

The complaint

Mr B and Miss G complain about the advice they got from Personal Touch Financial Services Ltd trading as PRIMIS Mortgage Network. They say they wanted a fixed rate mortgage product but were recommended a tracker rate mortgage product and have suffered as interest rates have risen.

What happened

Mr B and Miss G spoke to a mortgage advisor, an appointed representative of PRIMIS in the early summer of 2022. Their two-year fixed rate mortgage with their existing lender was coming to an end in August 2022 and they sought advice on a replacement mortgage product. The adviser recommended a tracker rate mortgage product at 0.94 % above the Bank of England base rate with a different mortgage lender and with a product fee. At the time of recommendation, the interest rate on their mortgage was 1.25%. By the time of completion in September the rate had increased to 2.69%, and by December 2022 to 4.4% and in March 2023 to 5.19%.

Mr B and Miss G expressed their concerns that a tracker rate might go up but were reassured that interest rates would have to go up four times before they would be affected and then they could change and lock into a low fixed rate. But in September 2022 when mortgage rates went up, they found that the fixed rates were now much higher, and they would have to pay a second product fee to switch. The adviser told them that interest rates would be going down if they stayed with the tracker rate.

Our investigator's view

Our investigator didn't recommend that this complaint should be upheld. Our investigator felt that the tracker recommendation was reasonable as it was the cheaper option at the time and the contractual monthly payments ("CMP") at time of recommendation - £818.27 - was in line with the budget they had for their mortgage payments. And the adviser couldn't have foreseen how much rates would increase. Mr B and Miss G disagreed and asked for a review.

My provisional findings

As my Provisional findings differed from that of our investigator, I issued a Provisional Decision as set out below:

"Mr B and Miss G had a fixed rate mortgage product coming to an end and they sought advice from a mortgage adviser. This was in the spring/summer of 2022. Part of the adviser's role according to the Mortgage conduct of business regulations or MCOB is to take reasonable steps to ensure that the mortgage is suitable for the customer. The adviser needs to consider the needs and circumstances of the customer. One of the factors the adviser must consider is "whether it is appropriate for the customer to have stability in the amount of required repayments, especially having regard to the impact on the customer of significant interest rate changes in the future" (MCOB 4.7A.6(4)).

The adviser appears to have completed a mortgage fact find dated 29 April 2022. I note that the adviser records that the couple want to obtain a competitive mortgage, have £800 available to pay per month and were paying then £728 per month. In the part of that document for determining the most suitable mortgage type, it records Mr B and Miss G's requirements "lowest guaranteed monthly payments and minimum tie in period." The couple say they had no plans to move and say that they want "no up front fees and no redemption penalty after fixed rate expires."

I should say there is no record of why these are their priorities as the record is sparse in that regard. But a fair reading of that is that the customer required stability in their repayments given their budget and their stated requirement for the lowest guaranteed (my italics) monthly payments and their expectation of being offered a fixed rate. It would seem to follow that a two-year fixed rate would be recommended as it had been by the same adviser two years previously.

But the adviser then set out in a suitability report his recommendation of a two-year tracker rate with a new lender at an initial interest rate of 1.94%. Why was that?

In passing Mr B and Miss G say that they didn't receive this document or any document from the adviser at this time. This is denied by PRIMIS but has had no bearing on my decision. The adviser summarised his recommendation in a suitability report dated 6 May 2022. Under the section "Why are we recommending this mortgage type." The adviser notes that Mr B and Miss G have a budget of £800 per month to meet the mortgage payments and associated costs and there are no expected changes to this in the future. He recommends a tracker over a period of two years because of "low monthly payments and no tie in period." But Mr B and Miss G wanted lowest guaranteed monthly payments. There was nothing guaranteed about these monthly payments. Why would they want no tie in period? They had no intention to move house so could have lived with an early repayment charge ("ERC"). There is no record of their attitude to interest rate movements and no record that they expected interest rates to decline so that they didn't want to be stuck on a high interest rate on a fixed rate mortgage in a declining interest rate market. They would only need a no tie-in period if they had a tracker rate but it's not one of their requirements which would have led the adviser to recommend a tracker rate.

