

## The complaint

Mr and Ms A complain that delays in providing advice, and poor advice then provided, by Plutus Wealth Management LLP, meant they missed out on the chance to secure a much more advantageous mortgage interest rate for their rental property.

## What happened

Mr and Ms A rented out their UK property when they moved overseas. They had a mortgage with a lender I won't name here, and obtained permission to let the property. Mr and Ms A knew that their existing fixed interest rate mortgage deal would end at the end of October 2022. So in June 2022, they contacted the mortgage broker at Plutus, seeking some advice on remortgaging.

Mr and Ms A told us they had used Plutus before, some time ago. They said they'd previously received poor service from Plutus, and it was difficult to get any reply.

Mr and Ms A said they emailed Plutus about remortgaging on 11 June 2022, and then chased a number of times. But they received no reply at all until a holding response, dated 30 June. That response apologised for having "*completely missed this*" and said the broker would reply ASAP.

Mr and Ms A then chased again, repeatedly, but it was over a month before they got any further response. That said "*I have all the Info back from [your pre-existing lender] now and I'm trying to figure out our best options for November. Will send shortly.*"

On 10 August, the broker wrote again to offer options, including a five year fixed rate at 2.9%. Mr and Ms A said they wanted to take this option up. Mr and Ms A again received no response for some time. On 22 August, a further chase received a response, saying the rate had been secured the previous week, it would follow on from the existing deal, and there was nothing for Mr and Ms A to do. However, on the following day, the lender wrote to Mr and Ms A (at their previous address) to say that they weren't eligible for this rate.

Mr and Ms A finally received this letter on 18 September. They then contacted the broker, on 21 September, asking the broker to speak to their existing lender, and also to look at other options in the market. They chased this on 25 September, but said they heard nothing more, so they arranged a tracker rate with their existing lender (for which Plutus was apparently paid a fee) and complained on 25 October.

Mr and Ms A say they anticipate they could have secured a five year fixed rate of 3.5 to 4%, but they said they were now facing rates of 7% or more.

For its part, Plutus said that it didn't consider, in 2022, that Mr and Ms A were existing clients. Although they had used its services before, that was many years previously. And it thought their initial emails read like rather speculative enquiries.

Plutus blames the delay in responding to Mr and Ms A on the market turmoil at the time. It hasn't explained why the rate it said was secured for Mr and Ms A turned out to be

unsuitable for them, in their circumstances. But it has said it then sought to engage with Mr and Ms A, once they'd complained. It offered to pay them the referral fee that it had received from their existing lender, which was £728.90. And it sourced a number of options which were suitable for them, as overseas landlords. These included a five year fixed rate of 4.99%. Plutus said it would pay Mr and Ms A any commission it received for arranging a mortgage for them, and it didn't suggest there would be any fee.

Mr and Ms A didn't accept, or engage further with Plutus about remortgaging. They said they anticipated their losses would be many thousands, and they offered to settle the complaint for £25,000. When Plutus didn't accept that, Mr and Ms A brought their complaint to us.

Our investigator didn't think this complaint should be upheld. She said Mr and Ms A had contacted Plutus, and chased repeatedly, before any response was received. She also noted that no formal fact find had been completed or any client agreement signed, and Mr and Ms A weren't charged Plutus' normal fee of £495. She said Mr and Ms A could've sought advice elsewhere.

Our investigator said she understood Mr and Ms A believed they could have secured a mortgage at a lower rate. But no application was submitted, so she couldn't know if Mr and Ms A would have secured a product. Mr and Ms A then remortgaged with their own lender.

Our investigator said Plutus had refunded £728.90 to Mr and Ms A in recognition of the inconvenience caused. It also offered to make an application to a specialist lender and rebate the fee. She thought Plutus had taken reasonable steps to put things right.

Mr and Ms A didn't agree. They said they could only see with hindsight that they ought to have gone elsewhere. They said it was quite reasonable for them to expect, at the time, that Plutus would provide them with the promised service. And Mr and Ms A still said they'd experienced very substantial financial losses, which we hadn't referred to.

