DRN-5673758

The complaint

Mr and Mrs N complain about mortgage advice they received from Orchard House (IFAs) Ltd.

What happened

In 2020, at the time they approached Orchard House for advice, Mr and Mrs N had two mortgages:

- A residential mortgage for around £305,500 on interest only terms – with the term about to expire.

- A buy to let mortgage, also on interest only terms but expiring in 2029, for around £186,000.

Mr and Mrs N initially told Orchard House that they wanted to retain both properties, and to remortgage both of them onto lifetime mortgages. At the time, Mrs N (the younger of the two) was around 60 years old. Because of her age and loan to value restrictions, Mr and Mrs N were not able to borrow enough on a lifetime mortgage.

Instead, therefore, Orchard House gave Mr and Mrs N advice about re-mortgaging the residential property onto another interest only mortgage over a ten year term, at the end of which a lifetime mortgage should then be available to them. It sent them two illustrations, one for borrowing of £302,000 and one for £326,000, both over ten year terms with initial fixed interest rates for five years.

However, the lender Orchard House recommended was not prepared to lend to Mr and Mrs N over a ten year term. It would only lend over five years. And it would only lend enough to repay the existing mortgage plus fees without extra borrowing. Orchard House proceeded with an application to borrow £306,500 over a five year term and with a five year fixed rate. This mortgage completed in late 2020.

In 2024, the lender wrote to Mr and Mrs N to remind them that the mortgage term would expire in a year, and to check on their plans for repayment. Mr and Mrs N say that this was the first time they realised that Orchard House had arranged a five year, not a ten year, term and that they would have to repay in 2025.

Mr and Mrs N took additional borrowing on their buy to let mortgage, which they used to reduce the balance on the residential mortgage so they could get a lifetime mortgage on their residential property. They then repaid the residential mortgage, replacing it with a lifetime mortgage. Because they repaid before the end of the five year fixed interest rate, the lender charged them an early repayment charge (ERC).

Mr and Mrs N complained. They said that Orchard House ought to have arranged a ten year mortgage as discussed. Or it should have advised them to increase the borrowing on the buy to let mortgage so they could reduce the balance on the residential low enough to qualify for a lifetime mortgage. But instead it had arranged a five year mortgage without telling them this was what it was doing, so it came as a surprise when the lender contacted them in 2024. It also hadn't told them why they couldn't borrow the higher amount of £326,000.

Mr and Mrs N said that when they realised they would have to repay the mortgage at the end of the five year term they made arrangements to do so. To put things right, they wanted Orchard House to refund the ERC they paid in 2024, plus the difference in interest between the five year mortgage and the lifetime mortgage for the 13 months from when they repaid to the end of the five year mortgage term. And it should refund all the fees they'd paid to set up the five year mortgage. They also said it ought to have told them to consult a specialist about their buy to let mortgage.

Orchard House said it didn't offer any buy to let advice and it was for Mr and Mrs N to decide if they wanted to consult someone else. It said that the mortgage it arranged was the only realistic option open to Mr and Mrs H. The buy to let mortgage was still in an ERC period so re-mortgaging to get further borrowing would have been very costly. It set out the reasons for the recommendation in its advice letter at the time, and the mortgage documents made clear it was being arranged over a five year term. And it said it wasn't responsible for Mr and Mrs H's decision to repay that mortgage early, incurring an ERC.

Our investigator said that we couldn't consider anything about the buy to let mortgage because that isn't a regulated product. He looked at what had happened with the residential mortgage. He agreed, based on what the lender had said at the time, that the mortgage Orchard House had arranged was the only one available to them. He thought that the mortgage documents were clear that it was a five year, not a ten year, mortgage, but said that Orchard House ought to have expressly drawn that to Mr and Mrs N's attention. However, he said that there was also some responsibility on Mr and Mrs N to understand the mortgage they were agreeing to. And in any case they would always have taken this mortgage because they needed to repay their old one and had no other option to do so at that time. He said it wouldn't be fair to expect Orchard House to refund the ERC or other fees, because it had arranged a suitable mortgage and Mr and Mrs N didn't have to repay it before the fixed rate expired.

Mr and Mrs N didn't accept that. They said that Orchard House had not provided them with an illustration of a five year mortgage or any explanation of why a ten year mortgage had been rejected. They only became aware that a five year mortgage had been arranged when the lender contacted them in 2024. The adviser must have made a mistake and applied for the wrong mortgage – and also lied to the lender about their repayment strategy.

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.

In particular, I've thought very carefully about everything Mr and Mrs N have said. It's clear they feel very strongly about what happened. But I'm afraid the evidence doesn't support their recollection of events. That's not to say that there's any suggestion that their recollection isn't honestly held. But it's well known that human memory is fallible and that memories unconsciously change over time and are influenced by later events. I think it's most likely that Mr and Mrs N initially wanted a ten year mortgage, were told that wasn't possible and agreed a five year mortgage instead – but then, some years later, didn't recall the later discussions and so were surprised when the lender reminded them that it was a five year mortgage. Where later recollections, some years after the event, conflict with the documents from the time I think it's reasonable to place more weight on the contemporary documents.

