

The complaint

Mr E and Ms H complain about mortgage advice they were given by a broker working for First Mortgage Limited, working under the umbrella of Mortgage Advice Bureau Limited ("First"). They said relying on the advice cost them £2,750, they wanted First to pay that.

What happened

Whilst this complaint is brought by both Mr E and Ms H, as the mortgage applications made were in both their names, our dealings have been with Mr E. So I'll mainly refer to him in this decision.

Mr E said that in January 2022 he and Ms H approached First for mortgage advice. They were later told that they could start to look at properties. They found a place they were interested in, checked with the broker if they could make an offer, and were told they could.

Mr E said that to take the property off the market, they had to pay a sizeable buyer's fee to the estate agent, and this was non-refundable. So they checked again with the broker, and although he mentioned some caution with these fees, Mr E said they were told they could make an offer as the broker was very confident that he could source the mortgage.

Mr E said their subsequent mortgage application was at a much lower loan to value ("LTV") than they wanted, and he wasn't told why. A subsequent application to a different lender also had a lower LTV. Mr E said they found they couldn't afford to buy the property they wanted after all.

Mr E said he'd spoken to other lenders after this, and now understood this happened because of Ms H's immigration status. He said all those lenders would only offer 75% of the value of the property. So Mr E thought this was what went wrong. And he said if they'd been told from the outset that they could only borrow 75% LTV, then they would never even have started looking at properties. He said he wanted First to pay them back the £2,750 buyer's fee they'd lost.

First said its broker had raised a concern about the length of time then remaining on Ms H's visa, after discussions with her and Mr E in January. This issue had then been resolved, and Mr E and Ms H then found a leasehold property they wanted to buy.

On 13 April, Mr E said that he was intending to pay, later that day, a large "*Committed Buyers Fee*" to secure the property, and asked the advisor if he'd heard of this fee. The broker replied, pointing out that this fee didn't come off the total purchase costs, and was just a surcharge, which he referred to as "*a bit shoddy*" but said if they loved the property, then it was "*... totally your prerogative to proceed or not.*"

A mortgage application was submitted to one lender, who then asked for extra information including on ground rent and service charges. This lender then decided it would only lend around 75% of what Mr E and Ms H had understood to be the value of the property.

The broker looked for other lenders, but many lenders have a lower maximum LTV on leasehold properties. This broker then left the business, and a new broker found a different lender, however, this lender decided it wouldn't make an offer.

Mr E and Ms H weren't able to make their purchase, and First offered to cover their solicitors costs of £300 for the works completed to date, as a gesture of goodwill. First didn't think it had done anything wrong. It said the lender its broker initially approached didn't have a 75% LTV limit for joint applications where one person has the sort of residency Ms H possesses. That lender will consider up to 95% in those circumstances, so First thought they were an appropriate choice for lending to Mr E and Ms H.

Our investigator thought this complaint should be upheld, but he didn't think First had to pay back all of the £2,750 fee that Mr E and Ms H said they'd lost. He said ultimately it was Mr E's choice to pay the buyer's fee, the broker hadn't advised Mr E to pay this, but rather had stated he had reservations about the buyer's fee scheme.

Our investigator said the first lender approached reduced its mortgage offer, and when a second broker took over this work, the only other lender he could identify decided not to lend. Our investigator said that there are no guarantees of a mortgage offer until an application is made, and the correspondence he'd seen didn't suggest the first broker had offered any guarantees about this. Unfortunately, after the more detailed checks which are carried out as part of a full application had been conducted, neither lender would offer enough for Mr E and Ms H to go ahead.

Our investigator didn't think Ms H's residency status was the reason these applications weren't approved at the level Mr E and Ms H wanted. He said that the first was reduced once service charge and ground rent information had been included. First's broker made a mistake in not providing this information right away, but this only delayed this problem being uncovered. And the second lender wouldn't accept Mr E's sources of income.

Our investigator thought First did make mistakes. He thought the service charge and ground rent information should have been passed to the first lender right away, and Mr E and Ms H should have been told the full reasons why lenders wouldn't offer what they wanted. It was also unhelpful that the first broker left without letting Mr E and Ms H know. So, although he knew that First had already waived the solicitor fees of £300, he thought that First should pay an additional £150 in compensation to acknowledge the journey Mr E and Ms H had during the application process, and the distress and inconvenience caused.

