DRN-4216030

The complaint

Mr P and Ms P complain that mortgage advice they received in 2021 from the broker at Avalon Options Ltd was unsuitable. They said their intended retirement ages were simply wrong, so they'd still be paying after they'd retired, and the fixed interest period was too long.

What happened

Whilst this complaint is brought by both Mr P and Ms P, as the mortgage is in both their names, most of our dealings have been with Ms P. So I'll mainly refer to her in this decision.

In 2021, Mr P and Ms P took out a mortgage with the assistance of a broker. They now say the advice they got was negligent. Their complaint centres on two points – the overall term of their mortgage, and the length of the fixed interest rate period.

Ms P said she'd expressed concern at the time about a 35-year term on their mortgage, as that meant they would be continuing to pay beyond their planned retirement ages. Ms P said the broker didn't explore other, shorter mortgage terms. And he also dismissed their suggestion that they would be interested in fixing their interest rate for longer than the two years he had applied for, on their behalf.

Ms P said she now knows she could have secured a five year fixed rate in 2021 that wasn't significantly more than the two year rate. She thought a five year fixed rate deal would have saved them over £36,000 in mortgage payments over the fixed rate period. Ms P said they couldn't say for certain what decision they would have made had they received proper advice and explored the options. But she said they had no intention of moving house in this period, and the five year rate would have been difficult to turn down. She said there was a strong likelihood that they would have taken up this longer fixed rate deal if it was offered. She thought it was negligent for the broker not to explore this with them.

Avalon didn't think it had done anything wrong. It said the mortgage it sourced wouldn't continue beyond state retirement age for either Mr P or Ms P. And the term of the mortgage was clear on the offer documents they received. It could have been amended if they wanted.

Avalon also said that it was working with a limited choice of lenders, because one of the parties had only recently started a business. Avalon said it understood that Ms P and Mr P had discussed with the broker the options available for different fixed interest terms, and agreed that the flexibility offered after two years would give them more options, bearing in mind that the lenders who would assist at the point of application were few.

Avalon said it thought Mr P and Ms P had decided to apply for a two year deal because 1) a longer fixed term deal would carry a considerable early repayment charge ("ERC") especially in the first years of that deal and 2) the shorter deal kept options open to make changes without penalty after two years, and 3) it kept payments as low as possible initially, giving them the chance to properly assess their budget once they were in their new home.

Avalon said the mortgage offer it secured and the reasons for the recommendation were all sent to Mr P and Ms P, and they could have requested further information or illustrations, right up to their exchange of contracts.

Avalon didn't think it had made a mistake.

Ms P then wrote to our service, setting out her arguments in more detail. She didn't think Avalon had collected enough information from her and Mr P to make appropriate recommendations. She said Avalon simply never asked what their planned retirement ages were, and she had queried the 35 year term, but was told it was normal, and good for keeping repayments low. She thought Avalon should have asked then about their retirement plans, but said instead Avalon just made generic non-tailored recommendations.

Ms P said Avalon focussed on the limited choice of lenders they had, not on getting information about what would be suitable for them. She said they were told that a 35 year term and a two year fixed rate were just placeholders, but when they tried to change these, Avalon recommended they stick to the illustration provided. Ms P disagreed that options were discussed at this point, she said she was never given any costings.

Ms P said Avalon had recommended the two year fixed rate for three reasons. She thought these were 1) they would have a wider choice of lenders in two years, when the business was established, 2) a lower monthly cost would give a better chance to assess budgets in the new home, and 3) a shorter term would mean they could avoid an ERC if they needed to sell or move home within the first few years.

Ms P addressed each of those. She said that the lender they went with had one of the best rates on the market at the time, and they didn't anticipate any changes to the business in the next two years that would make them more desirable to a lender in 2023 than they already were. She said that she and Mr P could have provided accurate assessments of their monthly bills, and shown the extra cost of a five year fixed deal would have been affordable. And she said that they were buying a home suitable for them in the longer term, perhaps even their forever home. They had no plans to move or pay off the mortgage. She also said the ERC wasn't high anyway, it was as low as 1% of the amount repaid, so there was minimal benefit in avoiding this if they did have to sell.

Our investigator didn't think this complaint should be upheld. He said Avalon wasn't obliged to provide illustrations for a two and a five year fixed rate, and the mortgage term Mr P and Ms P took wouldn't run past state retirement age for either of them. He said there was only one lender prepared to offer them a mortgage. And he said Avalon's notes recorded that they wanted the option to make large repayments towards the capital.

Our investigator said he thought that an appropriate recommendation was made by Avalon. And he couldn't ignore that concerns about the advice received in March 2021 were only raised by Ms P and Mr P after several rises in the Bank of England base rate following the mini-budget in September 2022. Our investigator said there was no way that either Ms P and Mr P or Avalon could've known, when Avalon's recommendation was made in March 2021, what would happen in late 2022.

Ms P replied to disagree. She said she'd only just seen Avalon's fact finding document. She said it didn't look right, it contained information that wouldn't have been available when it was first completed, and it contained multiple inaccuracies, including a planned retirement age for them both of 70. Ms P stressed that she'd never seen this document before, she certainly didn't see it at the time.

Ms P queried whether the loan term did extend beyond the UK's current normal retirement age, or whether only this lender was prepared to lend. She still thought a five year deal would have been better for them, and said surely it was common to complain when the effects of a mistake are first felt.

Our investigator didn't change his mind. He said that we do consider the market and conditions known to the broker at that time. We can't factor in the benefit of hindsight.

