

The complaint

Ms B and Mr P complain that Embrace Financial Services Ltd – a mortgage broker and appointed representative of First Complete Ltd trading as PRIMIS Mortgage Network – gave them incorrect information.

What happened

In 2023, Ms B and Mr P were contacted by Embrace when the existing interest rate product on their mortgage was due to expire in August 2023. I will refer to PRIMIS as the principal firm and respondent in this case. They told PRIMIS about their circumstances and it said that their existing lender, B, did not offer the best rates at that time – it could only offer a two-year fixed rate of 5.73%. It said it would need to look further into Ms B's residency status.

On 8 March 2023, Embrace then emailed Ms and Mr P:

“Following our call on Monday, I have been speaking to lenders regarding the Visa status for yourself. The general consensus is that: Lenders require at least 1 year remaining on a Visa, or permanent residency rights. In addition, they would look to lend up to 75% of property value in some cases, (although I don't see this as an issue, due to your partner being party to the loan). Therefore, I would suggest that, as you intend to apply for residency in May of this year, the best course of action would be for us to transfer to a new deal with your current provider, (this would over-ride any issues), but on the shortest term deal we could agree, then review again when all paperwork is sorted, and deal is ready to expire again.

If you wish to discuss further, please advise, and we'll book a call in at your convenience.”

Ms B and Mr P said they relied on what PRIMIS said but they now believe it was misleading and inaccurate. They said that after receiving the information from PRIMIS they decided to wait before taking any action as the rates offered by lender B were not competitive. But they discovered that other lenders were prepared to lend to them. On 19 June 2023 they received a mortgage offer from another lender, H, with a two-year fixed rate of 5.77%, shortly before Ms B's visa was approved on 21 June 2023.

Ms B and Mr P complain that PRIMIS gave them incorrect information. As a result they delayed taking action and interest rates went up.

I issued a provisional decision, upholding the complaint in part. My provisional findings, which form part of this decision, were:

The email

PRIMIS was not in a position to give Ms B and Mr P mortgage advice. Things were at an early stage. But PRIMIS had an obligation to communicate in a way that was clear, fair and not misleading. I don't consider that the email of 8 March 2023 was clear, fair and not misleading.

The adviser said it was his intention that Ms B and Mr P arrange a rate with their existing

lender and hedge against any rate rises while the visa issue was sorted out. But I don't think the email reads that way. And while PRIMIS said the adviser checked Ms B and Mr P's eligibility with other lenders, I'd usually expect a broker to provide evidence of that. PRIMIS has not done so.

Ms B and Mr P said the rates with lender B were higher than other options on the market at the time. So they understood their options were to delay and wait until residency was sorted out or to remortgage with lender B.

The correct position

Where a business has given unclear or misleading information, we would usually look to put the affected party in the position they would have been in had they been given the correct information in the first place.

We know that in June 2023, lender H was prepared to lend to Ms B and Mr P even though they said the visa issue was unresolved at that point. But looking at lender H's website it said that it would require proof of permanent right to reside unless the loan to value was 75%, both customers had lived in the UK for five years or less or if Ms B and Mr P's combined income was over £100,000. Ms B and Mr P have confirmed they'd lived in the UK for more than five years so they would have met lender H's criteria for lending where either of the borrowers did not have permanent right to reside in the UK.

Even if Ms B and Mr P were able to meet lender's criteria, we do not know if Ms B and Mr P would have qualified for a mortgage with lender H in March 2023. I accept they were able to secure a mortgage with lender H in late June 2023. But it does not necessarily follow that they would have been able to do so in early March 2023.

What would Ms B and Mr P have done differently?

The difficulty I have is that I am not persuaded that Ms B and Mr P would or could have done anything differently had they been told it was possible they could remortgage with another lender in March 2023. I will explain why.

The main reason I am not persuaded that Ms B and Mr P would have done anything differently is that they did not act on PRIMIS's advice. They did not arrange another interest rate with their existing lender or arrange a follow up appointment with PRIMIS. It follows, that it would be difficult for me to find that had PRIMIS given them the correct information in March 2023 that they would have acted on that. Ms B and Mr P's actions do not support that they were relying on what PRIMIS told them.

I also understand that Ms B and Mr P were out of the country in April 2023 and they did not progress any mortgage application until June 2023. So I can see that arranging the new mortgage might not have been a priority for them. It was Ms B and Mr P's decision to wait – and they might have taken the same decision had they been given more accurate information in the first place.