As no agreement was reached, this case was then passed to me for a final decision. And I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I did propose to uphold it in part. This is what I said then:

Plutus told Mr and Ms A in early August that it had secured a rate which turned out to be for a product that their existing lender would not offer them. It hasn't explained how this happened. I think Plutus was aware that Mr and Ms A were renting out their property, as they mentioned this in their first email. So I think it's more likely that Plutus made a mistake here, in applying for a remortgage that Mr and Ms A weren't able to take up.

It appears there was then a delay in Mr and Ms A realising this, which appears to have happened because their existing lender didn't hold an up to date address for them.

I know Plutus has offered to pay Mr and Ms A £728.90 to say sorry. This appears to have been rather a windfall for Plutus, as this money was paid to it by Mr and Ms A's existing lender for arranging their mortgage, although Plutus didn't support them in their application, and doesn't appear to have been expecting this payment. I think it's appropriate for Plutus to pay this money to Mr and Ms A, so I'll include this in my award.

I also think Plutus let Mr and Ms A down, both because it appears to have tried to secure for them a remortgage which wasn't suitable, and also because it then failed to

take any further action to support them in obtaining a mortgage, until after they complained. I note that Mr and Ms A were left to secure their own remortgage, at a time of particular market turmoil following the 2022 mini-budget. So I think that Plutus should pay a little more compensation in this case.

But I don't think Plutus has to pay the amount of money that Mr and Ms A have indicated they think is owed here. That's for two reasons. Firstly, Mr and Ms A's loss appears to be somewhat speculative. They haven't suggested the tracker rate they actually secured is worse than they could have achieved earlier in 2022. And they haven't yet remortgaged onto a fixed rate. It doesn't seem reasonable to suggest that the best rate they might secure, and the level their losses should be based on, would be in the region of 7%, when Plutus appears to have been able to offer them a fixed rate of less than 5% in late 2022.

But secondly, and more importantly, Mr and Ms A argue that they should have had a remortgage in place in June 2022, when they first contacted Plutus and it failed to respond. They said they could only see with hindsight that they ought then to have made a decision to use a different broker. They said it was quite reasonable for them to expect, at the time, that Plutus would provide them with the promised service. But I don't think that is quite right.

Mr and Ms A's circumstances were complicated, as they were landlords living overseas. They wanted to remortgage at a time when mortgage rates were rising sharply for the first time in some years. So it's not clear why they chose then to leave this matter entirely in the hands of a business that they'd apparently had no dealings with for some time, and which they have, from the outset, acknowledged had been unreliable and difficult to contact in the past.

As Mr and Ms A are aware, our service resolves complaints on the basis of what the ombudsman considers to be fair and reasonable in all the circumstances of the case. And I think Mr and Ms A's previous experience of this business is one of those circumstances that I must take into account.

Our investigator noted that throughout June and July, when Mr and Ms A had received no substantive response from Plutus, they were also under no obligation to remain with the business. They were quite free to source advice elsewhere, either instead or in addition to their enquiry with Plutus. Given their previous experience and the fact that the service they appeared to be receiving at this point was a reduction from a level they've said was already poor, it does seem surprising that they did not do so.

Our service isn't a regulator, and we aren't primarily responsible for holding businesses to the relevant regulatory standards. Rather, we look at the impact of what's gone wrong, in any particular case, on the individuals affected. And here I don't think it would be fair and reasonable, in all the circumstances of this case, to hold Plutus solely responsible for Mr and Ms A not obtaining a remortgage at the rates which may have been available to them in June or July 2022, and to base compensation on that. Rather, I think a payment of £500 in compensation, would be more appropriate here, in recognition of the frustrations Mr and Ms A have faced. I think that would provide a fair and reasonable outcome to this case.

I know that Mr and Ms A will be disappointed, but I don't think Plutus has to do more than that.

I invited the parties to make any final points, if they wanted, before issuing my 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.

Mr and Ms A replied to make two points. First, they addressed the basis of any compensation. They said that I'd suggested their claim was "*somewhat speculative*" because Plutus could have secured a fixed rate of under 5% for them in late 2022. They queried whether there was any evidence to support that rate being available to them, and said it was contrary to what their new broker told them. They thought they could only have obtained a fixed rate of 7% then.

