

The complaint

Mr and Mrs M are unhappy with the way in which they were treated by Advance Mortgage Funding Ltd trading as PRIMIS Mortgage Network. They believe they've ended up paying more on their mortgage because of this.

What happened

Mr and Mrs M held a mortgage with a lender that I will refer to as 'Lender A'. After receiving notification from Lender A that the fixed rate on the main part of their mortgage was coming to an end, they contacted the adviser who had arranged that rate for them. The adviser is part of the PRIMIS network and PRIMIS is responsible for dealing with the complaint.

An initial discussion took place in March 2023. There is no contemporaneous record of this initial discussion and there is a dispute about what was discussed and agreed in terms of the scope of what the adviser would be doing. Mr and Mrs M say they understood the adviser would be looking at all options including what Lender A could offer them. PRIMIS' adviser says they had only been asked to look at options other than Lender A and that their understanding was that Mr and Mrs M would be contacting Lender A to establish what they could offer.

Following that initial meeting, Mr and Mrs M contacted PRIMIS' adviser a couple of days later to ask if the adviser needed anything from them, including any details about their existing mortgage with Lender A, to get a new mortgage agreed – as they were concerned about interest rates rising. A couple of weeks later, PRIMIS' adviser sent Mr and Mrs M a message indicating that they would be sending through details of options they'd found. After then not receiving anything, Mr and Mrs M sent a number of messages chasing the details they'd been told would be forthcoming and asking for updates.

In July 2023, the adviser sent Mr and Mrs M a mortgage illustration from a different lender. It then became apparent that PRIMIS' adviser had found it difficult to find other lenders who would be willing to lend to Mr and Mrs M due to the nature of Mr M's income. Mr and Mrs M approached a different broker and eventually took a new rate with Lender A whilst also extending the mortgage term to 32 years.

Mr and Mrs M complained to PRIMIS that due to its adviser's inaction and lack of contact, they'd ended up needing to pay a higher rate of interest than should have been the case. They said they'd also needed to extend the mortgage term to keep the monthly repayments affordable, which would result in them paying much more interest over the mortgage term.

PRIMIS upheld the complaint in part. It agreed that its adviser should've been more responsive to Mr and Mrs M's contact and it offered £250 in compensation to reflect this. It didn't though consider that it had caused Mr and Mrs M a financial loss, because it said its adviser was only ever looking at options other than Lender A, and that Mr and Mrs M could've arranged the product transfer direct with Lender A if they'd wanted to.

Mr and Mrs M referred their concerns to the Financial Ombudsman Service. An Investigator here issued an assessment upholding the complaint. They said they found Mr and Mrs M's

recall of what had been discussed and agreed with the adviser to be persuasive. They said they thought the adviser ought to have advised Mr and Mrs M to secure a rate with Lender A and that, if things had gone as they should, Mr and Mrs M would've secured the product transfer at a lower rate of interest and wouldn't have needed to extend the mortgage term.

The Investigator said that on this basis, in addition to the £250 compensation, PRIMIS should calculate and pay the difference between the interest Mr and Mrs M would've paid if a product transfer had been secured earlier, and the interest they'd ended up needing to pay over the product term. And that PRIMIS should also compensate Mr and Mrs M for needing to extend the mortgage, by paying the difference between the capital balance Mr and Mrs M would've ended up on, and the higher capital balance they would actually end up on at the end of the product term.

PRIMIS disagreed. It said Mr and Mrs M's own testimony in the course of bringing the complaint shows that the adviser was only ever to look at options other than Lender A. PRIMIS maintained that Mr and Mrs M could have secured an earlier product transfer direct with Lender A.

It also said that even if Mr and Mrs M had secured a product transfer around the time off the initial meeting with the adviser, they still would have needed to extend the mortgage term due to affordability considerations. PRIMIS said it couldn't have organised this on Mr and Mrs M's behalf, because in such a situation, Lender A requires borrowers to make direct contact, not through a broker. PRIMIS also said that given the Investigator's suggested redress, it shouldn't also be expected to pay an amount in compensation – because when redress is paid in a lump sum as in this scenario, the consumer derives a benefit from getting money up front.