Mr E didn't agree. He still felt he'd spent £2,750 on a buyers fee which they paid in confidence that the broker would be able to source them a mortgage. Mr E said he would expect a professional mortgage advisor to provide realistic expectations of what they could borrow. Mr E repeated that three lenders he'd spoken to since wouldn't offer any more than 75% because of Ms H's immigration status. And he said if he'd been told that, then this problem would never have arisen.

Our investigator repeated that Ms H's immigration status wasn't a factor in the lender's decisions. Mr E said he still felt that the broker assured him that his student loan and bursary would count as income, and they were not told that they would be able to borrow less due to Ms H's immigration status. And they said that even after the reduction by the first lender, this wasn't explained by the broker, so they continued to apply, instead of trying to resolve the issue of the committed buyers fee with the estate agent.

Because no agreement was reached, this case then came 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 do think First should pay some compensation to make up for elements of poor service provided to Mr E and Ms H, but I don't think I can fairly ask First to pay the buyers' fee they paid, which they have told us is non-refundable.

I do think that, as our investigator said, Mr E and Ms H have received poor service from the broker they initially spoke to at First. But their argument has been that their case was hopeless from the start, they should never have been told they could get a mortgage, because of Ms H's immigration status, and more recently Mr E has added the concern about his income not being counted for mortgage purposes. Mr E also said he sought reassurance from the broker before he paid a large, non-refundable fee, and relied on that reassurance.

I do think Ms H's immigration status restricted the lenders who would be prepared to offer a 90% LTV mortgage to Mr E and Ms H. But it didn't, as they've suggested, mean this was impossible from the outset. Although the broker has clearly made mistakes here, he did identify a suitable lender for them, who would not restrict lending in this way, and he made the application there.

I also haven't been able to see that Mr E relied on the advice of the broker when he paid a large fee to take the property off the market. When Mr E contacted the broker, on 13 April, and asked if he'd heard about these fees, Mr E said he'd already decided to pay it. And whilst there's no clear warning there that a mortgage application could still fail, I haven't been able to see that the broker had previously offered any guarantees that an application would be successful. And I would also say I think it's hard to characterise the advice Mr E received in response as positive overall.

So why did this lending not go ahead? It's not always possible to tell why a mortgage application hasn't been approved, but here, we know the first lender the broker applied to, reduced its offered lending, once it was given details of the extra costs associated with a leasehold property. I can see Mr E had provided these to the broker on 13 April, so I think they should have been submitted to that lender with the initial application, but I think this only delayed the reduction in lending. It didn't cause it. Mr E and Ms H were always going to be told this lender wouldn't offer what they wanted. They should have been told sooner.

Mr E said if he had been told this sooner, he could have worked with the estate agent to try to get his fee back. But Mr E was aware that this fee was non-refundable, and unfortunately, I think it is just very unlikely indeed that the agent would have returned this fee, in any circumstance where they could legitimately have kept hold of it. So I don't think Mr E and Ms H would have been able to recover this money sooner, if they'd been given the reasons why this first lending was reduced.

Mr E then discovered the first broker had left, and he was assigned a new broker. That broker tried to source lending for Mr E and Ms H, but was unsuccessful, as the new lender he'd identified wouldn't accept Mr E's sources of income.

Mr E has also said he was told earlier that his income could be accepted, but I can see an email where Mr E asked whether he should wait until he'd received a further loan instalment, so his bank account looked more healthy. The broker's reply, on 19 April, was "*... I shouldn't think it will cause an issue as you won't have income the lender will need to assess and thus*

the status of your account shouldn't matter as long as its within pre-arranged limits / in the black." So I think Mr E was told in writing that his income wouldn't count towards the mortgage.

I understand that Mr E and Ms H were deeply disappointed to miss out on a property they'd put an offer in on, and had imagined as their first purchased home. And I do think that there are a number of points here where the broker's service to them was poor. However, I haven't been able to see that it would be fair and reasonable to hold First responsible, either for the fact that they chose to make a large non-refundable payment to take a property off the market, or that they then weren't able to purchase that property.

For those reasons, I do think First's offer to cover the solicitors fees that Mr E and Ms H had incurred, plus the compensation payment of £150 that our investigator suggested, would provide a fair and reasonable outcome to this complaint. So that's what I will now award.

My final decision

My final decision is that Mortgage Advice Bureau Limited must pay the solicitors fees of £300 that Mr E and Ms H incurred, if it hasn't done so already, and must in addition pay £150 in compensation to Mr E and Ms H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Ms H to accept or reject my decision before 22 March 2024.

Esther Absalom-Gough
Ombudsman