The adviser in a handwritten note following the complaint says that after discussing the "pros and cons" of fixed and tracker rates Mr B and Miss G proceeded with a tracker rate because of the initial benefits of lower rates and on this tracker there were no redemption penalty if they wanted to transfer to a fixed rate at a later date. Those seem to be "pros" whereas the "cons" are unspecified. Mr B and Miss G say they were persuaded to take the tracker out because of the advocacy of the adviser who told them that they would be paying less on the tracker and that they could switch to a fixed rate if interest rates went up but that they would have to go up four or five times before Mr B and Miss G would be paying more on the tracker rate than if they took out a fixed rate.

The adviser seems to have been saying and, as I understand it, Mr B and Miss G understood him to say, that they could have the advantages of a fixed rate but with the lower cost of a tracker. But the "con" would be if they wanted to fix in the future and interest rates went up, they would be fixing at a higher rate than would have been available then and so in a worse position, if a fixed rate was still available to them. They may also have had to pay a new product fee thus paying two product fees instead of one. And what if interest rates suddenly went up dramatically as they did following the mini budget of September? Mr B and Miss G would not have the stability they required. There is no evidence of these "cons" being pointed out to Mr B and Miss G. It's fair to say that the suitability letter contains a warning that the tracker rate is subject to fluctuation, but the adviser was simultaneously reassuring Mr B and Miss G that it would have to go up a long way to make a fixed rate more

worthwhile and that the interest rate picture pointed to falling interest rates in early 2023.

It's instructive to compare the recommendation in this letter to that of the same adviser two years previously when he advised a fixed rate. The adviser in the earlier suitability letter said

"Having discussed the interest rate options available. I recommend a fixed rate product. A fixed rate mortgage provides you with the certainty of knowing exactly what your monthly repayments will be during the fixed rate period. I recommend you take out a loan with a fixed period of 2 years.

The specific reason for term and use of fixed rate You wanted the minimum tie in period and the lowest monthly payment."

It doesn't seem to me that Mr B and Miss G's mortgage requirements were different in 2024 than they were in 2022. It seems to me that the lowest guaranteed payments were at the heart of both applications, but a completely different mortgage type was recommended by the adviser given the same requirements.

That Mr B and Miss G were uncomfortable with the recommendation is clear from the texts flowing between them and the adviser. On 16 June Miss G texts the adviser to ask if they are going to be OK with the tracker as interest rates keep rising. The adviser responds to say that "they are predicting rates to reach a peak over next 2/3 months before reducing early next year. And that "Even with rate rise it's still 0.5% below Fixed Rate." This is in June before the switch had taken place. I'm not sure who "they" are that are making the interest rate predictions. But the adviser in my view is clearly advocating - rather than independently advising on - the tracker rate that he has chosen for Mr B and Miss G giving them what turned out to be false comfort that even if the interest rates are on the rise they are still below the fixed rate and in any case the rate will come down again shortly.

Was the advice from the adviser appropriate? My view is that it wasn't. Mr B and Miss G wanted stability in their mortgage payments which could be achieved through a fixed rate. The adviser recommended a strategy to them that would give them lower payments than a fixed rate as long as interest rates remained low but ignored the MCOB direction to "have regard to the impact on the customer of significant interest rate changes in the future." The adviser appears to have had an over optimistic view of the direction of interest rates which clouded his judgement and affected his advice. If the adviser had given proper consideration to Mr B and Miss G's needs and circumstances he should have recommended to them a fixed rate as he had done with similar circumstances two years previously. Mr B and Miss G had an existing mortgage with a lender, and I assume that they may well have stayed with that lender but with a two-year fixed rate mortgage product.

So, for the above reasons I intend upholding this complaint. Mr B and Miss G should be put into the position they would have been if the PRIMIS adviser had recommended that fixed rate product to them. As I don't yet know what two-year fixed rate product was available from their existing lender in May 2022, I've made certain assumptions here including that the fixed rate product would have been less than the tracker rate at commencement in September 2022 and throughout. That Mr B and Miss G wanted a two-year product as identified in the fact find and from their existing preference.

