

The complaint

Mr J complains that Phil Hughes Financial Services Ltd provided him with incorrect advice about porting his mortgage product that meant the product is no longer available to him.

What happened

Mr J had a flexi offset tracker mortgage with a lender I shall call Lender A at an interest rate of 0.49% above Bank of England base rate. Mr J used Phil Hughes Financial Services Ltd as his broker. In 2019 Mr J moved house and got an additional borrowing of £14,000.00 taking his total borrowing to £149,000.00. His intention was to do it up and sell it. In 2021, after it was done up and on the market, Mr J says his father emailed the broker to ask about the time limit for porting this mortgage product to a new property and was told he had 90 days.

But Mr J's buyers had problems selling their own property. In June 2022, Mr J offered on a property he wanted to buy but his buyers pulled out of his sale. Mr J with the help of family bought the house he offered on for £200,000.00 and put his existing house on the market again. The broker told Mr J that he couldn't port the mortgage to the new property he now owned.

Mr J sold his existing property on 30 September 2022, found a new home and was going through the motions as he understood he had 90 days to port his mortgage product, but the broker then told him that he had been told by the lender that the porting should have been simultaneous, and he had lost the mortgage product when he sold his property.

The broker agrees that it had misunderstood the product as it believed that the product was a normal tracker rate product without an ERC and that Mr J had 90 days to finalise the purchase of a new property and port the mortgage product. It says that its misunderstanding was identified after Mr J sold his property and the broker asked the lender about extending the three-month period. The broker was told that in order to retain the product, the sale and completion had to be simultaneous. But it says that this error wasn't responsible for Mr J being unable to port the mortgage product.

Our investigator's view

Our investigator didn't recommend that this complaint should be upheld saying that on 10 June 2022 the broker made it clear to Mr J that he needed to make a new application before his sale completed and Mr J didn't do that, and our investigator felt that there was no guarantee that Mr J would have been able to obtain a new mortgage to allow him to comply with the terms and conditions of porting the product to a new property. Mr J disagreed and asked for a review.

My Provisional Findings

As my view of this complaint differed from that of our investigator I issued a Provision Decision. In that decision I said

"There is no doubt that the broker supplied incorrect information to Mr J about the timing of

when Mr J could sell his old property and buy his new property and still port his mortgage. The broker says he misunderstood what type of mortgage it was and conveyed incorrect information to Mr J. Because of that I intend to uphold this complaint. But for the reasons set out below I don't consider that this incorrect information was the cause of Mr J losing his mortgage product.

The broker when asked about the timing of the porting gave Mr J incorrect information consistently saying that the completion of the purchase of the new property could take place up to three months after the sale had taken place. But the timing was only one aspect of the process. As the broker told Mr J by email on 10 June 2022 "the application would have to be submitted for a new property prior to the completion of H (the old property). You then have to complete the purchase within three months, or the product will no longer be available." So, according to the broker, Mr J would be able to port the mortgage product if he applied for a mortgage on a new property before he completed the sale of his old property. That's fairly standard on most porting applications although lenders have different requirements as to the timing of the completions. In general, it's expected that the customer before selling will have applied for a new mortgage on which to port the product. That means that the customer will have agreed to buy a property. The timing of completions may differ between mortgage products. In this case because of the type of mortgage, the lender required the timing of the completion of the sale and purchase to be simultaneous.,

So, to port, Mr J would have to source a new property before he sold his existing property and apply for a mortgage on the new property. If he did that and applied to port his mortgage, it's likely that the timing issue would have been identified by the lender as it was a requirement of the lender that instead of allowing a later completion of the purchase it required the sale and purchase to be simultaneous. If Mr J wanted to retain his mortgage product and sell the property, he would of course have to comply with the lender's requirements. That might mean adjusting the sale and purchase to comply, or Mr J withdrawing from the sale to comply. I see in his email to us of 10 August 2023 Mr J says that he could easily have delayed the sale so, presumably, the sale and purchase could have been done simultaneously after some adjustment.

But Mr J deprived himself of the opportunity to port his mortgage product by failing to apply for a new mortgage on a new property before he sold his existing property. My reading of the file is that Mr J believed, and he was wrong to do so, that he could apply for the new mortgage after the sale of the existing property. I think that's a fair assumption as in his detailed complaint submission Mr J never refers to the requirement to have a mortgage application submitted before he sells his property. That misunderstanding led to his actions depriving himself of the mortgage product, but that misunderstanding wasn't the result of any misinformation he got from the broker.

As I say above the email of 10 June from the broker to Mr J's father - who is representing him in this complaint - tells him that he has to apply for a new mortgage before he completes the sale of his old property. I also see that on 10 June the broker sent a further email with the lender's key criteria for porting. There's a note at the bottom from the broker saying, "if H (the old property) completes before a new application is submitted the mortgage will be redeemed and the account closed so no products would be transferable to a new application" But despite these two warning Mr J went ahead and sold his exiting property before a new application was submitted.

