

The complaint

Mr G and Mrs T complain that they had understood the mortgage deal they took out through First Complete Ltd trading as PRIMIS Mortgage Network could be cancelled if rates dropped before it came into effect. But rates did drop, and they weren't then able to cancel.

What happened

Whilst this complaint is brought by both Mr G and Mrs T, as the mortgage is in both their names, our dealings have been with Mr G. So I'll mainly refer to him in this decision.

Mr G said that he'd taken out a new mortgage deal with his existing lender, through a broker working for PRIMIS. He said he was reassured that he could change his mind any time before the deal came into effect. So if rates then dropped after he'd accepted an offer, he could still benefit from these better rates. But Mr G said that rates did drop before his offer came into effect, and he was then told it was too late to change. Mr G said that contradicted the advice his broker had given him, repeatedly, before he took up this offer.

Mr G said he wouldn't have agreed this deal with his broker without this reassurance that he would be able to cancel if a lower rate became available. He said he had nothing to gain from doing that, and there was no deadline for him to accept any mortgage offer, so he could have accepted a mortgage renewal directly from the lender instead, closer to the date.

Mr G thought PRIMIS should pay the difference between the monthly payments under the mortgage offer he eventually wanted, which was only released in late February, and the mortgage offer he'd accepted at the very start of February.

Mr G also said that when he challenged the broker about this, the broker said that this lender would honour the lower rate, but that was entirely wrong, the lender wouldn't change Mr G's rate. So Mr G said that was fraudulent.

PRIMIS' response to this complaint said it could see the broker had set out this lender's policy for Mr G. But it did think that its broker had made a mistake, because PRIMIS didn't think the broker had made clear every time he talked about being able to cancel an accepted offer before the deal took effect, that this was only possible 14 days before the deal started.

PRIMIS said that none of this lender's customers were able to cancel a deal within the 14 days before it came into effect, so it didn't think the position should be different for Mr G. Instead, it offered £250 in compensation.

Our investigator didn't think this complaint should be upheld. She summarised the communications between Mr G and the broker, and she said the right information was given to Mr G in an email dated 17 January 2023. He was told then that any changes could only be made 14 days prior to the date the product would come into effect. She appreciated that the broker didn't mention this 14 day timescale again in later emails, but she said he had already told Mr G about this, so she didn't think Mr G was given incorrect information.

Our investigator also noted that Mr G and Mrs T then accepted a mortgage offer which said

they had no right to cancel. And she said they didn't query that with their broker.

Our investigator also said she couldn't be sure that Mr G wouldn't have taken this deal out anyway, if he had been told, each time he checked, about the 14 day deadline for changing his mortgage deal. She said rates were changing on a daily basis at the time, and it made sense to lock in a rate sooner rather than later.

Our investigator said she thought PRIMIS' offer of £250 for the trouble and upset caused by the lack of clarity in the broker's emails was a fair offer.

Finally our investigator said she didn't think the broker had provided fraudulent confirmation that the lender was offering the lower rate to Mr G and Mrs T. She said all he had confirmed was that the lender was still applying the rate Mr G and Mrs T had previously agreed to.

Mr G replied in some detail to disagree. He said the broker had repeatedly told him he could cancel up until 3 March, his product switch date, and he said the only reference to the 14 day period was informal and in direct contradiction to the body of that email. And Mr G said the ability to cancel a rate was of key importance to him, when he took out this deal. He stressed how many times he had checked this. Mr G said he'd also asked the broker to make the legal position clear, and Mr G didn't believe he had done so.

Mr G said he didn't need to commit to a new deal before the end of his existing fixed rate. He thought the only benefit of doing this was the rate switching facility that had been described. Mr G said he didn't think the evidence showed he was trying to sort out his mortgage early, or was worrying about rises in mortgage rates.

Mr G said that his broker had sold him a mortgage with a particular product feature – the ability to cancel at any time before the deal took effect – and this product feature hadn't been honoured. Mr G wanted his complaint to be considered by an ombudsman, so this case was 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 explaining why I proposed to uphold this complaint in part. This is what I said then:

I think there's been some confusion around the legal position on the mortgage offer made, and accepted, in this case, so I'll set out my understanding of this, to begin with.

On 17 January, Mr G asked whether he could change his mind, after accepting a mortgage offer. In response, Mr G's broker said he could.