I believe that fairness can be achieved in the following way. PRIMIS should ascertain what the two-year fixed rate would have been for a mortgage product that it could have sourced for Mr B and Miss G on 6 May 2022 from their existing lender that would commence in September 2022. It should then work out the difference between what they will have paid on their new mortgage for the two years from 1 September 2022 and what they would have paid to their existing lender and refund the difference. As their mortgage is paid monthly, each

month they will have paid more than they should have been paying and been deprived of that excess. To compensate for that, PRIMIS should pay interest to Mr B and Miss G on each month's excess at 8% pa from the dates that Mr B and Miss G paid the CMP to the date that the money is refunded.

I've no information on whether there would have been a product fee with their existing lender. If not, it would seem appropriate to refund separately the product fee and repay the interest that Mr B and Miss G paid on that to date. Mr B and Miss G refer to paying a second product fee for another tracker. I've seen no evidence of that and will look at that issue if they provide me with evidence of it.

Mr B and Miss G seem to have paid a fee in September of £362 to their previous lender on the late completion of the mortgage to their new lender. I would assume that part of this is due to paying their existing lenders standard variable rate after the end of the fixed rate period. Clearly there wouldn't have been this issue if they took out a new product with their existing lender on 1 September. If Mr B and Miss G can provide evidence of the payment, and the rate of interest on the payment, PRIMIS should also pay the difference between that and what they would have been paying their existing lender on the new interest rate from 1 September 2022 together with interest from the date they paid this to date of refund.

Mr B and Miss G will have suffered distress and inconvenience because of this, and I've read their comments about the stress they have been going through. This really should have been straightforward for them, and they should have received the recommendation of a fixed rate mortgage in May 2022 and moved on with their lives. Instead, they've had to remortgage and had constant interaction with the mortgage adviser and PRIMIS since then and all the worry and stress. I believe compensation of £500 is appropriate for that part of the complaint."

After I issued my Provisional Decision I invited further submissions from Mr B and Miss G and from PRIMIS which I refer to below.

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.

After I issued my Provisional Decision I invited submissions from PRIMIS and Mr B and Miss G. I also asked for some further information from both parties.

PRMIS does not agree with my upholding the complaint and says that it maintains that the difference between a tracker and fixed rate was explained to the clients and it was important to them that the lowest cost option was indeed the tracker rate mortgage and that it's just with hindsight that we see that the fixed rate would have been the more cost effective operation.

I believe that I've dealt with those issues in my Provisional Decision. Mr B and Miss G wanted the lowest *guaranteed* monthly payments. This should have been significant to the adviser as there is a requirement for the adviser to consider the significance of the stability in payments to customers under the regulations "*having regard to the impact of the customer significant interest rate changes in the future*". Mr B and Miss G wanted stability in the payments as they had wanted two years previously in 2020. I said in my Provisional Decision that I didn't think that Mr B and Miss G's requirements were different in 2024 than they were in 2022. I intended to say that I didn't think that their requirements were different in 2022 than they were in 2020. In 2020 the same adviser faced with a similar facts recommended a fixed rate product and which seemed the appropriate mortgage product

type to recommend. But in 2022 the adviser recommended a tracker type mortgage which would not provide the element of stability for the customer.

I acknowledge that the customers were aware of the difference between the types of mortgages between tracker and fixed rate, but the adviser distorted and confused the picture by, as I say above, telling Mr B and Miss G that they could have the advantages of a fixed rate but with the lower costs of the tracker. That may have worked had interest rates not dramatically changed but that didn't make the recommendation suitable for Mr B and Miss G's circumstances.

It's clear from the correspondence that the adviser had an overly optimistic expectation of the direction of interest rates which would have affected his recommendation. But there was a requirement for prudence in his recommendation as set out in the regulations. There was a requirement that the adviser consider the recommendation with regard to the impact on the customer of significant interest rate changes in the future. That's what the adviser didn't do and why I am upholding this complaint. To be clear, my view is not affected by the significant interest rate changes that then did occur. My decision is not one that's made in hindsight. The recommendation was unsuitable from the start. The subsequent significant changes in interest rates affect the amount of redress to be paid but not that the recommendation only became unsuitable because of those changes.

If I move on to the issue of fair redress. I set out how I hoped to achieve that in my Provisional Decision. I've received some further information and I require PRIMIS to take the following steps.