The Investigator didn't agree that Mr and Mrs M would've needed to extend the mortgage term if the product transfer had been organised earlier on and still thought the complaint should be upheld on the basis they'd said.

As the matter remained unresolved, the case was passed to me to make a decision. I shared my provisional thoughts with both parties in September 2024. I said:

"I've reviewed this case and currently intend to reach the same overall outcome as the Investigator. But having carried out some further investigation, it is appropriate for me to share details of this and my current thinking with both parties and provide an opportunity for both parties to provide any further evidence and/or arguments for me to take into account, before I reach a final decision (if one is required)."

I consider that the key issue in this case is whether the PRIMIS adviser provided an adequate level of service to Mr and Mrs M. And if not, how this has impacted them and thus what needs to happen to put things right. I'll consider these issues in turn.

Did the PRIMIS adviser provide an adequate level of service to Mr and Mrs M?

PRIMIS has already accepted that its adviser didn't provide a good level of service to Mr and Mrs M – in that there was a lack of communication from its adviser, following the initial discussion that took place with Mr and Mrs M in March 2023. PRIMIS offered £250 in compensation to reflect this. However, Mr and Mrs M say that the adviser's shortcomings have caused them to lose out financially, because they say they missed out on being able to access a new product with lower interest rates, after their existing rate came to an end. And that this in turn meant they ended up needing to extend the mortgage term to keep their mortgage repayments affordable.

There is a dispute about what was discussed and agreed during the original fact-finding meeting that took place in March 2023. PRIMIS says that it had been agreed that Mr and Mrs M would contact their existing lender (Lender A) directly in relation to the rates they could offer and that they (the adviser) would be looking at the rest of the market for potentially suitable deals. Mr and Mrs M say this wasn't what was discussed and agreed and that their understanding was that PRIMIS' adviser was looking at the whole of the market, including Lender A. As such, they didn't contact Lender A directly because they were relying on PRIMIS' adviser to arrange everything.

It is necessary for me to make a finding on which version of events is the more likely, because if what PRIMIS says was discussed and agreed is the more likely, it would mean that even if everything didn't go exactly as it should in terms of the actions PRIMIS' adviser took, I would likely find that Mr and Mrs M hadn't done enough to mitigate their own potential losses.

Considering everything, I find Mr and Mrs M's version of events more persuasive. There are several reasons for this. As a start point, I cannot see a reason why the adviser wouldn't have included Lender A in their search for suitable deals. My understanding is that PRIMIS' adviser was an independent broker able to look at the whole marketplace. On that basis, it would seem odd that an adviser would exclude the incumbent lender from their research into potentially suitable deals. It also seems to me that PRIMIS' adviser would likely have benefited from arranging the product switch with Lender A, so this is also a reason why its adviser would've wanted to include Lender A in the scope of what they were doing.

I note PRIMIS has said that its adviser wouldn't have been able to arrange a term extension as well as the product switch. I'm not sure this is correct, but regardless (as I will cover in more detail later) I think it most likely that Mr and Mrs M would've kept the original term had they secured a rate available shortly after their meeting with the adviser. So I currently think that PRIMIS' adviser would've been able to arrange and secure a new rate with Lender A.

I'm also finding it difficult to understand why, if PRIMIS' adviser's understanding was that Mr and Mrs M had undertaken to contact Lender A directly, the adviser didn't seek to find out what had happened. After all, if PRIMIS' adviser was expecting Mr and Mrs M to contact Lender A directly, the adviser would rationally have wanted to know how that had gone – since it would likely influence the work they were undertaking looking at the rest of the market.

However, I can't see that PRIMIS' adviser made any such enquiry with Mr and Mrs M – despite Mr and Mrs M's repeated attempts to make contact following the initial meeting. I note PRIMIS has pointed to the fact that Mr and Mrs M arranged a further advance directly with Lender A. And that as such it says Mr and Mrs M had shown they were able to engage the lender directly.

I understand this point, but I don't find it compelling, particularly bearing in mind that the mortgage product that was coming to an end – on the main part of the mortgage - had been arranged by PRIMIS' adviser in the first place. So there was a track record of PRIMIS' adviser being involved in arranging the mortgage on the main part of their borrowing.

