

The complaint

Mr E says Bradgate Financial Solutions Limited recommended a mortgage that wasn't suitable. He had to repay the mortgage within a short period. Mr E asks that Bradgate compensates him for the costs related to taking out and repaying the mortgage.

What happened

Mr E owned two properties. Property A (his home). And property B (a house and land subject to an agricultural tie). Mr E had a residential mortgage on property A.

Mr E wanted to sell the property B house and keep the property B land. Before selling the property B house he needed to transfer the property B land into the land title for property A. He also needed to transfer the agricultural tie to property A.

Mr E had a residential mortgage on property A and the lender didn't agree to this.

Mr E took mortgage advice from Bradgate. It recommended a mortgage and Mr E re-mortgaged property A. However, the new lender didn't agree to him transferring the property B land into the property A land title. Mr E repaid the mortgage using savings. Mr E incurred costs in taking out and repaying the mortgage recommended by Bradgate.

Our investigator said Bradgate had recommended an unsuitable mortgage. She said it shouldn't have recommended a regulated mortgage. This was because it knew the mortgage wouldn't be within the definition of a regulated mortgage after the agricultural land was added to the land title. Our investigator said while Bradgate had provided documents to the lender it hadn't explained what Mr E intended to do. In particular, that he intended to make changes to the property title.

Our investigator said Bradgate should compensate Mr E for all of the costs related to taking out and repaying the mortgage.

Bradgate didn't agree. It said, in summary, it had taken reasonable steps to research lenders and provide all relevant information to the lender. It said it was the lender's responsibility to read the application and supporting documents and raise any concerns about Mr E's plans.

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.

The circumstances here are unusual. But, in summary, Mr E asked Bradgate for advice in sourcing a mortgage for his residential property (property A). The lender would need to be amenable to him adding agricultural land and an agricultural tie (imposed under section 106 of the Town and Country Planning Act 1990) to property A.

Bradgate recommended a lender which it said wouldn't have a problem with the S.106 agreement. Mr E re-mortgaged with this lender, paying an early repayment charge (ERC) to do so. Unfortunately, the new lender didn't accept the transfer of the agricultural land into the

land title.

The mortgage recommended by Bradgate wasn't suitable for Mr E. His sole aim in re-mortgaging was to be able to transfer the agricultural land and the S.106 agreement to property A. In order to go ahead with his plans, Mr E had to repay the mortgage only two months after taking it out. He paid another ERC to the second lender. He says his costs are at least £11,500. This also caused delays in him completing his plans.

What I have to decide is whether Bradgate made an error when it recommended the mortgage.

Bradgate says it researched lenders and made the lender aware of Mr E's plans. It says all documentation and information provided by Mr E was passed onto the lender, including the draft deed of modification which set out Mr E's plans.

The lender asked questions about the agricultural tie. Bradgate sent a copy of the draft deed (under which the original section 106 agreement would be modified) and the new section 106 plan. Bradgate says the lender is at fault as it shouldn't have offered the mortgage if it wasn't happy with Mr E's plans. It pointed out that the lender's marketing material says it deals with properties with agricultural ties and section 106 agreements.

Mr E also brought a complaint to us about the lender. The lender provided evidence to us, which I have also reviewed. Having done so, I think there was a serious misunderstanding between Mr E, Bradgate and the lender about the current situation and Mr E's intentions.

The lender offers mortgages for properties that are subject to a section 106 agreement. That wasn't the problem here. The problem was the transfer of the agricultural land into the property A land title. Crucially, the lender didn't realise Mr E intended to transfer 140 acres of agricultural land into the land title for property A.

The mortgage recommended by Bradgate was never suitable for Mr E's needs. Rules on mortgage regulation set out the definition of a regulated mortgage contract. The key point here is that the debt must be "secured by a mortgage on land, at least 40% of which is used ... as or in connection with a dwelling".

Once the agricultural land was added to the land title the mortgage wouldn't meet the definition of a regulated mortgage. I think Bradgate should have known this. It should not have recommended a regulated mortgage. This error led to Mr E taking out an unsuitable mortgage which he had to repay shortly after, at some cost.

Bradgate says it fully informed the lender of Mr E's plans by sending the draft deed of modification and section 106 agreement to it. Bradgate says it was for the lender to read and understand the documents it provided and ensure it was happy to proceed. In effect, Bradgate is saying the lender should have spotted that the mortgage it had recommended was unsuitable.

While Bradgate did send the draft deed of modification and section 106 plan to the lender, I don't think this is enough for me fairly to find that the lender was at fault here rather than Bradgate. I've explained why below.

Bradgate checked that a section 106 agreement was within the lender's criteria before recommending the mortgage. I don't think it checked that a property with 140 acres of agricultural land was within the lender's criteria. In fact, the lender's criteria is a maximum of 10 acres, and not more than 40% of this can be in commercial use. This was the first missed opportunity for Bradgate to establish that Mr E's plans wouldn't be acceptable to the lender.

The information provided by Bradgate in the application form was incorrect. It said there was an agricultural tie (which wasn't the case at that time). It said there wasn't more than one acre of land. It said there was nothing unusual about the property or proposed use. Bradgate missed the opportunity to complete the application correctly and explain Mr E's plans – which might have alerted the lender to a possible problem.

I've read the draft deed of modification that Bradgate provided to the lender. This says the agricultural occupancy conditions will be transferred from property B to property A. That property B could only be used for the purposes of occupation by persons employed in agriculture. And that the legal ownership of property A cannot be severed from the remainder of the Property. The deed was drafted with the previous lender as a party. I don't think Bradgate made it clear as to whether the deed was provided to explain what had happened, rather than (as was the case) the expectation that the new lender would enter into a deed in a similar form.

