of 2022, and Mr T having unexpected difficulty in the job market. But neither of these factors are things CFML could reasonably have been expected to know or predict at the time of advice. For example, CFML could not reasonably have predicted events such as the September 2022 'mini-budget' and how that – and other wider matters – would impact the economy and wider interest rates. Because of this, it wouldn't be fair or reasonable for me to apply those factors when making a finding about the advice Mr T and Mrs F were provided with.

Mr T and Mrs F have suggested that CFML changed its recommendation to a tracker product because the commission amount paid to it by Lender P was higher for that application. But I'm not persuaded this is the case. In the period leading up to CFML making an application to Lender P, it produced several mortgage illustrations for Mr T and Mrs F. These were with several lenders, for different loan amounts, at different interest rates (albeit all were fixed rates) and at different times. Each lender sets the level of commission it will pay. I can see that some of the proposed commission amounts in the illustrations CFML provided to Mr T and Mrs F were much lower than the amount Lender P ultimately paid to CFML. But many of these illustrations were provided for lenders that wouldn't consider Mr T and Mrs F's application due to Mrs F's adverse credit history. Therefore, it wouldn't be fair or reasonable to include those when thinking about the level of commission that was ultimately paid.

The most relevant comparison in Mr T and Mrs F's case is the mortgage offer they received from Lender P – for a different property – in October 2021. This is because it was provided by the same lender their mortgage completed with. The commission figure at that time, for a lower loan amount, was just under £2,000. The commission amount in the later offer based on the tracker product was just under £2,300. This is a higher amount, but as the loan amount was also higher, I'm satisfied this is what accounts for the increased commission amount. I've not seen any evidence to suggest that the commission would have been different had a fixed rate been taken, compared to a tracker rate, for the same amount. And in any case, CFML declared both that it would receive commission, and how much it would receive, before Mr T and Mrs F decided to go ahead. This allowed them to take the fact it would receive commission into account in deciding whether to accept the advice – as required by the regulator's rules. Because of this, I am not persuaded the level of commission had any bearing on CFML's advice for Mr T and Mrs F to take out a tracker product, or that the fact it received commission meant the advice was unsuitable or that Mr T and Mrs F were treated unfairly.

I am sorry to hear about the financial difficulties Mr T and Mrs F are facing. I can only suggest they continue to speak with their lender to see what support it may be able to provide and if they don't believe they are being treated fairly, they may be able to refer their concerns to this Service. If they haven't already done so, Mr T and Mrs F may also wish to seek some free advice from a debt charity. The investigator can provide them with contact details of organisations that can help if this is something they'd like to pursue.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr T to accept or reject my decision before 4 February 2025.

Keith Barnes
Ombudsman