In saying that, the issue with the competitiveness of the interest rates would not have been a factor had Ms B and Mr P been given the correct information. They would not have had the worry they were committing to an interest rate that was higher than others available on the market. But I note the interest rate available with lender B in March 2023 was lower than the interest rate they said they took with lender H – and they still had time to switch to a different rate if rates improved and/or the visa issue was resolved. So if they had acted on PRIMIS's advice they would have mitigated to some extent the loss they have now suffered.

To arrange a new rate required action by Ms B and Mr P. I do not think it would be fair to say that PRIMIS should compensate them for their own decision to delay securing a new rate.

Overall, I am not sufficiently persuaded that Ms B and Mr P suffered a financial loss because of anything PRIMIS did or did not do. They did not follow what PRIMIS told them to do – and their own circumstances contributed to the delay in arranging a new mortgage. I do not see how it would be fair for me to say that PRIMIS should compensate them for the movement in interest rates that resulted from that.

Putting things right

That is not to say that PRIMIS has acted fairly – it should have taken a great deal more care to gather accurate information and to explain things in a clearer way. But I do not see how it would be fair for it to compensate them for the difference in rates because it is not sufficiently clear that they could have actually qualified for a cheaper rate and because they delayed taking action, during which time interest rates went up.

I accept that Ms B and Mr P have been caused unnecessary distress and inconvenience because of what happened. They had the worry they've ended up on a rate that was higher than they otherwise would have had to pay and the inconvenience of pursuing this matter. I consider £250 would be a fair amount to reflect any distress and inconvenience.

PRIMIS accepted my provisional conclusions. Ms B and Mr P did not. They responded to make a number of points, including:

- There was ample time in March to submit a mortgage application. The timeline should not be a factor in deciding what they would or would to have done.
- It was irrelevant that Ms B was out of the country for some time. Mr P remained in the UK and could have progressed an application.
- The main reason for not arranging a follow up was due tot the misleading advice given by PRIMIS. It was speculative to assume they would not have acted differently had they been given the correct information. Their intention in March 2023 was to secure a new mortgage.
- It was also speculative to suggest that lender H may not have approved an application in March 2023 – it approved an application in June 2023 so it follows they would have been approved in March.
- It was not fair to make a judgement on what their priorities were. Ms B's priority was to arrange a visa. They approached a mortgage broker because they wanted help with their financial situation. The broker told them it was best to remortgage with their existing lender and that they would have more options once Ms B's visa was in place. Neither of those things were correct.
- They interpreted the information from PRIMIS that they should wait until Ms B had submitted her visa application. She therefore applied for the visa once she had returned to the UK so she would have more options. They then spoke to another broker in parallel to applying for the visa. They are being penalised because Ms B visited her family. Getting a new mortgage was a priority.
- Financial firms have an obligation to give clear and accurate advice. PRIMIS did not do that or act with due skill and care.

- They should be compensated for the difference between the lender B two-year fixed rate from March 2023 and the lender H rate from March 2023 – a difference of around £1,200.

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.

It isn't in dispute that PRIMIS did not give Ms B and Mr P clear, fair and not misleading information. It is likely they could have qualified for a mortgage with another lender even though Ms B did not have permanent right to reside in the UK at that point.

I note Ms B and Mr P consider it is "speculative" to say what might have happened. But we do not know for certain what Ms B and Mr P would have done had PRIMIS given them the correct information. My point is that there are a number of possibilities as to what they might have done.

The difficulty for me, whichever way I look at things, is that Ms B and Mr P did not do what the broker said. It is therefore difficult for me to say that had they been given the correct information they would have done what the broker said either. And of course, if they had done what the broker suggested they would have received a lower interest rate than they eventually secured.

Further, importantly, it was only Ms B and Mr P that could progress an application for a mortgage. PRIMIS gave them the incorrect information in March 2023. Ms B and Mr P did not take the action PRIMIS said or any other action until June 2023. That was their decision and they might have reasons for that. But in those circumstances, it is not fair to say that PRIMIS should compensate them for the difference in interest rates that arose because of their decision.

My final decision

My final decision is that First Complete Ltd trading as PRIMIS Mortgage Network should pay Ms B and Mr P £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr P to accept or reject my decision before 20 December 2024.

Ken Rose
Ombudsman