

The complaint

This complaint is about an abortive attempt Mr and Mrs H made to secure a mortgage through Elmco Ltd trading as The Mortgage Brain (hereafter referred to as Elmco).

They were eventually turned down for a mortgage by several lenders, but only after they had paid a non-refundable deposit of £14,200 to the auction house that was marketing the property they wished to buy. With other abortive costs and consequential losses, Mrs and Mr H say they are out of pocket by £17,310, which they are seeking from Elmco, along with compensation for their time, trouble and upset.

Whilst the complaint has been brought by Mr and Mrs H jointly, all of our dealings have been with Mrs H on their behalf.

What happened

By way of a provisional decision dated 30 October 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

“The broad circumstances of this complaint are known to Mr and Mrs H and Elmco. I’m also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don’t need to repeat all the details here. Our decisions are published, and it’s important that I don’t include any information that might result in Mr and Mrs H being identified.

Instead I’ll give a brief summary in my own words, rounding the figures, and then focus on giving the reasons for my decision. If I don’t mention something, it won’t be because I’ve ignored it. It’ll be because I didn’t think it was material to the outcome of the complaint.

Mr and Mrs H first approached Elmco for a mortgage to buy their intended home in June 2023. The property was with an auction house, but Mr and Mrs H had been given the opportunity to buy it rather than bid in a live auction. Elmco identified two possible lenders, which I’ll call L and H respectively, and both issued a decision in principle (DIP). H required a 15% deposit, which Mrs and Mr H didn’t think they could raise. L only required a 10% deposit, so Mrs and Mr H favoured L, whose DIP was dated 14 July 2023 and was valid until 14 October 2023.

Mr and Mrs H weren’t able to proceed straightaway; matters rested as they were until mid-August 2023, when they approached Elmco again to resurrect the application to L, having checked with Elmco that the DIP was still valid. On 17 August 2023, Mr and Mrs H paid £16,300 to the auction house, comprising £14,200 (the 10% deposit) and £2,100 in auction fees, and served notice to their landlord of their attention to move out.

On 31 August 2023, the mortgage application was submitted to L, and as part of the underwriting process, L asked for proofs of identity. On receiving Mrs H’s identity documents, L noted that her date of birth and middle name were different from what

Elmco had keyed into its system when obtaining the DIP in July 2023. After correcting the keying errors, L ran credit checks and declined the application.

Elmco tried to source an alternative lender, starting with H. But aside from the issue of H requiring a 15% deposit, it too said no, due to credit issues. Also, H's valuer reported that the property wouldn't be suitable security for a mortgage, as parts of it had single-skinned external walls. Another potential lender, which I'll call K, was approached, but that also came to nothing. Mr and Mrs H ended up losing the property and the money they'd paid up front. They were able to negotiate a new tenancy to stay in their existing home, but at a higher rent for the next twelve months.

Mr and Mrs H complained to Elmco. They said they'd found from L directly that the DIP had been cancelled immediately in July 2023, and Elmco's broker had been informed but let them believe the DIP was still valid. In its final response, Elmco refuted this, saying that the refusal by L was ultimately down to credit issues, the refusal from H down to the house being declared unmortgageable, and it hadn't advised them to pay the deposit when they did.

Our investigator didn't recommend the complaint be upheld; Mr and Mrs H have asked that it be reviewed by an ombudsman.

What I've provisionally decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

I've considered all the available evidence and arguments in order to decide what's fair and reasonable in the circumstances of this complaint. Having done so, these are my conclusions, and the reasons for them. They're different from those reached by the investigator, as are my reasons for reaching them. So I'm setting them out in a provisional decision first. That gives both parties the opportunity to comment before I finalise my decision.

The first thing I need to make clear is that in this decision I won't be considering the actions of L, H or K in rejecting the mortgage applications Elmco submitted on Mr and Mrs H's behalf. My remit is confined to assessing whether Elmco acted fairly and reasonably in the way it handled Mr and Mrs H's attempt to apply for a mortgage.

It seems to me that the starting point here is whether and when Elmco knew, or should have known, the DIP issued by L on 14 July 2023 had been cancelled, if indeed it ever was (I'll clarify what I mean about that shortly). There's no dispute that the DIP was issued based on incorrect information keyed by Elmco on 14 July 2023.

Mr and Mrs H believe the DIP was cancelled, and Elmco informed of this, almost as soon as it had been issued.

I appreciate why Mr and Mrs H have attached some weight to what L apparently told them, but taking a step back and thinking logically, I can't see how that would be the case. It invites the question of how L could know on 14 July 2023 that the date of birth and middle name spelling on the submission from Elmco had been mis-keyed. At that point, L had nothing against which to cross reference the data Elmco had keyed in.

The first opportunity L would have had to check the data and realise the DIP had been issued in reliance on the mis-keyed information was after the mortgage application proper had commenced and the applicants had been asked to submit documentary proof of identity. That only happened in early September 2023, and when L ran its checks based on the correct data, that was when it located the credit issues that were then given for rejecting the application.

A DIP is not a guarantee that lending will be agreed; and the DIP L issued made that clear. A lending decision is only made after an application has been made, and full assessed. So it seems to me that it was the application, rather than the DIP, that was cancelled. Meanwhile, the available evidence doesn't support Elmco having misrepresented the validity of the DIP to Mr and Mrs H before they paid the deposit and auction fees, and gave notice to their landlord.

Nor does the available evidence indicate Elmco advised Mr and Mrs H to take those actions. In my view, they did so of their own volition. I've no doubt they had their reasons for doing so; I imply no criticism of them and none should be inferred. But it was their decision.