1. Calculate the CMP that Mr B and Miss G would have been charged had they stayed with their existing lender

Since I issued my Provisional Decision, PRIMIS has been in contact with Mr B and Miss G's previous lender which told the broker the rates that would have been available to Mr B and Miss G on 8 May 2022 if they had renewed their mortgage product, namely an interest rate of 2.29% with a £995 product fee and an interest rate of 2.54% without. I believe that the broker should have recommended to Mr B and Miss G the product that produced the lowest CMP given their stated preference for the lowest guaranteed monthly payments. So, PRIMIS should calculate on the information available to them which of these products would have produced the lowest CMP.

2. Compensate Mr B and Miss G for the higher payments they will have made on the tracker mortgage product with the new lender rather than the fixed interest rate mortgage product with their existing lender.

PRIMIS should then work out the difference between what Mr B and Miss G will have paid on their new mortgage for the two years from 1 September 2022 and what they would have paid to their existing lender and refund the difference. As their mortgage is paid monthly, each month they will have paid more than they should have been paying and been deprived of that excess. To compensate them for that, PRIMIS should pay interest to Mr B and Miss G on each month's excess at 8% simple, from the dates that Mr B and Miss G paid each CMP to the date that the money is repaid.

3. The Product Fee

The recommended tracker mortgage had a booking fee of £999 which was added to the mortgage. Since September 2022, Mr B and Miss G will have been paying a part of this off and interest on it as part of the CMP. If PRIMIS calculation in 1 above suggests that the recommended product should have been the 2.29% rate with the product fee, PRIMIS

should pay Mr B and Miss G the difference of £4. On the other hand, if the PRIMIS calculation at 1 above suggests that the 2.54% rate without the product fee should have been recommended, PRIMIS should refund the product fee less that part of it which will have been refunded to them as part of the calculation at 2 above.

4. The effect of the late completion with the new lender.

Because of late completion by 11 days, Mr B and Miss G had to pay £32.91 per day or £362.01 to their existing lender. As their existing mortgage product had ended, they were on their existing lender's SVR for 11 days. They also had to pay £12 to the solicitor to confirm property ownership. If PRIMIS had provided suitable advice to stay with their existing lender, they would have moved seamlessly onto their existing lender's mortgage product on 1 September 2022 and they would not have been on the SVR nor incur the legal fee of £12. Mr B and Miss G would have had to pay for a mortgage on those 11 days but presumably not at the SVR then charged. Mr B and Miss G should produce evidence of the interest rate that they were being charged at that time and PRIMIS should refund the difference between the £362.01 and what they would have paid had they gone onto the new product with their existing lender on 1 September 2022. PRIMIS should also pay interest on this balance at 8% simple from when this was paid until payment is made by PRIMIS.

My overall intention here is to put Mr B and Miss G in the financial position they would have been had PRIMIS provided the advice it should have provided in May 2022. PRIMIS is responsible for calculating and paying the compensation. It may require further documentation from Mr B and Miss G to calculate that and they should provide such information as PRIMIS should reasonably require. Equally PRIMIS should respond to any reasonable queries that Mr B and Miss G may raise in relation to the calculations.

Mr B and Miss G have asked me to also consider the stress that Miss G has had to endure because of this. This is a matter I gave consideration to in my Provisional Decision. I've looked at the further submissions that Miss G has made and our guidelines for such awards. I can see from the submissions and documentation provided by Miss G that PRIMIS actions caused considerable distress, upset, and worry and inconvenience. I believe that the award I suggested of £500 is fair compensation for that part of the complaint.

Putting things right

PRIMIS should pay the compensation as set out above including £500 for Mr B and Miss G's distress and inconvenience. Where I've said that any payment should include interest, that interest is simple interest calculated at the rate of 8%. If PRIMIS considers that it's required by HM Revenue & Customs to deduct income tax from that interest it should tell Mr B and Miss G how much it's taken off, it should also give Mr B and Miss G a tax deduction certificate if they ask for one so they can reclaim the tax from HMRC if appropriate.

My final decision

My decision is that I uphold this complaint and require Personal Touch Financial Services Ltd trading as PRIMIS Mortgage Network to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss G to accept or reject my decision before 3 September 2024.

Gerard McManus
Ombudsman