The email of 17 January includes the following, which the broker said he simply cut and pasted from the lender's own rules –

You can submit a product transfer cancellation request if your client has accepted the offer and:

- *the deal is pre-booked i.e. it's due to start on a future date; and*
- *you cancel it at least 14 days before it's due to start; and*
- *you want to secure a new [same lender] deal (lower rate or different deal e.g. tracker to fixed or 2 year fixed to 5 year fixed). We won't cancel a deal if you want to remortgage your client to another lender.*

No cancellations are allowed once the deal has started, as an ERC will apply, (not applicable if a NO ERC deal)

I should note here that Mr G also said he thought this email, containing the above policy, provided clear advice that he could cancel his new mortgage deal at any time before his 3 March renewal date, and he's argued that the policy set out in that email was just informal. I think the reverse. I think that Mr G's broker provided quick and informal advice in the body of the email, and then the formal position was set out in full, where the broker had copied over the lender's policy.

Mr G and Mrs T then received a mortgage offer dated 26 January. That offer was valid until 9 February 2023. On the first page, the letter they received said this –

When you accept the offer you won't have the right to change your mind and cancel the contract.

Mr G said he'd accepted a mortgage with a particular product feature, the ability to cancel at any time before the mortgage came into force. But I think it was clear from this offer that this was not a feature of this product. I don't think there was anything in this offer to suggest the lender was bound, after this date, to allow Mr G and Mrs T to cancel their mortgage deal. Quite the reverse.

We do know, however, that in practice this lender may allow the brokers it works with to cancel a deal taken out on behalf of one of their clients, as long as it is cancelled 14 days or more before it's due to start. This is set out in the policy Mr G's broker sent him.

Mr G has said his legal obligations weren't set out clearly. I think they were – those were in the offer document. But additionally, I think that the broker had also told Mr G of a policy this lender has, of not requiring its customers to stick to the strict letter of the legal agreement they'd entered into, if it gets sufficient notice of their wish to change.

I think Mr G was made aware of the overall position, before he took out the mortgage.

Mr G argues that his broker's advice was misleading and wrong, because the broker didn't just tell Mr G on 17 January that he could change the deal after accepting it, with the qualification I've set out above that this had to be 14 days in advance of the new mortgage deal taking effect. Mr G points to a number of other places where his broker said the same thing, without qualification.

I accept that the broker then repeatedly referred to being able to change before the switch date, without repeating the important qualification that this was only possible 14 days before the switch date. And I do think this was unhelpful, and potentially misleading. But that doesn't mean that I think it would be fair to do what Mr G wants.

Mr G wants the brokerage to cover the additional cost of his mortgage for the next two years. I think there are, unfortunately, some significant hurdles for Mr G to get over, before I could say it would be fair and reasonable for PRIMIS to pay what he wants.

Before I could ask PRIMIS to pay such a sum, I'd have to be able to see that it was fair and reasonable to hold PRIMIS responsible for what's gone wrong here. And I don't think this is all PRIMIS' fault. It is partly PRIMIS' fault, but not all.

I do think it would have been helpful if the broker had reminded Mr G, each time he asked, about this lender's policy, even if only in summary – so Mr G was reminded that he needed to cancel his new mortgage deal at least 14 days before it took effect.

But I have to set against this, that Mr G hadn't queried that the offer he was given, and accepted, was set out as binding, with no scope to amend it at all. And I also have to set

against this that the broker had shared with Mr G, exactly what this lender's policy was.

So this problem could have been avoided if Mr G's broker had been clearer in later emails. But, importantly, I think it could also have been avoided if Mr G had read the 17 January email more carefully. Or if Mr G had read and queried his mortgage offer, before accepting it.

Mr G also says that he wouldn't have taken out this offer, if he'd realised that he could only change his mind, up to 14 days before the new deal came into force. But, because I don't think it's wholly PRIMIS' fault that Mr G didn't realise that, I don't think it's fair to ask PRIMIS to pay all the costs Mr G says resulted from that. So I don't think it would be fair or reasonable for me to simply tell PRIMIS to pay Mr G the difference between the monthly payments he would have made, under the mortgage deal he now says he wanted, and the deal he actually took out in early February.

However, I do think PRIMIS should do a little more to recognise, and make up for, its part in what went wrong here. I think PRIMIS should pay Mr G and Mrs T a total of £600 in compensation. It doesn't appear that PRIMIS has already paid the £250 it previously offered, but I'll allow PRIMIS to count towards this award, any payment it's already made, in case it has done so.