Mr and Ms A said our service could measure their loss by reference to the variable rate they actually secured, but then we would need to take into account all the interest rate rises over recent months, and take a view on future rate rises, as well as the risk of them having to sell their property in a depressed market. But they said they still thought their loss should be measured by comparing the rate they could have achieved in June 2022 – which they said would have been 5% at the highest - with the rate they could have achieved after October 2022 – which they said their new broker put at 6.49% on 14 December. And they said that even on that basis - 1.49% p.a. for 5 years - their loss was in excess of £25k.

I did say in my provisional decision that I considered the suggested losses Mr and Ms A had mentioned were somewhat speculative, but that wasn't solely because the calculation of losses appeared to be based on them not subsequently being able to secure a rate lower than 7%. On that issue, Mr and Ms A say Plutus' suggestion that it could have obtained a rate fixed for five years at 4.99%, in late December, wasn't evidenced, but I would note that the 7% rate they initially suggested for their losses was also inconsistent with the rates their new broker had suggested she could obtain for them in mid-December, of 6.49% fixed for five years, or 5% fixed for two years.

However, I also suggested this loss was somewhat speculative because Mr and Ms A were calculating their losses based on payments they weren't actually making, and rates they hadn't taken up. And there didn't seem to me to be compelling evidence here that the choices Mr and Ms A subsequently made about what mortgage to pursue, were as a result of mistakes which had been made by Plutus. So I wasn't persuaded that this approach was appropriate in this case.

Mr and Ms A's second point was that my decision said they should not have relied on Plutus but should have looked elsewhere. Mr and Ms A said they didn't think that was legally correct. They said once Plutus had taken them on as clients, it owed them a duty of care, and that duty could not be watered down by its past track record. Mr and Ms A said they didn't think any court would say that they were contributorily negligent by failing to instruct back-up brokers. They said my decision as to what is "*fair*" must, at a minimum, encompass their basic compensation under the common law. And if, under the common law, Plutus owed them a duty to respond promptly to their requests, and if under the common law Plutus could not dilute that duty by saying they should have known not to rely on it, then Mr and Ms A said my decision should follow along similar lines.

I understand that Mr and Ms A are confident in their assessment of the law, but I haven't reached such a clear-cut view on any position that might be taken by a court of this case. And I think it's worth noting that Plutus doesn't accept Mr and Ms A were existing clients, that it didn't charge the usual fee, or sign any new contract with them.

When I reached my provisional decision in this case, I was mindful of the duties on me to consider a number of matters, including relevant law and regulations, in reaching a decision on what's fair and reasonable here. But my overriding duty is to determine this complaint

*"...by reference to what is, in [my] opinion, fair and reasonable in all the circumstances of the case."*

My provisional decision set out not only what Mr and Ms A said about Plutus having been difficult to work with in the past, but also that it failed to respond promptly to their enquiries. I think it's worth adding that at this time, when Mr and Ms A say they were repeatedly chasing Plutus and receiving no response, interest rates were climbing rapidly. So I do still think it would have been reasonable then for Mr and Ms A to pursue other avenues for remortgaging.

I also note Mr and Ms A refused the suggested rate Plutus subsequently suggested it could secure for them, and a comparable rate their broker offered as a shorter term fix. They don't appear to have fixed their mortgage elsewhere. It's not clear why they haven't done this, but I do think this makes it difficult for me to conclude that, in the particular circumstances of this case, it would be fair and reasonable to hold Plutus responsible for all the financial consequences which Mr and Ms A have argued flow from Plutus' failures.

Plutus said it would pay what I'd suggested in this case, but said it was more concerned about the consequences for it of a complaint against it being upheld. Mr and Ms A didn't wish to settle this complaint for anything that Plutus has been willing to offer them, so they have requested an ombudsman's decision in this case, which they are entitled to do. And although my award falls short of what they requested, I do still think that the fair and reasonable outcome in this case is for this complaint to be upheld.

For the reasons set out above, I haven't changed my mind in this case. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that Plutus Wealth Management LLP must pay Mr and Ms A the sum of £728.90, which it received from their existing lender, and £500 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A and Mr A to accept or reject my decision before 15 November 2023.

Esther Absalom-Gough

**Ombudsman**