

The complaint

Miss M's complaint arises out of a mortgage application made on her behalf by a representative of First Complete Ltd trading as PRIMIS Mortgage Network (and referred to here as First Complete). The application did not proceed and fraud markers were registered against Miss M on the National Hunter and CIFAS databases.

Miss M says that false assertions have been made by First Complete that it was she who provided First Complete with information submitted to the lenders which later proved to be false. Miss M says that it was in fact her previous mortgage broker, a Mr C – who'd failed to secure a mortgage for her and who later referred her to First Complete – who told her to provide First Complete with the contact details for an accountant she'd never heard of or used. Miss M says she has played no part in any fraudulent activity.

To settle the complaint, Miss M wants First Complete to retract the statement that it was Miss M who provided it with false information for the mortgage application and to confirm that it was the previous broker who provided this.

Miss M is represented in the complaint by solicitors, but for clarity I will refer throughout to Miss M as if all submissions have been made by her.

What happened

I won't set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat all the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Miss M being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

In April 2023 Miss M was referred to First Complete by a previous broker she'd instructed, a firm I will call BGM.

There was a telephone conversation on 18 April 2023 which resulted in a fact-find being compiled, based on the conversation with Ms M. This recorded gross income of £71,050 and a monthly net profit after tax of £4,188. There was also a tax calculation provided dated 20 March 2023 based on self-employed gross profit of £71,050. This contained Ms M's Unique Taxpayer Reference (UTR).

First Complete made an application for a Decision in Principle (DIP) to a building society (LBS) on 18 April 2023, which was turned down at the initial stage, as Miss M had failed the credit score. First Complete requested Miss M's credit file, which she provided.

At about this time First Complete were contacted by the solicitors acting for Miss M on her purchase to see if she was still proceeding with a mortgage application she'd made to a

bank. This was the first time First Complete had heard about this, and asked Miss M about it. Miss M said she'd considered applying to the bank but decided not to as their rates weren't competitive. First Complete checked on the bank's rates compared with LBS and another building society, CBS, and this seemed to be correct.

In a WhatsApp message sent on 17 April 2023 at 17:06 First Complete asked Miss M if she had an accountant. Miss M replied at 17:19 with the details of a firm I'll refer to as HB and attached a .vcf contact file with HB's details on it. On 19 April 2023 at 13:42 Miss M confirmed to First Complete via WhatsApp that her accountant was HB.

An DIP was obtained from CBS and the mortgage application was submitted. Despite Ms M later saying in a signed Statement of Truth that she had no knowledge of this application and that it had been submitted without her consent, CBS wrote to her on 19 April 2023 confirming it had received the application. In addition, First Complete provided its letter of recommendation on 19 April 2023 confirming that it had recommended the mortgage with CBS after its discussion with Ms M.

The application appeared to be proceeding as normal – the survey was carried out. But on 27 April 2023 CBS said that the application had been denied because Miss M's income couldn't be verified. It appeared that the reason for this was that the tax certificate sent in with the application was based on false income. A fraud marker was registered against Miss M on the National Hunter and CIFAS databases.

The last contact First Complete had with Miss M was on 4 May 2023 when she thanked First Complete for the work they'd done.

Miss M instructed solicitors to act for her in October 2023. They raised a complaint – the crux of it being that Miss M hadn't provided any documentation to First Complete, and that all the information provided that had resulted in the declined application and the fraud marker had been provided directly to First Complete by Miss M's previous broker, BGM.

Miss M's solicitors also complained that First Complete had deleted emails and documents from its system, in breach of both its terms and conditions and mortgage regulations.

An internal investigation was carried out at First Complete, but no wrongdoing was found to have taken place in relation to the mortgage application. First Complete confirmed that Miss M had provided the information about her accountants, as well as her credit file, which suggested that there'd been discussions about her finances and business.

First Complete said that its staff weren't required to keep emails or documents indefinitely and so the broker hadn't breached First Complete's terms and conditions.