I've seen the messages Mr and Mrs M sent to PRIMIS' adviser following the initial meeting. I note that in the message sent 11 May 2023, Mr and Mrs M said "Hi (adviser's name) we've just had a reminder from Lender A about our mortgage renewal. Did you manage to send over the other deals you found? Just wondering if they got stuck in my junk." Whilst this didn't strike me as necessarily inconsistent with Mr and Mrs M' recall of what was discussed and agreed in the initial discussion with PRIMIS' adviser, I did want to explore more about what Mr and Mrs M had meant by "other deals". And, in so far as they had said they recalled an "insurance rate" being discussed in the initial discussion with the adviser, why they weren't asking specifically about this.

In summary, Mr and Mrs M reiterated that they had understood PRIMIS' adviser was handling everything, including enquiries with Lender A and that they had never considered Lender A to be a distinct element in the process. And they simply wanted to secure the best deal available as quickly as possible. They said they were encouraged by the message from the adviser in April 2023 which suggested the adviser had found some deals and would be sending details to them.

Mr and Mrs M's explanation is consistent with their recall of the initial discussion with the adviser and I find what they've said to be plausible and persuasive. Bearing all of this in mind, I find Mr and Mrs M's version of events more compelling than PRIMIS' adviser.

I'm also mindful that to the extent there may have been some confusion on the part of PRIMIS' adviser in terms of the scope of what Mr and Mrs M understood they were doing, the adviser missed the opportunity to resolve this – in that after not sending anything to Mr and Mrs M in April 2023 as they'd indicated would be happening, they then didn't engage with Mr and Mrs M' messages asking for an update from 11 May 2024 through to the end of June 2024. Had PRIMIS' adviser been more communicative and responsive, there's a chance that any misunderstanding may have been resolved and this may have prompted Mr and Mrs M to make direct contact with Lender A.

Lender A has told us that since September 2022, an existing borrower has been able to secure a new rate up to 6 months in advance of their existing rate coming to an end. In this way, Lender A was already offering what later formed part of the Mortgage Charter. This is something I would've expected a reasonably competent mortgage adviser to have been aware of such that PRIMIS' adviser ought to have either made it a priority to secure a rate on Mr and Mrs M' behalf as quickly as possible or – if they felt they couldn't for any reason (e.g. due to their workload) to make it clear to Mr and Mrs M that they could and should contact Lender A at the earliest opportunity to secure a rate. I can't see that either of these things happened.

Taking all of this together, I find that PRIMIS' adviser's lack of activity and engagement with Mr and Mrs M following the initial meeting caused them to miss out on a lower interest rate and has caused them a financial loss. I've gone on to think about what PRIMIS should do to put things right.

How have Mr and Mrs M lost out?

When upholding the complaint, the investigator said that in addition to the £250 compensation already offered, PRIMIS should pay the difference between:

- The interest Mr and Mrs M have paid / are going to pay over the two years and the interest they would've paid over the two years, had they secured an equivalent rate in March 2023.
- The capital balance as it will stand at the end of the fixed rate period and the capital balance Mr and Mrs M would've had if the mortgage term had not been extended.

PRIMIS' argues that Mr and Mrs M would have extended the term to 32 years even if they'd secured a lower rate in March 2024. It says that even the lower rate available in March 2023 was significantly more than the rate Mr and Mrs M had been paying under the rate that was coming to an end. And that given their circumstances, they'd have wanted and needed to keep their outgoings to a minimum. Mr and Mrs M say the only reason they extended the mortgage term was because they had no choice given the interest rate that was available when a new rate was eventually secured. They say they could and would've been able to afford to keep the mortgage term as it was, had they secured the rate available in March 2023.

Given my earlier findings, I currently think that PRIMIS does need to compensate Mr and Mrs M by covering the difference in interest between what Mr and Mrs M will pay in interest over the 2 years period and what they would've paid, had they secured a rate in March 2023. In terms of whether PRIMIS needs to go further than this - I need to make a finding on what I think Mr and Mrs M most likely would've done regarding the mortgage term.