Once the mortgage application to L had been rejected, I think Elmco did all it reasonably could to try and source a new mortgage for Mr and Mrs H. It's regrettable that those efforts were also unsuccessful, but that's not down to Elmco.

I will make one observation regarding what Elmco said in its final response about the relevance of the valuation carried out on H's behalf. That valuation didn't declare the house unmortgageable as Elmco said. It merely said that the property wasn't suitable security for a mortgage from H. Elmco should have known not to say that, given that the separate valuation carried out for L had been successful.

All of that aside, however, there remains the undeniable fact that Elmco made a mistake on 14 July 2023 when it keyed in the request for the DIP. Mr and Mrs H are due redress from Elmco for the reasonably foreseeable consequences of that mistake. So I next consider what the consequences were, and whether and to what extent Elmco could reasonably have foreseen them *when it made the mistake*.

(My use of italics is deliberate; my assessment on this point can only take account of what Elmco knew (or should have known) about Mr and Mrs H's likely future actions on or before 14 July 2023.)

To decide what the consequences of the mistake were, I have to think about what would have happened if the mistake hadn't happened.

There's no dispute that Mrs H had a less than healthy credit history; it's something she was quite open about in her early phone conversations with Elmco. So it was common ground that getting a mortgage was always going to be a challenge. If

Elmco had keyed Mrs H's date of birth and name correctly on 14 July 2023, it's logical to conclude that L would have carried out its checks in the usual way, and those checks would have revealed the same result that were revealed in September 2023. In other words, L would have known on 14 July 2023 that it wouldn't be willing to lend, and would not have issued the DIP at all.

Following on from that, it seems reasonable to presume that the likely next sequence of events to unfold would have been for the attempts to source the mortgage with H and K, and they would have been rejected for much the same reasons they would be a few weeks later; that is, because of credit issues and, in the case of H, the property not being acceptable security. In broad terms, then, but for Elmco's keying errors on 14 July 2023, the most likely outcome is that they'd have found themselves in much the same position, unable to obtain the mortgage they needed for the house they wanted to buy.

I said their position would be much the same "in broad terms"; there's one critical difference. In all likelihood, the realisation that Mr and Mrs H couldn't not get the mortgage would probably have been reached before they paid the deposit and auction fees and gave notice to their landlords. So in that context, those actions and the resulting financial impact, *are* a consequence of Elmco's mistake of 14 July 2023.

But there is, as I alluded to, a further test for me to apply; that is, whether Elmco could reasonably have foreseen on 14 July 2023 that Mr and Mrs H would take the actions that have cost them so much money, in reliance solely on receiving a DIP from L. That, after everything else has been taken into account, is what the outcome of the complaint turns on, and I have given it a great deal of thought.

Having considered everything that both parties have said and provided, I'm not persuaded that on 14 July 2023, Elmco could or should have foreseen what Mr and Mrs H would do in reliance on a document which made clear that it offered no guarantee of a mortgage being made available. For that reason, I will not be ordering Elmco to reimburse Mr and Mrs H the main element of their loss claim. What I do think was reasonably foreseeable on 14 July 2023, however, is the potential for an error such as that made by Elmco to cause Mr and Mrs H very considerable distress, worry and inconvenience, from having their expectations raised unrealistically.

Trying to buy a home is an inherently stressful time, especially for people who are doing so for the first time. In Mr and Mrs H's case, Elmco's mistake left them in a limbo phase, hoping and believing they could achieve their objectives, for around two months before they eventually came to realise it would not be possible. For that, I consider an award of £750 compensation is warranted. I understand that Mr and Mrs H might see that as scant compared with the loss they've suffered, and I'm not unsympathetic towards them in that respect. But I've explained why I can't fairly award them redress for the loss itself.

I appreciate how upset Mr and Mrs H are at how things have turned out, and I understand the disappointment and frustration they are likely to feel on reading my provisional decision. All I can add is that should they wish to, Mr and Mrs H could raise separate complaints with the lenders about how their applications were considered. To be clear, I am not advising them on whether they should do so or not. Additionally, nothing I say here is in any way intended to pre-empt what the potential outcome of such a complaint, if made, might be, and nothing should be inferred either way. I make the point merely for completeness, so that Mr and Mrs H are well informed."

Both parties responded to the provisional decision. Elmco accepted it without adding any further comment. Mrs H asked for an extension of time to listen to a recording of a 25-minute phone call she held with L on 14 September 2023. That time has now passed, and Mrs H has told us she hasn't been able to listen to the recording because the supplied security password doesn't work.

We can't leave cases open indefinitely; I have to keep in mind that there are two parties waiting for an outcome to this dispute, and I have to act impartially between both. I also have to assess how likely it is that evidence will have a material bearing on that outcome. Insofar as the key dates in this complaint are 14 July 2023 (when Elmco made the keying error) and 17 August 2023 (when Mr and Mrs H paid the non-refundable deposit) I'm not persuaded a phone conversation with L on 14 September 2023 will have a material bearing on the outcome.

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.

With no material new arguments or evidence to take into account, there's nothing further for me to consider that would give me grounds to change my provisional decision.

My final decision

My final decision is that I uphold this complaint in part, by ordering Elmco Ltd trading as The Mortgage Brain to pay Mr and Mrs H £750 compensation for the distress and inconvenience its mistake caused them. I don't make any other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 24 December 2024.

Jeff Parrington
Ombudsman