As a gesture of goodwill, First Complete offered to refund the broker fee of £400, provided this was accepted by Miss M within 28 days.

Miss M didn't accept and instead brought her complaint to the Financial Ombudsman Service.

An Investigator looked at what had happened, but didn't think the complaint should be upheld.

Miss M asked for an Ombudsman to review the complaint. She said that the crux of the complaint is that she had not committed fraud and wanted the fraud markers investigated and removed. Miss M said it was extremely concerning that First Complete hadn't been able to supply any of the emails between them, and that this was a regulatory breach.

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 conclusion as the Investigator, for broadly the same reasons.

I will explain that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint. So although I've noted the questions which Miss M would like answered, it's not my role to put those questions to First Complete or act as a representative or go-between on this case.

Fraud marker: In addition to this complaint against First Complete, I am also considering the complaints Miss M has raised against CBS, and against the bank Miss M had originally applied for a mortgage with, through BGM. These two complaints, and the current complaint, all relate to information provided in relation to mortgage applications in Ms M's name which have resulted in fraud markers.

On the complaint against the bank, a fraud marker had been made against Miss M's name because HB had provided false information about Miss M's income, stating she earned £71,050 when she did not. Miss M's position on that complaint was that she'd never heard of HB, and that HB was not, and had never been, her accountant. Miss M insisted the information provided to the bank about HB had come through BGM, not her. The bank didn't uphold the complaint, saying that if Ms M was to raise a complaint about BGM to the Financial Conduct Authority (FCA), and provided evidence of this, the bank would reconsider its position. I don't know if Ms M complained to the FCA but nothing turns on it in relation to this complaint.

CBS hadn't upheld the complaint Miss M had made against it. This is because the tax calculation stated Miss M's income was much higher than it actually was. As a result, a fraud marker was registered against Miss M.

The crux of the complaint against First Complete is that Miss M said she never provided any documentation to First Complete. She wants First Complete to retract its statement in the final response letter which said that Miss M had provided it with the documents that were used in her mortgage application which later turned out to contain false information.

It's clear from the information provided that First Complete was provided with documentation for the application. Although Ms M says she never provided First Complete with documentation, in her Statement of Truth at para.57 she confirms she did provide "*her broker*" with documentation to enable the application to be made to CBS. That broker was First Complete.

The information which led to CBS declining the mortgage application and registering the fraud marker was the information provided in the tax calculation dated 20 March 2023. This is based on a stated income of £71,050, which is the same income HB said Ms M earned on a false accountant's certificate provided to another lender by BGM prior to First Complete's involvement in Ms M's application for a mortgage.

That's also the same income First Complete recorded on the fact find after a discussion with Ms M. The fact-find contains detailed information about Ms M's income and expenditure, stating that she had total net monthly income of £4,188 and where Ms M provided details about her expenditure each month. That's information that could only have come from Ms M.

It's also clear from the WhatsApp messages I've been provided with that the details of the accountant came from Miss M. She provided First Complete with a .vcf contact card for HB on 17 April 2023 and confirmed again to First Complete on 19 April 2023 that HB was her accountant.

Given this, Miss M's claim that she'd never heard of HB, that HB wasn't her accountant, and any information about false income had come from BGM and not her simply doesn't stand up to scrutiny. If that had been the case, I wouldn't have expected during the fact find call on 18 April 2023 for First Complete to have recorded Ms M's income as £71,050 – which happens to be the exact same income figure HB provided to the bank which had declined Ms M's application on the basis of false income – information First Complete wasn't aware of at that time.