On balance, I think it's more likely than not that Mr and Mrs M wouldn't have extended the mortgage term. I'll explain why. PRIMIS has suggested in correspondence that the monthly payment amount Mr and Mrs M would've needed to pay had they secured a rate of 4.73% in March 2023, would've been £832. And that the amount Mr and Mrs M have ended up needing to pay each month, is only £30 more than this. However, I don't think this is correct. It appears to me that in PRIMIS' analysis, it isn't comparing like for like.

PRIMIS has supplied the Key Features Illustration from 2018 relating to the original borrowing and says this shows the outstanding balance at the end of year 5 would be £143,171. However, that is the figure at the end of month 5. The figure at the end of year 5 is £125,826. This is crucial, because when one applies the interest rate of 4.73% to approximately £125,000 over a 24-year term, you get a monthly repayment of approximately £727, not £832 as PRIMIS has suggested. The monthly repayment figure on £125,000 at 6.59% over 32 years is approximately £782. Since this was deemed affordable, it is logical to conclude that £727 would've been affordable – and would've meant that Mr and Mrs M didn't need to extend the mortgage, which of course comes with a significant downside, in that it will (all things being equal) result in needing to pay a lot more interest over the term.

PRIMIS has also made the point that where a lump sum payment is being made which at least in part covers mortgage repayments not yet due, the negates the need for a separate compensation payment, because the consumers derive benefit from having the funds up front.

As a general principle, I agree this is a consideration. However, in this case I still consider that PRIMIS should pay £250 in additional compensation. I say this because this will always turn on the individual facts of a case i.e. the amount of the lump sum (and thus the 'benefit' derived from receiving it in advance) and the extent of distress and inconvenience caused from the business's error.

In this case I think that the adviser's actions (or rather lack of action and contact) caused a fair amount of unnecessary distress and inconvenience, such that when balanced against the lump sum payment, it would still be appropriate for a separate compensation payment to be made. Bearing this in mind, I currently think that PRIMIS needs to do the following to put things right:

Pay the difference between:

- *The interest Mr and Mrs M have paid / are going to pay over the two years and the interest they would've paid over the two years, had they secured an equivalent rate in March 2023. PRIMIS should add 8% interest to the monthly amounts Mr and Mrs M have already paid, from the date of payment to the date of settlement.*
- *The capital balance as it will stand at the end of the fixed rate period and the capital balance Mr and Mrs M would've had if the mortgage term had not been extended.*

And pay an additional £250 to reflect the unnecessary distress and inconvenience caused to Mr and Mrs M."

I asked for any further evidence and/or arguments to be provided by 7 October 2024. Mr and Mrs M replied to say they were pleased with the findings. PRIMIS however disagreed. In summary, it made the following points:

- It appeared I hadn't considered that Mr and Mrs M had received details direct from Lender A of how they could arrange a product transfer themselves. The communications from Lender A were clear in terms of what Mr and Mrs M needed to do to arrange this.
- Mr and Mrs M haven't provided anything written down to support their version of events. In addition, the 'balance of probabilities' can't be used here, because Mr and Mrs M's own testimony in the course of bringing the complaint very clearly doesn't support their version of what was discussed with the adviser.
- They frequently used the word "we" in relation to securing an 'insurance rate', which shows they were aware they were to contact Lender A directly. And where Mr and Mrs M has mentioned "work to secure deals" this wouldn't mean a product switch. Mr and Mrs M also refer to the adviser looking at "other" mortgage deals i.e. not in relation to Lender A.
- Product transfers are not available to advisers on the sourcing system. If the adviser had thought they were to source the product transfer with Lender A, they would've asked Mr and Mrs M for the mortgage reference and for their agreement.
- Lender A's web-site shows that a product transfer can't be arranged by a broker in certain circumstances, including where the term is to be extended. So they could never have arranged this on Mr and Mrs M's behalf.

