

## **The complaint**

Mr H and Miss P complain that they were strongly advised by a broker working for First Complete Ltd trading as PRIMIS Mortgage Network to opt for a two year fixed interest rate. They said they wanted a five year fix, and now think the advice they took was wrong.

## **What happened**

Mr H and Miss P bought a home together in 2021, with the support of a broker working for PRIMIS. They said they saw this new property as a long term home for them, it was considerably larger than their previous home, and close to work and family for them both.

Mr H and Miss P said they had a strong preference for a five year fixed interest rate on their new mortgage. The broker provided two illustrations, for a two year and a five year term, but Mr H and Miss P said the broker advised a two year fix would be preferable, as he believed interest rates would be likely to drop in the following years, perhaps even below 1%.

Mr H and Miss P said they had little experience in this area, and the broker's strong recommendation led them to conclude this would be the best option for them. But they said when mortgage rates became unstable in 2022, they questioned this advice.

Mr H and Miss P didn't think the broker had taken note of their personal circumstances, and made recommendations on the basis of those. And they thought that a recommendation which didn't fit the clients' situation was basically mis-selling. They said because they'd been clear this property would be their long term home, they didn't think the advice they'd been given was suitable.

Mr H and Miss P also said, whilst they appreciated that there is a lot of nuance to mortgage rates, their overall view was that any mortgage priced with an interest rate below the Bank of England's inflation target was generally a very good deal. They thought they should have been advised to fix at such a rate for as long as they were comfortable doing so.

Mr H and Miss P told us that whilst they had benefitted over the first two years from a marginally lower rate, they now anticipate their mortgage costs will be very considerably higher over the next three years, because of the advice they received in 2021. They wanted compensation to bring their financial situation back to where it would be if they had agreed a five-year fixed mortgage deal in 2021, and compensation for the stress, worry and upset they felt PRIMIS' broker had caused.

PRIMIS said, in essence, it didn't think it had done anything wrong. It said that it understood Mr H and Miss P had opted for a two year fix, as this was their first home together, and a five year fix would carry a much higher repayment charge if they ended up having to change their mortgage, due to relocation for work or unexpected change in circumstances.

PRIMIS said this recommendation was set out for Mr H and Miss P in a suitability letter, which was sent to them on 20 March 2021, and the broker then made the application on this basis. Mr H and Miss P had signed to say they accepted the terms of the offer.

PRIMIS said it wasn't as simple as saying that when inflation rises, the underlying Bank of England interest rate also rises. It explained some of the workings of setting these rates, and said it didn't expect its brokers to predict future rates. It thought its brokers should listen to clients and make recommendations on that basis, and it felt that was what the broker had done here. PRIMIS said it was with the benefit of hindsight that Mr H and Miss P felt they should have chosen a longer fix. PRIMIS refuted any suggestion that its broker made this recommendation in anticipation of future business, and said there was never any guarantee Mr H and Miss P would use him in future.

Mr H and Miss P repeated that they had never intended to move house again quickly, and events since had proved they were right about that. They said that PRIMIS' broker had predicted future rates, and they had accepted his advice. They also said they'd understood their calls with the broker were recorded, so they were concerned to see that PRIMIS then said they were not. They said that was, at the least, clearly not good practice.

Mr H and Miss P felt that the burden of proof would be on PRIMIS to show that its broker had behaved with skill, care and diligence, and they said the evidence they'd seen showed this wasn't the case.

PRIMIS still said Mr H and Miss P were happy to take out a two year fixed rate in 2021. It said it was only now, with the benefit of hind sight, they regretted their decision. PRIMIS said that wasn't its brokers fault. It said brokers can't predict what will happen to interest rates, and the subsequent shift in the economy was not expected by anyone.

Our investigator didn't think this complaint should be upheld. She said that whilst it was unfortunate that calls weren't recorded, that means we can't tell for certain what was discussed at the time. We have to rely on the available evidence, including the application form and suitability report completed at the time. And our investigator noted that both the fact find and the suitability report noted a preference towards a two-year fixed rate product. The suitability report said it was a priority for Mr H and Miss P to review the mortgage in the short term, as they may want to sell the property in around two years' time, and they also wanted to keep the repayments low.

Our investigator noted that Mr H and Miss P's position on their likely length of stay in the property was very different, but unfortunately there was no other evidence to support this.

Our investigator said that she understood Mr H and Miss P didn't receive a copy of the suitability report. But she said they were clearly aware that their mortgage was on a two-year fixed rate term and there's nothing to show they challenged this. So our investigator said she just couldn't see that PRIMIS had done anything wrong. She said PRIMIS had been clear about the reasons for its recommendation, and she was satisfied that the recommendation was reasonable based on the evidence that is now available.