Taking the totality of the evidence into account, the evidence is persuasive, therefore, that the information which directly led to the fraud marker being registered against Miss M by CBS either came directly from her or is information about which she was aware. I say this because:

- During a previous mortgage application to a bank, false information was provided by HB saying Miss M's income was £71,050. First Complete didn't know about this.
- The fact-find compiled by First Complete on 18 April 2023 after discussions with Ms M resulted in First Complete recording her income as £71,050. This is information that I am satisfied would only have come from Ms M. If First Complete had said while completing the fact-find that Ms M's income was £71,050 and Ms M knew this to be incorrect, I'd have expected her to have corrected this.
- The likelihood of First Complete incorrectly recording the exact same incorrect information about Ms M's salary as HB had provided to the bank (about which First Complete was unaware on 18 April 2023) stretches credulity. I think it is more likely than not that that figure was provided by Ms M.
- The tax calculation dated 20 March 2023 was based on the same false income of £71,050, and pre-dated First Complete's involvement with this matter. Although Ms M says she'd never seen the tax calculation until CBS provided it in a Data Subject Access Request, I am not persuaded by this. The tax calculation contains Ms M's UTR, which would not have been available to First Complete.
- Although Ms M says she never provided any documentation to First Complete, on her Statement of Truth Ms M says *"I sent my correct documents to my broker and any application to [bank] and [CBS] was made by my broker."* The only broker who made an application to CBS was First Complete so Ms M has acknowledged she sent documents to First Complete, notwithstanding that she is now saying she did not.

In the circumstances, I'm persuaded that First Complete was unaware that the information it was provided with was false. First Complete was entitled to rely on the information recorded during the fact-find conversation with Ms M on 18 April 2023 – which is that her income was £71,050 – was true and accurate. I'm therefore satisfied First Complete acted in good faith

when it submitted the application to CBS based on information and documents provided by Ms M.

Ms M was approved for a mortgage of just under £300,000, when her actual income of £43,000 would not have been sufficient to meet affordability criteria for a mortgage of that size. Ms M has suggested that, as a naïve first-time buyer, she wouldn't have been aware of the income multipliers lenders use for mortgages. However, First Complete has said that Ms M told them she used to work for a bank, and believed her to be knowledgeable about mortgages.

The evidence – the fact-find and the WhatsApp messages – show that Ms M and FC discussed her finances. Therefore although Ms M claims there were no discussions with FC about her income or expenditure or any other financial matters, this isn't borne out by the evidence.

I'm satisfied that if Ms M had provided First Complete with information about her actual income (£43,000), an application for a mortgage would not have been progressed by First Complete. I note Ms M holds her previous broker, BGM, entirely responsible for the predicament she is now in. That's a different issue, and I am not looking at a complaint against BGM.

In relation to this current complaint against First Complete, after considering all the circumstances, the evidence is persuasive that Ms M provided documentation and/or information to First Complete about what she stated her income to be. I am entirely satisfied that First Complete wasn't aware this information was inaccurate before it submitted the mortgage application to CBS.

I note First Complete, as a gesture of goodwill, offered Ms M a refund of its £400 fee if Ms M accepted this within 28 days of its final response letter. (Ms M didn't accept this.) In the circumstances, and for the sake of completeness, because I'm satisfied First Complete has done nothing wrong I do not require First Complete to refund its fee. I do not uphold this part of the complaint.

Breach of data retention policy: There is no requirement for First Complete to retain emails indefinitely, and so there is nothing untoward or sinister in First Complete not being able to provide the emails between it and Miss M. It appears Miss M hasn't retained these either, because if she had, I'd have expected her to have provided them if she thought they would support her complaint. I don't uphold this part of the complaint.

The Financial Ombudsman Service isn't a regulator, and I don't have any power to tell First Complete how to run its business in relation to data retention. If Miss M believes First Complete has committed any regulatory or data breach, she'll need to refer her concerns about this to the FCA or the Information Commissioner.

Conclusion

I'm satisfied that First Complete is not responsible for the fraud marker registered against Miss M by CBS. Furthermore First Complete is not required to issue a declaration stating that Ms M did not provide it with any information or documentation in relation to her mortgage application. I'm also satisfied First Complete isn't required to retain emails or documents indefinitely.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 17 December 2024.

Jan O'Leary
Ombudsman