The evidence shows that there were initial discussions about Mr and Mrs N taking a lifetime mortgage to repay their old residential mortgage. But because of Mr and Mrs N's age, the maximum they could borrow was £275,000. The advice record from the time says that Mr and Mrs N didn't want to proceed with this option because it wasn't enough to repay the mortgage and because the best interest rate on a lifetime mortgage (5.36%) was much higher than they could obtain on a standard mortgage. Mr and Mrs N now say that they ought to have been advised to take a lifetime mortgage and make up the difference with further borrowing on the buy to let mortgage – but the evidence from the time suggests that wasn't something they wanted to consider, because of the interest rate on the lifetime mortgage being much higher (they may also have had to pay an ERC on the buy to let mortgage which was still in a fixed rate period if the existing lender wouldn't agree a further advance), making this a more expensive option.

Mr and Mrs N were sent two illustrations of ten year mortgages from the lender. It's important to note that an illustration isn't a promise to lend or a guarantee that the lender will accept an application. They're an illustration of what will be applied for, and are generally generated not by the lender but by the broker ahead of an application being submitted.

Orchard House then discussed an application with the lender, because the next step is obtaining a decision in principle. Again, this is not a guarantee of lending. It's the first step in the assessment of an application, in which the lender decides whether an application is likely to meet its criteria or not before going on to consider it in more detail.

It was at this stage that the lender said it couldn't proceed with a ten year application. That was because of Mr N's age – ten years would take him over average life expectancy, which meant that the lender would check whether the loan would be affordable should he pass away based on Mrs N's income alone. On that basis, the loan wouldn't be affordable. But this issue wouldn't arise with a five year term, meaning that a five year term was the maximum the lender could accept. The lender has since confirmed this was correct.

It's not clear that Orchard House specifically explained this to Mr and Mrs N at the time. I've only seen the email correspondence, but it seems there were also conversations. If Orchard House didn't explain this then it should have done.

However, even if it didn't explain the reasons the lender would only accept a five year term, I'm satisfied it did tell Mr and Mrs N that five years was the maximum and that Mr and Mrs N were content to go ahead on that basis. I say that because there are several emails in which the adviser made clear the application would be for a five year term. These include emails of 21 and 26 August 2020, both of which included attachments setting out what was being applied for. The 21 August email also included a "key features" document, which was the result of the decision in principle application and also functioned as an illustration of the mortgage which would be the subject of the full application. So I don't agree that Mr and Mrs N weren't given an illustration of a five year mortgage.

There were various email discussions after that, which I think show that Mrs N understood that a five year mortgage was being applied for.

The lender then issued an offer for a five year term, which was sent to Mr and Mrs N and accepted by them. Their solicitor would have explained it to them and made sure they understood and agreed to the mortgage before it completed.

For all those reasons, I'm not persuaded that Orchard House failed to explain that a five year mortgage was the maximum available, or failed to make sure Mr and Mrs N understood what was being arranged on their behalf. And I'm not persuaded that Orchard House failed to seek their agreement before proceeding. I'm satisfied that at the time they agreed to the mortgage Mr and Mrs N would have known it was over a five year term.

I've also thought about whether a five year term was suitable for them. I'm satisfied it was. Despite what they say now, I think Mr and Mrs N didn't want to go ahead with a lower value lifetime mortgage at the time because of the interest rate on the lifetime mortgage (and the risk of higher costs on the buy to let). That means the only option open to them was applying for a standard mortgage – and, given their ages and financial circumstances, the only standard mortgage available was a five year term with this particular lender which specialises in older borrowers. This mortgage therefore met their objectives – which were to repay their existing residential mortgage, fix their payments for five years, and then allow them to re-consider equity release at that time (when, because they were older and their property might be worth more, they might be able to borrow more) – and therefore this mortgage was the most suitable (indeed, the only) mortgage available to meet those objectives.

I'm therefore not persuaded that Orchard House did anything substantially wrong. It arranged the best available mortgage for Mr and Mrs N, and it explained to them what it was doing and what their options were, and Mr and Mrs N understood that at the time, even if by 2024 they didn't recall doing so.

But even if I was wrong about that, I still wouldn't require Orchard House to refund the ERC or the increased interest rate Mr and Mrs N incurred by re-mortgaging in 2024 rather than 2025. There was no need for them to do so during the ERC period, and their choice to do so rather than wait for the end of the ERC term was nothing to do with Orchard House's advice. Even if they are right (which, as I've explained, I don't think they are) that Orchard House should have arranged a ten year mortgage in 2020, they would still have been subject to an ERC until 2025.

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 Mrs N and Mr N to accept or reject my decision before 19 August 2025.

Simon Pugh
Ombudsman