DRN-5025342

The complaint

Miss C and Mr P complain about errors and poor service when they took mortgage advice from an appointed representative of Personal Touch Financial Services Ltd, trading as PRIMIS Mortgage Network (I'll refer to it as PRIMIS).

There was a significant delay in a mortgage application being submitted on behalf of Miss C and Mr P. They were misled about this for several months. They then had to source a mortgage at short notice, they missed out on a mortgage with a lower interest rate and were caused significant stress and worry. They ask that PRIMIS pays compensation.

What happened

Miss C and Mr P took mortgage advice from PRIMIS in mid-2023. PRIMIS recommended a mortgage (which I'll refer to as mortgage 1) and said it had submitted a mortgage application on their behalf. It asked for information and evidence from Miss C and Mr P, including bank statements and pay slips, which they provided. Miss C and Mr P say that PRIMIS told them and their solicitor that the application was proceeding. In fact, no application had been submitted. Miss C and Mr P discovered this in September 2023, shortly before their sale and purchase was due to complete.

Another mortgage adviser at PRIMIS found a mortgage for them (which I'll refer to as mortgage 2) and their sale and purchase completed. However, the terms of mortgage 2 aren't as good as mortgage 1. Miss C and Mr P say they had to take a five-year product as the rates for the two-year products available in September 2023 weren't affordable. Mortgage 2 has a higher interest rate than mortgage 1, a longer product term (five years rather than two years) and they paid a valuation fee.

PRIMIS upheld Miss C and Mr P's complaint. It said there was no reason to think they wouldn't have been offered mortgage 1 if an application had been submitted. It said they would pay about £360 more over the first two years of their mortgage (as compared to mortgage 1). It offered £1,000 compensation to cover this and the upset caused.

Miss C and Mr P said PRIMIS hadn't investigated thoroughly. For instance, it didn't contact their solicitor or the house builder to ask what the adviser had told them. They said it hadn't taken into account they'd make higher payments over five years.

I sent a provisional decision. In summary, I said PRIMIS should put Miss C and Mr P into the position they'd have been in if they'd taken out mortgage 1. That is, it should compensate Miss C and Mr P for the higher interest rate and refund the valuation fee, with 8% interest, and pay the early repayment charge (ERC) if Miss C and Mr P want to re-mortgage after two years. I said PRIMIS's offer of compensation for the distress and inconvenience caused (£645) was fair.

Miss C and Mr P agreed. PRIMIS agreed to pay most of the compensation and sent calculations. However, it didn't agree it should pay the ERC if Miss C and Mr P want to re-mortgage after two years. It said they chose a five-year rate and provided a copy of the fact find to support this.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

PRIMIS made an error. Its mortgage adviser misled Miss C and Mr P for several months that their application was proceeding. In fact, he hadn't submitted an application. He asked for information and documents from them, some containing sensitive financial information. He said a valuation had been arranged when this wasn't true. And he gave incorrect information to their solicitor. Miss C and Mr P discovered this only a short time before their sale and purchase was due to complete.

Miss C and Mr P described their circumstances at the time and how this affected them. There's no doubt that this was extremely upsetting. I think it's right that PRIMIS took prompt steps to help Miss C and Mr P secure a mortgage in September 2023.

Fortunately, Miss C and Mr P were able to secure a mortgage so that their sale and purchase could go ahead. However, the terms weren't as good as the mortgage recommended by PRIMIS in mid-2023.

The mortgage recommended by PRIMIS in September 2023 had a five-year product with an interest rate of 5.34%. The product fee was the same as for mortgage 1. There was a valuation fee of £100 (the valuation for mortgage 1 was free). Miss C and Mr P told us they had to take out a five-year product because by September 2023 the rates for two-year products weren't affordable. They are concerned they will be paying the same rate – which they consider high – for five years.

PRIMIS's recommendation letter said "*I have recommended this lender because they have a very competitive 5yr fixed rate product and excellent service levels. The clients need a mortgage offer within a week, otherwise they will lose the property that they are wanting to buy*." I note that PRIMIS sent a mortgage illustration to Miss C and Mr P for a different lender with a five-year product at a lower interest rate. It seems likely then that the ability to get to an offer within a short time was a significant reason for it recommending this mortgage. PRIMIS's failure to submit an application in mid-2023 was the reason this was necessary.

I think Miss C and Mr P were caused financial loss as well as worry and inconvenience. What I have to decide is what compensation is fair and reasonable in the circumstances. In doing so, I've taken the following into account.

Financial loss due to the higher interest rate during the first two years

Miss C and Mr P will pay more interest between the date of completion and 31 August 2025, due to the higher interest rate (5.34%) for mortgage 2, as compared to mortgage 1 (5.24%). I think it's fair that PRIMIS compensates them for this.

PRIMIS has agreed to pay compensation equal to the difference in the amount of interest that will be applied to Miss C and Mr P's mortgage between completion and 31 August 2025 at the different interest rates for mortgage 1 and mortgage 2.