The lender assumed the agricultural tie was already in place – which was not unreasonable given that this was stated in the application. In any case, it told Bradgate it would have agreed to this being transferred to the security property. The agricultural tie wasn't the problem. The problem was Mr E's intention to transfer 140 acres of agricultural land into the title for property A. The lender hadn't understood this was Mr E's intention, and I think this was because Bradgate hadn't made this clear.

The lender instructed a valuation. The valuation report said property A had two acres of garden. The valuer noted that the owner holds an additional 140 acres, but this isn't included in the valuation. The mortgage offer says the solicitor must confirm the 140 acres aren't part of the title. There was no mention of how the value would be affected when the agricultural tie and agricultural land were added to the property title or any provisions regarding this. This was an opportunity for Bradgate to question whether the lender had understood what Mr E's plans were.

In December 2023 Bradgate sent an email to the lender which said "Never did he [Mr E] mentioned to us about adding 140 acres to the security, this must have been something he planned to do after completion. Both myself and the broker are aware that adding this much land to the title would be considered commercial and we would have advised him of this during our initial meeting....".

Bradgate says here that it knew a property with this much land would be considered commercial and a regulated mortgage wouldn't be suitable. The email suggests Bradgate wasn't aware of Mr E's plan to add the agricultural land to property A. If so, that would explain why it didn't tell the lender this was his intention.

In light of this I've considered whether it's possible that Mr E didn't tell Bradgate about the transfer of the 140 acres of agricultural land, or was unclear about his plans. I find this unlikely. When Mr E contacted us he explained the situation clearly. I've no reason to think he wouldn't have been clear when speaking to Bradgate. And I'd expect Bradgate to ask further questions if it was unclear about Mr E's plans.

Bradgate hasn't said Mr E didn't provide clear and full information about his plans. In fact it told us it was fully aware of the situation and the proposed changes prior to the application. It says it asked all appropriate questions and carried out a fact find with Mr E.

Taking all this into account, I think Bradgate was – or ought to have been – aware of Mr E's needs, aims and circumstances. It recommended a mortgage that wasn't suitable. It failed to provide correct and clear information to the lender that would have enabled the lender to identify this and decline the application.

Mr E had to repay his existing mortgage in order to proceed with his plans to transfer the agricultural land and agricultural tie to the property A title. Mr E had savings available (which he used to repay the unsuitable mortgage in late 2023). He contacted Bradgate in mid-2023 as he preferred to re-mortgage as he intended to use these funds for other purposes.

If Bradgate had given Mr E correct advice at the outset he could have considered how to proceed. He might have used his savings to repay the mortgage in mid-2023. He might have looked into other options, such as taking out a commercial mortgage. Either way, he wouldn't have applied for, taken out and repaid an unsuitable mortgage with the related costs and delays to his plans. Bradgate should put Mr E into the position he would have been in if this hadn't happened.

Mr E suffered financial loss due to Bradgate's errors, and he's been out of pocket for some time. I think it's fair and reasonable to require Bradgate to compensate Mr E for his financial loss and for not having use of his money.

For completeness, I don't think it's fair to require Bradgate to compensate Mr E for the cost of repaying the first mortgage. This was something he had to do in order to change the land title for property A.

Putting things right

Bradgate should put Mr E into the position he would have been in if he hadn't taken out the unsuitable mortgage it recommended.

Bradgate should calculate and pay to Mr E the total of the following:

1. All fees and costs paid by Mr E in relation to the mortgage application, including the application fee, booking fee, funds transfer fee, the lender's legal fees, valuation fee, arrangement fee and any product fee.
2. The early repayment charge and exit fees paid by Mr E when he repaid the mortgage in December 2023.
3. Interest paid by Mr E on the mortgage balance (including on any fees added to the balance).

Bradgate can deduct from this the interest that Mr E would have received on funds equal to the mortgage balance while they were in a savings account. A copy of Mr E's account statement shows an interest rate of 0.7%.

4. Broker fees paid by Mr E to Bradgate.

Bradgate should add interest at 8% simple from the date Mr E made each of the above payments to the date Bradgate pays the compensation to Mr E.*

In addition, Bradgate should pay compensation of £350 to Mr E for the upset and inconvenience this has caused.

Bradgate has (amongst other things) copies of the mortgage offer, a letter from the lender dated 22 August 2024 (which sets out the completion date and redemption date and transactions in between), a redemption statement dated 13 December 2023, and a statement for Mr E's savings account (which evidences the 0.70% interest). I don't think that Bradgate also needs a copy of the completion statement or a receipt for the valuation fee (the mortgage illustration sets out the fee and says it has been paid) to complete the

calculation of the compensation.

*If Bradgate considers that it's required by HM Revenue & Customs to deduct income tax from the 8% simple interest, it should tell Mr E how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate. This direction relates to what Bradgate should do if it deducts tax from the 8% interest. I can't tell Bradgate whether it's required by HM Revenue & Customs to do this.

I had previously said to the parties that Bradgate should pay the legal fees and costs incurred by Mr E in relation to the re-mortgage and amendment of the deed of modification and/or section 106 plan for the new lender. However, it's only fair to require this if there's suitable evidence of these costs. Mr E says he asked his solicitor to send evidence of these costs. He said if this wasn't received within our extended deadline (which it wasn't) we should assume there are no such additional costs. In the circumstances, I don't think it's fair and reasonable to require Bradgate to pay compensation for legal costs incurred by Mr E in relation to the re-mortgage or any amendments to the deed of modification and/or section 106 plan.

Bradgate should make the payment and send a copy of its calculations to Mr E within 30 days of him accepting my decision (if he does).

My final decision

My decision is that I uphold this complaint. I order Bradgate Financial Solutions Limited to pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 1 November 2024.

Ruth Stevenson
Ombudsman