- Mr and Mrs M had arranged a further advance directly with Lender A, showing they weren't averse to speaking directly with Lender A and arranging a financial transaction themselves. Given this, it is inconceivable that Mr and Mrs A didn't understand the content of the 'rate coming to an end' letters from Lender A.
- Mr and Mrs M saying (in response to my request for further information) that they didn't consider options with Lender A to be a distinct part of the process doesn't make sense in the context of their complaint that the adviser didn't arrange a product transfer on their behalf.
- If Mr and Mrs M had accepted a product transfer at any point within the six month period, they would've tied themselves into the rate they'd accepted. PRIMIS believes that Mr and Mrs M chose to wait to see what would happen to rates and it understands this will have been a dilemma. Mr and Mrs M's actions were not those of people who were desperate to secure a product transfer, as they portrayed in their complaint.
- It would not be answering my provisional thoughts on redress, as it believed the information it was providing in response to my provisional findings on the merits of the case needed to be included first before any further decision is made.

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.

Having done so, I've reached the same overall conclusion for fundamentally the same reasons as set out in my provisional findings (which form part of this Final Decision).

Before I explain why, I wish to set out the purpose of my role as an Ombudsman. It isn't to address every single point that's been made to date. Instead, it's to decide what's fair and reasonable given the circumstances of this complaint. And for that reason, I'm only going to refer to what I think are the most salient points when I set out my conclusions and my reasons for reaching them. But, having considered all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint.

It is not disputed that PRIMIS' adviser didn't provide an adequate level of service to Mr and Mrs M. What remains in dispute though, is what had been agreed between Mr and Mrs M and PRIMIS' adviser, the impact of the adviser's lack of engagement and communication with them and the extent to which this caused them a financial loss.

Many of the points raised by PRIMIS in response to my provisional findings were already covered by those findings. So I will focus on the elements I think need to be covered in more detail.

PRIMIS has emphasised its view that Mr and Mrs M could've arranged an earlier product transfer themselves and it says that the communications from Lender A about how to do this were clear. However, these points become immaterial to the outcome if Mr and Mrs M's version of what was discussed and agreed with PRIMIS' adviser in March 2023 is persuasive. Because if their understanding was that PRIMIS' adviser was incorporating what Lender A could offer in the work they had undertaken to do, the fact Mr and Mrs M *could* have engaged Lender A directly carries little weight.

This case still turns on whether Mr and Mrs M's version of events or PRIMIS' adviser's version of events is the more likely. PRIMIS says that the balance of probabilities shouldn't apply here because it says Mr and Mrs M's own testimony when bringing the complaint shows that they had been aware PRIMIS' adviser was only looking at 'other' deals i.e. those available with other lenders.

I disagree. I find PRIMIS' arguments here to be weak. PRIMIS says that where Mr and Mrs M have used the word "we" in the context of being able to secure an 'insurance rate', this shows that Mr and Mrs M were aware this was action they were to undertake in relation to Lender A.

In this section of their complaint letter, Mr and Mrs M don't refer specifically to Lender A. The notion of an 'insurance rate' wouldn't only relate to a product transfer with Lender A. It's possible this is what Mr and Mrs M were thinking about, but even if it was, their use of the word "we" doesn't necessarily mean them taking some kind of action. I read it as they would be able to secure some kind of rate – not necessarily that they would be the ones doing the securing.

PRIMIS has also emphasised the references Mr and Mrs M have made to the adviser looking at "other" mortgage deals. But again, I don't find this to be inconsistent with their version of events. "Other" mortgage deals could simply mean other than the mortgage reverting to the Standard Variable Rate. As set out in my provisional thoughts, I did ask Mr and Mrs M for more detail about what they'd meant when they said "other" deals and I'm satisfied that their response (contained within the provisional findings) is consistent with their recall of what was discussed and agreed in the initial meeting with the adviser.

The other point PRIMIS raises in this regard is that where Mr and Mrs M referred to the adviser undertaking "work to secure deals" this wouldn't mean a product transfer. As put by Mr and Mrs M, to someone involved in the mortgage industry, this might suggest something other than a product transfer. But Mr and Mrs M don't work in the mortgage industry and bearing this mind, I find that their use of this phrase also isn't inconsistent with their version of events.

Taking everything into account, including all the points PRIMIS made in response to my provisional findings, I still find Mr and Mrs M's version of events persuasive for the reasons set out in my provisional findings.

So I've gone on to think about the impact on Mr and Mrs M, with this in mind.