Miss C and Mr P will be about half-way through the two-year period when they receive the compensation. They will have some of the money in advance, which will to some extent compensate them for the higher payments made before receiving the compensation. Taking this into account, I agree with PRIMIS that it isn't fair to require it to pay 8% interest on the difference in interest payments made to date.

However, I do intend to require PRIMIS to pay interest at 8% on all of the compensation if there is any delay in it being paid after Miss C and Mr P accept my decision (if they do).

Financial loss due to the higher interest rate after the first two years

The product for mortgage 2 expires on 31 December 2028. The product for mortgage 1 would have expired on 31 August 2025. Miss C and Mr P will make payments at the fixed interest rate for longer.

If interest rates increase Miss C and Mr P will be better off – they'll have the benefit of the fixed interest rate for longer. If interest rates fall by mid-2025, Miss C and Mr P will be worse off. They won't be able to take out a lower interest rate product without paying an ERC.

I don't think it's fair to require PRIMIS to pay compensation to Miss C and Mr P for the cost of their payments/interest rate between September 2025 and December 2028. It's not possible to calculate what their loss might be – if any – as we don't know what interest rates will be in the future.

Equally though I don't think it's fair for Miss C and Mr P to bear the risk of the potential loss if interest rates fall by mid-2023. Miss C and Mr P not only missed out on a lower interest rate due to PRIMIS's errors but also found themselves having to source a mortgage within a short time. I think this limited their choices.

PRIMIS says it shouldn't be required to compensate Miss C and Mr P for the cost of the ERC if they switch products after two years. After my provisional decision PRIMIS sent a copy of the fact find. In response to questions about what was important to Miss C and Mr P about their mortgage payments, how long they felt was reasonable to be tied into a product, and why the tie in period was chosen, the fact find says Miss C and Mr P "*want a 5yr fix, to have stable repayments*". The fact find says Miss C and Mr P's priorities were "*speed of processing, competitive 5 yr fix, add arrangement fee to the loan, no HLC, no redemption overhang*".

PRIMIS says a lender at that time offered a two-year product at 5.99%. It says the monthly payments would have been about £1,200 per month, within Miss C and Mr P's budget. PRIMIS says there's nothing to verify that this lender wouldn't have issued an offer quickly. Equally, we can't know that it would have been able to issue a mortgage offer within a week. I'd note that PRIMIS also sourced a mortgage illustration for a five-year product with a 5.26% rate – lower than the 5.34% interest rate for the mortgage it recommended. I assume it recommended this mortgage, despite the higher rate, as it thought this lender was most likely to meet the short deadline.

If the fact find was the only evidence regarding Miss C and Mr P's choice of product, I'd likely accept what PRIMIS says. But I need to look at all of the evidence and the wider situation.

PRIMIS says there's no evidence Miss C and Mr P would have preferred a two-year product. That's not right. They chose a two-year product in mid-2023 and would have proceeded with this (with an interest rate of 5.24%) but for PRIMIS's errors. Miss C says they told the adviser in mid-2023 they didn't want to be tied in for five years.

It's possible that Miss C and Mr P changed their minds between mid-2023 and September 2023 about what product term they preferred - and changed their minds again after taking out the mortgage. It's unfortunate that PRIMIS didn't provide a recording of Miss C and Mr P's call with the mortgage adviser in September 2023 – if the call was recorded – as this might have helped to settle this matter sooner.

We sent a copy of the fact find to Miss C and Mr P and asked for their comments. Miss C said that in September 2023 the mortgage adviser provided information about both five-year and two-year products. Rates for two-year products had increased significantly and they were told the five-year product would mean cheaper monthly payments. Miss C said they were limited as to which lender they could choose due to the short time to complete, which removed a number of lenders from their options. She said they were in a high-pressure situation and knew the payments for the available two-year products weren't going to be manageable for them. This is consistent with what Miss C and Mr P have said to us throughout the time the complaint has been with us.

It would be unfair not to take into account the situation Miss C and Mr P were in – through no fault of their own. They'd been led to believe for several months that PRIMIS had submitted an application for a mortgage with a 5.24% two-year product which would have required monthly payments of £1,100. They would have been budgeting on this basis. They'd been told the mortgage offer was imminent and were due to complete their sale and purchase before the end of September 2023. And they were expecting a baby. On 12 September 2023 they were told no mortgage application had been submitted.

When Miss C and Mr P met with the mortgage adviser (on the same day they were told no application had been submitted) they were, as they say, in a high-pressure situation. They had to start the application process again, with just over two weeks left before completion. Interest rates had increased meaning they'd their monthly mortgage payments would now be higher. Not only did the very short timescale limit the choice of lenders (and, therefore, interest rate products), Miss C and Mr P didn't have time to adjust to the situation and think about their options. Their application had to be submitted without further delays.

Given their concerns about the higher monthly payments and the short timescales, Miss C and Mr P did nothing unreasonable in accepting PRIMIS recommendation for a mortgage with a competitive rate and a lender that could offer a mortgage within their short timescales.

