

The complaint

Mr M and Mrs S have complained that they were given poor mortgage advice by Embrace Financial Services Ltd (EFS), a representative First Complete Ltd trading as PRIMIS Mortgage Network. (For clarity I will refer to EFS.)

Mrs S has dealt with the complaint throughout for herself and Mr M. Mrs S says that, as a result of the poor advice and delays on the part of EFS, she and Mr M have suffered a financial loss because of increases in interest rates.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr M and Mrs S being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mr M and Mrs S had a residential mortgage on their property, which I will refer to as LP. It was on a mortgage interest rate product that was at a fixed rate until December 2022, and subject to an early repayment charge if it was repaid before that date.

In early August 2022 Mr M and Mrs S found another property they wanted to buy (MR) but decided not to sell LP. Mrs S says that the plan was for them to buy MR with a new mortgage, re-mortgage LP in order to release funds to carry out improvements on MR and then convert the mortgage on LP to a let-to-buy (LTB) mortgage.

I will explain here that a LTB mortgage is a type of buy-to-let (BTL) mortgage for non-professional landlords, who decide to keep and re-mortgage a property they'd previously bought and occupied with a residential mortgage, so they can rent it out, buying another property in which to live.

Mrs S says that she was assured by EFS that this would be no problem, and that they would be able to borrow at a loan-to-value (LTV) of 90% on LP, on a BTL basis. Mrs S also says that she and Mr M were advised to apply for a new residential mortgage on LP (with a lender I will call NW), borrowing more money for home improvements at an 85% LTV, which they could then use for home improvements on MR. But Mrs S says that NW wanted to see planning permission on LP for this work, and as there was no work planned on LP, the mortgage to NW couldn't proceed any further.

Mrs S also says that it wasn't possible to borrow more than 75% from NW on a BTL basis, and so she and Mr M wasted time on trying to get a BTL mortgage in place when this would not have been possible.

Mr M and Mrs S completed their purchase of MR on 24 November 2022 with a mortgage arranged through EFS with another lender. This completed before their mortgage product on

LP had come to an end. Mrs S says that she and Mr M subsequently arranged an 85% BTL mortgage on LP through another broker.

A complaint was made to PRIMIS about the advice given by EFS. The complaint wasn't upheld, after a lot of back-and-forth correspondence about what Mrs S said had happened and what PRIMIS said in response.

Mr M and Mrs S raised their complaint with our service. An investigator looked at what had happened but didn't recommend the complaint should be upheld. Mrs S asked for an ombudsman to review the complaint. She has reiterated all the points she previously raised, and has said that if she had recorded the phone calls with EFS, her complaint would be upheld.

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 looked at everything that's happened, including the timeline of events and what each party has said about what took place. I'm not going to comment on each and every aspect of the complaint, as I'm not required to do so; instead I will concentrate on what I consider to be the most important issues.

I appreciate what Mrs S has said – that everything was done over the phone and so she has no record of what she'd been told by EFS. But I think there is sufficient contemporaneous evidence to enable me to reach a decision. The benefit of contemporaneous evidence is that it was compiled at the time of the events, and so I am satisfied that I can rely on it as an accurate record of what was discussed at the time.

Mrs S is adamant that she was assured by EFS that a 90% LTV BTL or LTB mortgage would not be a problem. However, the only mention of a 90% LTV is in an email she sent to EFS; there is nothing from EFS to suggest that Mr M and Mrs S were told that they could have a 90% LTV BTL or LTB mortgage.

But I've looked at NW's lending criteria for LTB mortgages, and NW *does* allow a maximum of 90% LTV across two properties. NW's LTB criteria also says that *"if raising capital for an onward purchase and either of the mortgages is with another lender, the LTV of the mortgage with [NW] cannot be higher than the one with the other lender."* The mortgage Mr M and Mrs S were taking out with their new lender was, according to the fact-find, at a 90% LTV, and the mortgage they'd applied for with NW was at 85% LTV.

So although there is no evidence in EFS's file to substantiate what Mrs S has told us about being assured a 90% LTV for a LBT mortgage wouldn't be a problem, there is evidence to suggest that *if* she'd been told this (and I reiterate, there is no evidence from EFS that she was), it wouldn't have been incorrect or inaccurate. There is also nothing in EFS's contemporaneous notes to suggest that NW was insisting on seeing planning permission for work on LP.

In all the circumstances, the available evidence doesn't persuade me that EFS provided the wrong advice. Mr M and Mrs S couldn't have completed the LTB/BTL mortgage before completion of their purchase of MR, because they wouldn't have been able to remain living in LP if they'd done that. By applying for a residential re-mortgage on LP, Mr M and Mrs S would have been able to remain living in LP, releasing the funds to do the work on MR and later converting the mortgage on LP to a LTB/BTL. They couldn't have rented out LP with a residential mortgage, as this would have been contrary to the terms and conditions.

Overall, the available evidence doesn't persuade me that EFS gave Mr M and Mrs S inaccurate or misleading advice. This was a complex transaction involving a new residential mortgage for the purchase of MR that was to complete before redemption of the mortgage on LP, with Mr M and Mrs S wanting to raise funds on LP to carry out work on MR and later converting the mortgage on LP to a LTB/BTL. I'm satisfied that documents show that the advice given reflected what they wanted to do. Ultimately it was Mr M and Mrs S's decision to go to another broker to arrange a BTL mortgage.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs S to accept or reject my decision before 4 September 2023.

Jan O'Leary
Ombudsman