Our investigator said he would expect a copy of the fact find would have been sent to Mr P and Ms P. He repeated that this mortgage didn't extend past their state retirement ages. He said the broker had noted in his recommendation that the other prospective lender would not offer them a mortgage, as it didn't think the lending was affordable for them, which is why this wasn't pursued further. And he still didn't think the advice given at the time was wrong.

Ms P said we seemed to be assuming that she and Mr P would both want to retire at state pension age, which wasn't their intention. And she repeated that she'd never seen the fact find, she queried when it had been written. Ms P wanted this complaint to be considered by an ombudsman, so it was passed to me for a final decision.

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 reached the same overall conclusion on this complaint as our investigator.

I'm aware I've summarised the events surrounding this complaint in less detail than the parties involved. No discourtesy is intended by my approach which reflects the informal nature of this service. I want to assure all parties I've read and considered everything on file. I'm satisfied I don't need to comment on every point raised to fairly reach my decision. And if I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues.

Mr P and Ms P's complaint rests on two points. The first is that they were never asked about their intended retirement ages, and the intended retirement ages recorded for them were simply wrong, so that this lending would extend past their planned retirement. Our investigator noted the intended retirement ages were set out on the fact find which Avalon completed on 1 February 2021, which he would have expected to be sent to Mr P and Ms P. They said they didn't see this at the time.

I haven't seen direct evidence that the fact find document was sent to Mr P and Ms P. But I haven't asked Avalon to provide that, because the evidence I have seen makes me think Mr P and Ms P were aware of the details of the application which was being made for them.

As a starting point, I understand that Mr P and Ms P did see the mortgage offer they then took up. So it's not clear why they would accept an offer which extended into their intended retirement period, if that was indeed the case. But in addition, Avalon has shown us that on 25 March 2021, it received an email from Ms P, asking to see the application form which their broker had completed on their behalf.

That email said this –

"..do you have the customer information form you completed when you submitted to [their lender]? It says that we need to be 100% sure that all the details are correct. No reason to believe they're not but good to be sure."

That suggests to me that Ms P was taking a particularly thorough approach to checking her mortgage application. I don't think it's likely either that she didn't then receive the requested application, or that she didn't check it.

The application form which Avalon sent to Ms P records an *"Anticipated retirement age*" for each party. These are both noted as 70. That's the same age as is set out on the fact find that Avalon completed.

Ms P now says that this is simply wrong. However, Ms P obtained this form for the stated purpose of ensuring it was accurate. if Ms P had thought in 2021 that the anticipated retirement ages recorded on that application were wrong, then I would have expected her to take steps to correct this at the time. The fact they didn't do so, does suggest that this wasn't an objection then.

I don't think it's most likely that Ms P and Mr P were both unaware of the intended retirement ages which formed part of their application. And, because no objection was raised by Ms P when she received the application form, I think it's most likely that Avalon had agreed these intended retirement ages with both Mr P and Ms P before this.

Ms P's second point is that she and Mr P were talked out of taking up, or even fleshing out any sort of quote for, a longer fixed interest rate period on her mortgage. She has said that her view is that a five year fixed interest rate should have been recommended, and the advice she received was negligent.

Avalon, however, says that its advice was tailored to Mr P and Ms P's circumstances. Much of its argument here rests on the content of the fact find, so I should pause here to address what Ms P has said about that document.

The fact find I have seen is handwritten, and may well have had further annotations after the first detailed discussion, which I understand was at the start of February. I don't think that undermines its content, or gives me any cause to think that it isn't genuine.

Avalon's fact find recorded that one party runs a business, which at the time hadn't been trading for long, and only showed modest recent dividends. However, Ms P said that the business had a large amount of retained profit, and they expected to have further years of accounts which would demonstrate its successes (and could bolster any remortgage application) within the next one to two years.

It doesn't appear that Avalon thought Mr P and Ms P were planning to move right away. Rather, the fact find recorded that they wanted to shorten their mortgage term, and that they envisaged making large overpayments onto their mortgage in the near future. They wanted to do that without having to pay an ERC.

Ms P also said that the ERC payable was a negligible amount, only 1% in the second year of her mortgage deal. But that ERC is so low because the deal is only for two years. At the time, if they'd secured a longer deal with their only choice of lender, that lender would have applied an ERC of 5% initially, reducing by 1% each year over a five year term. So the ERC would have been more than double in year two of a five year deal.

It does appear that Mr P and Ms P had a very limited choice of lenders at the time the mortgage was taken out. I would anticipate that a further two years of business accounts, demonstrating the anticipated profit, would then allow them to choose from a much wider range of lenders. That would mean they would be more likely to be able to secure lending over a shorter term. And they might well be able to explore more flexible mortgage options, like an offset mortgage.

The advice Mr P and Ms P appear to have received from Avalon's broker, and indeed the mortgage offer that Mr P and Ms P then accepted, does seem to me to be consistent with the content of the fact find Avalon has shown us. For the reasons I've already explained, I'm not able to say the retirement age on this fact find was simply fabricated. And, on balance, I don't think it's most likely that the other information recorded about Mr P and Ms P's intentions and requirements for their mortgage by Avalon has simply been fabricated by Avalon either.

I understand that Mr P and Ms P now feel that a mortgage which had a fixed interest period of five years would have been better for them. Whilst I accept that, with the benefit of hindsight, this may indeed be the case, I'm not able to say that the advice they received in 2021 from Avalon was negligent, or that it would be fair and reasonable to ask Avalon to pay the additional mortgage costs that Mr P and Ms P may now face over the next three years, which might have been avoided if their initial mortgage rate had been fixed for longer.

I know that Mr P and Ms P will be disappointed, but I don't think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P and Mr P to accept or reject my decision before 15 January 2024.
Esther Absalom-Gough
Ombudsman