Mr G also said he thought that the broker lied, when he was challenged, and said that the lender would now offer the rate that Mr G wanted. I have seen the email that Mr G interpreted in this way, and that's not how I read this. I think the broker was simply saying that this lender had provided the rate that Mr G had previously agreed to, when he took out the offer. I don't think this was either fraudulent, or intended to mislead Mr G. So I don't think this part of Mr G's complaint should be upheld.

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

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 G replied, to say that he and Ms T had received my provisional decision, and had no further comment. But PRIMIS also replied, in some detail, to say it disagreed. I'll set out each of its points below, and reply to them in turn.

Firstly, PRIMIS noted where I'd said *"I do think PRIMIS should do a little more to recognise, and make up for, its part in what went wrong here."* PRIMIS said it thought nothing *"went wrong"*. It said Mr G and Ms T talked to its broker as their current deal was coming to an end. The broker made a suitable recommendation then made an application for Mr G and Ms T's agreement. The product transfer completed when their existing deal had expired.

I haven't suggested the recommendation made to Mr G and Ms T was unsuitable, or that PRIMIS made mistakes in its application. But I see Mr G had a very different understanding of how this mortgage application might work, and in particular, the point at which he would be tied in to this exact mortgage deal. Because Mr G and PRIMIS ended up with such very different understandings on this, I think something did go wrong. My provisional decision was also that this was not wholly PRIMIS' fault, but I'll return to that below.

PRIMIS said it had upheld Mr G and Ms T's complaint on the basis that they had suffered a loss of expectation; they believed they would be able to switch products at any point up until their existing product had expired.

PRIMIS then said it agreed there were missed opportunities where the broker could have repeated important qualifying terms and conditions, but it said it was satisfied that Mr G and Ms T were made aware of these, both before, and on submission of the application. PRIMIS said no queries were raised, so it seemed they were happy to accept these at the time.

PRIMIS set out what it felt were the key pieces of correspondence, and quoted from them, noting those points where PRIMIS considered there had been a missed opportunity to repeat the important qualifying terms and conditions.

- On 11 January 2023 from the broker – *“with staying it gets agreed straight away, and if rates do fall in between and before the rate takes effect, we can switch to that.”*
PRIMIS considers this a missed opportunity for clarification.

- On 17 January 2023 - Mr G asked whether he could change his mind, after accepting a mortgage offer, and the adviser said this was correct; and then provided a copy of the lender's terms and conditions as noted on their website (as reproduced above).

- On 24 January 2023 – Mr G emailed the adviser: *‘I was just checking around the [lender's] mortgage renewal on the banking app and I realised there is a renewal option which I can apply directly.’*

PRIMIS said it had looked at what Mr G would have seen, through this lender's banking app, and that included the following text -

‘Can I cancel a deal I've already booked?’

Once you've booked your new deal, you can change to a different deal or cancel the one you've already booked. You must do this at least 14 days before your new deal starts.....’

PRIMIS thought this was further evidence that Mr G would, or at least should, have been reasonably aware of the important qualifying terms and conditions.

- On 25 January 2023 Mr G received a response from the broker to his email which said - *‘Using us just allows us to do the work, plus keep you in our system for when it needs reviewing again in 2 years’ time, and if rates drop in between agreeing and it switching, we take away the hassle of getting it cancelled and getting it re agreed.’*
PRIMIS considers this a missed opportunity for clarification.

- On 26 January 2023 – the broker again said *‘If during the period it takes effect rates drop, we simply request the new rate and get a new offer.’* PRIMIS considers this a missed opportunity for clarification.

- On 26 January 2023 – *‘If in the event rates do come down before this rate has taken place, we can re-apply for that, after the switch date that is the product then in force.’*
PRIMIS said that a further copy of the lender's terms and conditions were noted in this email, but when I looked at this email, I could see no reference to the 14 day switching window that PRIMIS had previously discussed with Mr G, or any attachment on this email which might contain such details.

PRIMIS said it thought there were three potential missed opportunities for clarification, but also that the terms and conditions were made available to Mr G and Ms T on three separate occasions. So it said its broker did share the lender's policy more than once, and PRIMIS said it appeared that Mr G either did not read it, or paid no regard to it.

PRIMIS said it sympathised with the situation Mr G and Ms T found themselves in, but it didn't think they would have done anything differently. It said they didn't want to move to a different lender, and it couldn't be sure Mr G and Ms T would have waited until there were less than 14 days left on their current deal before taking any action. Mr G had said in his email of 16 January 2023, that they were *"looking to decide on the remortgage option by the end of the month if at all possible"* and on 17 January 2023 had confirmed they wanted *"to sit tight for another two weeks then go ahead with [their existing lender's] 2 year fixed."*

So PRIMIS said it felt my decision to increase the compensation from £250 to £600 was disproportionate, and it said it would ask me to review my decision to increase its offer.