Mr J's father says that after 10 June he asked the broker to go ahead with the application and questioned whether if the application started but the sale broke down would the lender carry on running down the 90-day time frame or would the process start again whilst new buyers were found. He says that the broker couldn't answer that question, but it was agreed that they let the sale of H complete and stay within the 90-day time frame. I note that this is

solely Mr J's father's recollection of the conversation as the broker says he can't recall the conversation and would have been able to answer the question about the process starting again. But even accepting that, it's not claimed that the broker said that the sale could take place without an application being made on a new property before the sale, or that for some reason, he now no longer stood by his repeated advice of 10 June.

There does seem to have been a reference to beginning a mortgage application after 10 June which the broker says stopped when on 31 July Mr J's father told him that they didn't want to proceed at that stage until they were confident that the sale was progressing as it had fallen through on four previous occasions. In any case the file suggests that a mortgage might have been difficult to source at this particular time for Mr J given his employment situation. The broker says it received no further communication about any possible mortgage application or indeed about the sale between 31 July and 30 September and I've seen no evidence that there was any further engagement between Mr J and the broker. So, on 30 September Mr J sold his property without applying for a new mortgage on a new property and he lost his mortgage product. As that wasn't the fault of the broker, I don't consider that it was responsible for any financial loss that Mr J suffered as a result.

But the broker was wrong about the timing of the porting and consistently wrong until it contacted the lender in October. Mr J and his family had several transactions over the years with the broker and trusted its advice. It would have been very disappointing to find out that they were given wrong information on several occasions both before and after the property was sold. All this could have been avoided if the broker had researched the product before advising on it which I would have expected it to do. This would have caused Mr J an amount of distress and inconvenience and I have to measure the impact of that on Mr J. Mr J's main concern has been the loss of the mortgage product but I'm not compensating him for that. Looking at our guidance on this I believe that an award of £300 is fair. So, my intention is to uphold this complaint and award Mr J compensation of £300."

I issued my Provisional Decision and invited submissions from Mr J and from the broker. Both parties responded and I refer to their submissions below.

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.

Mr J has made further submissions to me in support of his complaint. The submissions are partly related to the circumstances of the complaint and partly to the amount of compensation he believes to be due. Mr J emphasises the closeness of the relationship with the broker and his reliance on the broker's advice and says that had he been told that he would lose his mortgage product if a new mortgage application wasn't in place on another property at the time he sold his existing property he would have waited until the new property was ready to accept and then port his mortgage product simultaneously. Mr J also asks me to consider higher compensation as the broker wouldn't act for them anymore and when they bought the new property they had to pay £1,999 as an arrangement fee and £795 as a broker fee.

The broker disagrees with my Provisional Decision. He says that the complaint is about the advice received leading to Mr J losing his mortgage product. As I say that it didn't result in that, the broker feels that the claim is invalid and if the complaint was that he suffered distress and inconvenience as a result of the advice the broker would have offered an ex-gratia payment similar to what I've decided. The broker doesn't feel that this can properly be called compensation.

In the light of these further submissions, I've reviewed this complaint, but I remain of the view that my Provisional Decision represents a fair outcome to this complaint. This complaint is about the advice given by the broker. I've said that the advice about the timing of when Mr J's mortgage product could port was incorrect. The broker accepts it was wrong. That is what Mr J's complaint was about and in my view the broker should have upheld it as I have.

The next question that the broker should have considered and that I have to consider is what compensation is appropriate for this wrong advice. For the reasons set out above I don't accept that the wrong advice about the timing caused Mr J financial loss. The broker made clear that Mr J would have to have another mortgage application in place before he sold the existing property and Mr J didn't have that and went ahead regardless of the advice. That's not the broker's fault. So, I don't accept that the broker caused financial loss but that doesn't mean that I'm prevented from awarding compensation for the distress and inconvenience caused by the broker's incorrect advice. I believe that the compensation I've suggested, for the reasons set out above, is fair. Mr J in his recent correspondence points out that he had to pay an arrangement fee and a broker's fee when buying a new property. I assume that follows from the loss of his mortgage product that he had previously. But as I say above I don't hold the broker responsible for the loss of that product and I can't fairly require the broker to pay these fees which are a consequence of the loss of that product.

I thank Mr J and the broker for their further submissions but I'm content that my Provisional Decision represents a fair outcome to this complaint. So, I'm upholding this complaint and require the broker to pay Mr J £300.

Putting things right

Phil Hughes Financial Services Ltd should pay Mr J £300

My final decision

I uphold this complaint and require Phil Hughes Financial Services Ltd to pay Mr J £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 10 January 2024.

Gerard McManus
Ombudsman