PRIMIS says Miss C and Mr P didn't complain directly about the five-year product when they contacted it about their complaint. But I think they expected it to compensate them for their higher monthly payments over five years. The fact that it didn't was one of the reasons they gave for bringing the complaint to us. I've explained above why I don't think it's fair and reasonable to require PRIMIS to compensate Miss C and Mr P for higher payments between September 2025 and December 2028.

It's impossible now to put Miss C and Mr P into the exact position they'd have been in but for the delays caused by PRIMIS. PRIMIS did have an opportunity to do this. It could have offered in September 2023 (when Miss C and Mr P were choosing a product) to cover the additional cost of a two-year product offered by a lender that could offer a mortgage within a week. Had it done so and Miss C and Mr P had still chosen the five year product, it's unlikely I'd find it fair to require PRIMIS to cover the cost of the ERC. But this didn't happen. When Miss C and Mr P chose the five-year product they thought they'd have to meet the higher monthly payments. They've been consistent throughout that they didn't think the two-year rates available at the time were manageable for them.

Taking all of this into account, I think it's fair and reasonable to require PRIMIS to pay the cost of the ERC if Miss C and Mr P decide to switch to a new product after 31 August 2025 (I've set out more details about this below). This does give Miss C and Mr P the option to switch if rates fall, while also having the benefit of the fixed rate if interest rates rise. But I think this is a fairer outcome than leaving the risk and potential downsides with Miss C and Mr P if interest rates fall.

Valuation fee

Miss C and Mr P paid a £100 valuation fee for mortgage 2. There was no valuation fee for mortgage 1. I think it's fair that PRIMIS compensates them for this additional cost. It should add interest at 8% simple. PRIMIS has now agreed to this.

Compensation for the distress and inconvenience caused

Miss C and Mr P say PRIMIS's adviser lied to their solicitor and to the house builder as well as to them over several months. I don't think the fact that PRIMIS completed its investigation quickly suggests it didn't take the matter seriously. PRIMIS didn't need to ask for evidence from third parties because it accepted what Miss C and Mr P said about what happened.

PRIMIS said we should take into consideration as a material fact that Miss C and Mr P knew a family member had recently experienced issues when dealing with the adviser and still chose to ask him to advise them. It also said it had taken Miss C and Mr P six months to raise their complaint. I'm not sure how PRIMIS thinks this should change the outcome. Miss C and Mr P took advice from one of PRIMIS's brokers. They were entitled to receive appropriate advice and service. They had six years in which to raise a complaint and bring it to this service. They moved home and had a baby. I don't think there's any reason to think this matter was any less upsetting for Miss C and Mr P because they didn't raise a complaint sooner.

PRIMIS's adviser asked Miss C and Mr P for information, including bank statements and payslips over several months – information that he didn't use to support an application. Miss C and Mr P felt misled and concerned about the reasons for asking for this information. They say the adviser called several times a day to update them on his contacts with the lender. This caused unnecessary stress and inconvenience. Miss C and Mr P were overseas for part of this time. Miss C was pregnant and worried about the effect of the stress on her and the baby.

Miss C and Mr P discovered no application had been submitted on 12 September 2023. Completion of their sale and purchase was due at the end of that month. They were understandably upset and worried.

PRIMIS acted promptly to source a mortgage for Miss C and Mr P in September 2023. Nonetheless this was a distressing and worrying time for Miss C and Mr P. PRIMIS offered (in effect) £645 for their upset and inconvenience. I think this is fair and reasonable in the circumstances.

Putting things right

PRIMIS must now do the following:

1. Calculate and pay to Miss C and Mr P the difference in the amount of interest they have paid or will pay between the date of completion and 31 August 2025, due to the higher interest rate (5.34%) for mortgage 2, as compared to the rate for mortgage 1 (5.24%).

2. Pay Miss C and Mr P £100, for the valuation fee, plus 8% simple interest per annum from the date this was paid until the date it pays the compensation.*

3. Pay compensation of £645 to Miss C and Mr P for the upset and inconvenience this has

caused to them.

PRIMIS should pay these amounts to Miss C and Mr P within 30 days of them accepting my decision (assuming they do). After this, it should add 8% simple interest on the whole amount from that date to the date of payment.*

4. If Miss C and Mr P repay their mortgage between 1 September 2025 and 30 November 2025 then PRIMIS should pay compensation to them equal to the ERC they pay to the lender when they repay mortgage 2. They will need to provide evidence to PRIMIS of the amount of the ERC and that it was paid, such as a copy of the redemption statement and a letter from the lender confirming the mortgage was redeemed and/or a letter from their solicitor.

   PRIMIS should pay this to Miss C and Mr P within 30 days of them providing this evidence to it. After this, it should add 8% simple interest on the whole amount from that date to the date of payment.*

*If PRIMIS considers that it's required by HM Revenue & Customs to deduct income tax from this interest, it should tell Miss C and Mr P how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr P to accept or reject my decision before 18 October 2024.

Ruth Stevenson
Ombudsman