I wrote to PRIMIS for clarification on the final bullet point above. I said I could see no reference in that email to the switching window (allowing changes to the selected deal more than 14 days before the selected deal takes effect) that PRIMIS previously discussed with Mr G, or any attachment on this email which might contain such details. So, although PRIMIS had gone on to say that the broker *"did share the lender's policy more than once"* and that *"the terms and conditions were made available to the customers on three separate occasions"* I could only see one example, as noted in my provisional decision, plus the provisions on Santander's own website which Mr G may have seen when considering applying himself.

PRIMIS replied to say it was sorry, it had made a mistake. The email in question didn't refer to the 14 day switching window at all. But PRIMIS still thought Mr G had been made aware of the lender's terms and conditions on three separate occasions. It now said that was in the broker's email of 17 January (the second bullet point above) on the lender's banking app (the third bullet point above) and in the offer of mortgage.

PRIMIS said it wasn't denying it would have been helpful if the broker had reminded Mr G of the policy in other emails, but PRIMIS still thought that Mr G did have three chances to see this, and either Mr G missed this (although PRIMIS said it was difficult to believe that he would have missed it three times), did not read it, or paid no regard to it

Before I address the comments that PRIMIS made, I should clarify something. PRIMIS has repeatedly referred to the policy of this lender, allowing customers to change their mind about the deal they wanted (which I've referred to as the 14 day switching policy) as part of the terms and conditions of the mortgage offer. But I set out in my provisional decision why I didn't think it was part of the terms and conditions. I'll summarise that again now.

The terms of Mr G and Ms T's offer say (clearly, on the first page) *"When you accept the offer you won't have the right to change your mind and cancel the contract."* So, as I explained in my provisional decision, there's no contractual right to change the deal, once it's accepted. But it is clear that this lender does have a policy, a concession it makes, of allowing its customers to transfer to a different mortgage deal, provided they choose this new deal more than 14 days before the deal they're already committed to, has started.

I do think that this is the sort of thing that PRIMIS' broker could be expected to assist with. And, unfortunately, although he did set out the policy in full, on one occasion, he then didn't set this out again in full the other times he discussed cancelling the existing deal with Mr G. I said in my provisional decision that I thought this was unhelpful, and potentially misleading.

I still think PRIMIS hasn't shown our service that its broker alerted Mr G to the full policy more than once. It has shown us Mr G may have seen the same policy when he considered applying directly online, but it's not clear to me that Mr G would have linked this to the reassurances from his broker, or that he reasonably ought to have thought that the exact

same policy would apply for a direct application to the lender as for an application made via a broker. So I still think that the broker repeatedly referring to being able to change the mortgage deal, without the important clarification that this was only possible 14 days or more before the switch date, was unhelpful, and potentially misleading.

PRIMIS also said it felt Mr G and Ms T wouldn't have acted differently if they'd been properly informed about the 14 day switching window. I note Mr G says he would. However, I said in my provisional decision I didn't think it was solely PRIMIS' fault that Mr G hadn't realised the switching window closed 14 days before this deal took effect. And because of that, I didn't think it would be appropriate to ask PRIMIS to pay the additional cost of his mortgage for the next two years. I still think that.

I don't think I can completely rule out, however, that Mr G would have acted differently if he'd been properly advised. And I do think that PRIMIS' broker let Mr G down, by repeatedly providing a reassurance which Mr G later realised was rather less helpful than he had thought. So I think there are two issues here, one is Mr G and Ms T's disappointment at not being able to change their mortgage deal, the other is the loss of the chance to make a fully informed decision, on whether to go early and book a rate or to wait and see if rates did drop closer to the end of their mortgage. And I think PRIMIS is partly responsible for both those things going wrong here.

For those reasons, I do still think that PRIMIS should pay more than the sum of £250 which it offered. I still think a payment of £600 provides a fair and reasonable outcome to this complaint. So I'll now make the decision I originally proposed.

My final decision

My final decision is that First Complete Ltd trading as PRIMIS Mortgage Network must pay Mr G and Mrs T a total of £600 in compensation. First Complete Ltd trading as PRIMIS Mortgage Network may to count towards this award, any payment it's already made for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Ms T to accept or reject my decision before 12 March 2024.

Esther Absalom-Gough

Ombudsman