The impact on Mr and Mrs M

PRIMIS says that Mr and Mrs M faced a dilemma around the time they spoke with PRIMIS' adviser, when their existing fixed rate still had a few months to run. PRIMIS says that in order for Mr and Mrs M to lock in a rate with Lender A, they would've needed to risk rates falling between that point and the end of their existing fixed rate and PRIMIS says many people around that time were waiting to see what happened with rates before committing.

Lender A has told us that borrowers in Mr and Mrs M's position would've been able to secure a Mortgage Offer that they wouldn't have needed to accept straight away and could effectively have 'in their back pocket' whilst waiting to see if rates came down – and if they did, borrowers in Mr and Mrs A's position would then be able to apply for the lower rate. Only at the point they formally accepted the Mortgage Offer would borrowers in Mr and Mrs M's position have been locked into that rate. This is consistent with the notion Mr and Mrs M had from their discussion with the adviser about securing an 'insurance rate'.

Even if that isn't correct, I think it most likely that Mr and Mrs M would've wanted to lock a rate in as quickly as possible. I say this having regard to their circumstances – they were facing a significant increase in their mortgage costs – and also having regard to what they said in a message to the adviser, two days after the meeting in March. They said “*Hey (adviser name). Do you need anything from us or from Lender A that we can get to **get a new mortgage agreed before these inevitable interest rate rises?**...*” (my emphasis).

Given my earlier finding about what was discussed and agreed between Mr and Mrs M and PRIMIS' adviser and thinking about Mr and Mrs M's circumstances (including the nature of Mr M's income), I still find that PRIMIS' adviser ought to have either made it a priority to secure a rate on Mr and Mrs M' behalf as quickly as possible or – if they felt they couldn't for any reason (e.g. due to their workload) to make it clear to Mr and Mrs M that they could and should contact Lender A at the earliest opportunity to secure a rate. I still can't see that either of these things happened.

I remain mindful that to the extent there may have been some confusion on the part of PRIMIS' adviser in terms of the scope of what Mr and Mrs M understood they were doing, the adviser missed the opportunity to resolve this because of their lack of engagement and communication with Mr and Mrs M. Had PRIMIS' adviser been more communicative and responsive, there's a chance that any misunderstanding may have been resolved and this may have prompted Mr and Mrs M to make direct contact with Lender A.

Taking everything into account, I still find that PRIMIS' adviser's lack of activity, engagement and communication with Mr and Mrs M following the initial meeting caused them to miss out on a lower interest rate and has caused them a financial loss.

Putting things right

PRIMIS chose not to make any representations to do with redress because it felt that certain points relating to the merits of the case needed addressing first. I would observe from this that it appears PRIMIS might think it is in control of the case investigation and progression. It is not.

I'm satisfied PRIMIS has had the opportunity to make representations on the whole of my provisional findings. It was PRIMIS' decision not to comment on certain aspects and I see no reason to give it a further opportunity to make any further representations.

This means that neither party has provided any further evidence and/or arguments for me to consider in relation to how things need to put right. As such, I see no reason to depart from my provisional findings.

For the reasons set out in my provisional findings, PRIMIS must do the following:

Pay the difference between:

- The interest Mr and Mrs M have paid / are going to pay over the duration of the fixed product and the interest they would've paid over the same time, had they secured an equivalent rate in March 2023. PRIMIS should add 8% interest to the additional monthly amounts Mr and Mrs M have already paid, from the date of payment to the date of settlement.*
- The capital balance as it will stand at the end of the fixed rate period and the capital balance Mr and Mrs M would've had if the mortgage term had not been extended.

And pay an additional £250 to reflect the unnecessary distress and inconvenience caused to Mr and Mrs M. For clarity's sake this is £250 compensation in total for distress and inconvenience caused. So PRIMIS can deduct any amount it has already paid towards this, from this figure.

* PRIMIS may deduct income tax from the 8% interest element of my award, as required by HMRC. But if it does this, it should tell Mr and Mrs M what it has deducted so they can reclaim the tax if they are entitled to do so.

My final decision

My final decision is that I uphold Mr and Mrs M's complaint about Advance Mortgage Funding Ltd trading as PRIMIS Mortgage Network and I direct it to do what I've set out above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 8 November 2024.

Ben Brewer
Ombudsman