Mr H and Miss P replied to disagree. They said their complaint also included that PRIMIS had acted contrary to the Principles for Businesses set out in the FCA Handbook. They thought they had painted a clear picture of a couple looking for a long term home at a time when mortgage rates were astoundingly low. They said they were moving to a bigger house so wouldn't need more space in this time, and their circumstances since the move showed that they wouldn't have been considering a sale of the house due to personal circumstances. They repeated that they'd taken advice based on PRIMIS' predictions of a future interest rate drop. They said PRIMIS had since altered the reasons for its recommendation, which was a breach of FCA rules, and they also said that PRIMIS itself had accepted that advice given on the basis of future rates would be wrong.

They said that there was little evidence on PRIMIS' side, just a report they didn't receive, and they said PRIMIS should have checked they got this.

Mr H and Miss P said they believed they'd clearly demonstrated that PRIMIS wasn't following the principles and guidelines of the regulator. And they'd been left considerably out of pocket because of that. Mr H and Miss P wanted their 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 arguments advanced by parties as part of 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.

I should also note that Mr H and Miss P have made a number of comments about points where PRIMIS has breached FCA principles. However, those conclusions rest at least in part on their own view of events, which I think it's clear PRIMIS hasn't accepted. And I should note that, again in line with the informal nature of our service's dispute resolution process, this decision will focus on my core duty, which is to determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

As I've noted above, the two sides to this dispute have rather differing views of what happened here. And there is unfortunately little contemporaneous evidence which is accepted by both sides, at least in part because Mr H and Miss P say they didn't receive the Mortgage Suitability Report.

Mr H and Miss P's comments go beyond this, they've also said some parts of this Mortgage Suitability Report are simply fabricated. They told us they had no intention whatsoever of selling in the first two years, and they said that a recommendation of a two year deal over a five year deal (which they say was the broker's very strong recommendation) was just not suitable for them.

The suitability report which I've seen suggests PRIMIS first suggested Mr H and Miss P should port their mortgage with their existing lender, and avoid paying any ERC. There does appear to me to be some support elsewhere for this having been discussed, because Mr H and Miss P sent us an email chain which sets out that porting was discussed, but they ruled that out early on, apparently for the reasons later given in the Mortgage Suitability Report.

I think that the similarities between what PRIMIS said in its Mortgage Suitability Report and what's in the email Mr H and Miss P sent us, does lend some support to what PRIMIS has said here. However, I should stress I haven't reached my overall decision here on the assumption that, just because one part of the Mortgage Suitability Report appears to be supported by other documentation, other parts of the same report must also be an accurate representation of the discussions at the time.

Importantly, this discussion on porting, where the broker's advice was apparently considered but not followed, does make me think Mr H and Miss P were giving active and detailed consideration to the options being put forward, and when it didn't suit them, were comfortable declining the offered advice. Here, they didn't want to be tied into a mortgage arrangement with separate ERC dates, and chose to pay an ERC instead to end that borrowing.

That does make me think that if Mr H and Miss P had been as clear that lending over a five year term would be more suitable for them, they would have been likely to make an active choice to opt for this lending. And they have been very clear since that they had absolutely no plans to move home during this time.

We know that they did not challenge this point, but instead opted for the two year fix. They've said that's because they had accepted the broker's advice about interest rates. However, as PRIMIS said, it would be quite unusual for a broker to make such a recommendation, in the very strong terms that Mr H and Miss P have described. And there is no evidence other than Mr H and Miss P's recollection to support this.

Mr H and Miss P said they thought the burden of proof was on PRIMIS to show it had behaved properly, and in line with FCA regulations. But what they are asking for here is a considerable amount of compensation, for the impact of a decision which they made. And I think that means, unfortunately, they have two, not inconsiderable, hurdles to get over. For me to decide that such a payment would be a fair and reasonable outcome to this complaint, I'd have to be able to see that PRIMIS had given them inappropriate advice, and I'd also have to be able to decide that it was fair and reasonable to hold PRIMIS entirely responsible for the decisions which Mr H and Miss P then made.

I have considered the arguments and evidence offered by both sides, and on balance, I'm not able to say it is most likely both that Mr H and Miss P were given very strong advice about future anticipated reductions in interest rates, so that they ought to take a two year fixed rate mortgage in circumstances which would otherwise point entirely to a longer fixed rate being appropriate, and also that it would be fair and reasonable for me to hold PRIMIS responsible for their subsequent decision to take this advice.

I understand that Mr H and Miss 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 Mr H and Miss P to accept or reject my decision before 30 January 2024.

Esther Absalom-Gough

**Ombudsman**