

## **The complaint**

This complaint is about the service Mr F received when he made what turned out to be an abortive mortgage application through Patrick O'Donovan Financial Solutions Ltd ("POD").

## **What happened**

In what follows, I have summarised events in rather less detail than they've been presented, using my own words to do so. No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. Another reason for the absence of detail is that the paucity of information (from POD in particular) means there is little detail to leave out.

Mr F approached POD in September 2022, seeking a mortgage to fund the purchase of his home from his local authority. He paid £1,500 up front, part of which (£495) POD described as a non-refundable administration fee. Mr F says that in the year that followed, he received no mortgage offer and there were no material developments to help him get one. Mr F says POD ignored all his attempts to contact it for updates.

In October 2023, Mr F contacted us to complain about the poor service from POD, saying he wanted a refund of his broker fee, minus the £495. We referred the complaint to POD so that it could look into it first. POD told Mr F it had been unable to source him a mortgage due to age restrictions and proof of income. POD agreed to the part refund on condition Mr F dropped his complaint to this service.

Mr F wasn't willing to drop the complaint, pointing out that the refund was merely part of the agreement between him and POD and separate from the complaint. We began our investigation, which included asking POD to provide its response and any relevant supporting documentation. We requested this of POD on three occasions between 16 November 2023 and 10 December 2023.

On 9 January 2024, having still heard nothing from POD, our investigator issued his view of the complaint. He recommended POD refund £995 of the broker fee and pay him £500 compensation for his time and trouble. Despite reminders, we heard nothing from POD; meanwhile, Mr F told us he now thought he should be refunded the £1,500 fee in its entirety.

The investigator revisited the case in the ongoing absence of any response from POD, and revised his opinion on how the case should fairly be settled. In a new view dated 22 February 2024, the investigator recommended POD refund the whole fee of £1,500, plus interest, and pay Mr F £500 compensation.

We've heard no more from POD, and so the case has been passed to me to review and decide.

## **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the

Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached broadly the same conclusions as the investigator, and for much the same overall reasons.

I don't need to consider whether the first £1,005 of the broker fee Mr F paid should be refunded. He could ask for that at any time, and was entitled to receive it back, if he decided not to continue using POD to source a mortgage. The residue of £495 was described as an administration fee and designated as non-refundable. That's fine as far as it goes; it's neither unusual nor inherently unreasonable for brokers to charge non-refundable fees.

But here, I'm not satisfied that POD has demonstrated that it carried out any administration to justify retaining this part of the fee it charged Mr F. It's fair to say POD has had ample time to produce any evidence it has to show the work it did on Mr F's behalf. POD must accept the consequences of choosing not to do so.

POD should also compensate Mr F for his time, trouble and upset. Assessing compensation isn't an exact science; everyone's reaction to events is unique to them. It's clear from his testimony that Mr F has found this episode hugely exasperating, and I appreciate that. He also now faces the prospect of starting his application to buy his home all over again and this will take more time, and incur the cost of a new the valuation.

There's also the not insignificant matter of POD unfairly seeking to induce Mr F to drop his complaint to this service by attempting to make it a condition of agreeing to make the refund he was entitled to in any event. A regulated business should never do that. Taking everything into account, I agree with the investigator that £500 is fair in all the circumstances.

### **My final decision**

For the reasons set out above, my final decision is that I uphold this complaint by ordering Patrick O'Donovan Financial Solutions Ltd to do the following:

- refund the £1,500 broker fee to Mr F in full;
- pay interest on the £1,500, at 8% simple per annum\* from the date the broker fee was paid by Mr F to the eventual date of settlement; and
- pay Mr F £500 compensation.

\*If POD deducts basic rate income tax from the interest element of this award, it must then also supply Mr F with the relevant tax certificate, so that he can apply to HMRC for a refund if his wider circumstances allow.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

All I would add is a reminder to POD that if Mr F accepts my final decision, it will be binding on both parties, and if POD failed to comply with it, Mr F could seek to enforce the decision in court and bring it to the attention of the FCA as a potential regulatory breach on POD's part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 30 April 2024.

Jeff Parrington

**Ombudsman**