

## **The complaint**

This complaint is about a fee Mr F and Mrs M paid to a mortgage broker firm that is part of 2 Plan Wealth Management Limited (2PWML). The fee was paid for arranging a new interest rate product to replace the one that was about to expire on their existing mortgage. In essence, the complaint is that:

- 2PWML misled them about when and on what terms the fee would be refundable; and
- 2PWML failed to provide the service they were seeking, resulting in them securing a new product directly with the lender.

## **What happened**

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll 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.  
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## **What I've 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 work within the rules of the ombudsman service and the remit those rules give us. 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.

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 and/or contradictory, as is the case here, 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.

It's for us, rather than the parties to the dispute, to decide what evidence we need to reach a fair outcome. It's also for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture.

I've taken all of that into account. Having done so, here are my findings on what I consider to be the two broad elements of the complaint, as summarised above.

Were Mr F and Mrs M misled about when the fee would or would not be refunded?

Mr F and Mrs M say they were told in a phone conversation that *“if you finally don’t make it with us we are unable to get you a mortgage you will not be charged”*. There’s no recording of the conversation, so I have no way of knowing exactly what was said in the phone call. That’s not to say I disbelieve Mr F and Mrs M, or that I have disregarded their testimony. It’s simply that I haven’t been able to corroborate it with supporting evidence.

But even if I were to accept on face value that 2PWML’s advisor said the words set out above verbatim, it’s not what the complaint point turns on. That’s because I then have to consider the written information Mr F and Mrs M received following that conversation. 2PWML sent them an invoice for the fee, which said the following:

*“Further to our Mortgage and Protection Agreement, our refund policy is as follows:*

*A full refund if we are unable to obtain you a mortgage because of your personal circumstances which you have disclosed to us.*

*No refund if: you decide not to proceed with our services; your transaction does not proceed; or we are unable to obtain you a mortgage because of your personal circumstances which you have not disclosed to us.”*

The only fair conclusion I can reach is that even if the oral information in the phone conversation had been potentially misleading, any possible ambiguity was removed by the written information in the invoice. Mr F and Mrs M paid the fee after receiving this invoice; it follows that they did so knowing the correct position on when and in what circumstances the fee would be refundable.

It’s common ground that no new mortgage deal was arranged through 2PWML; Mr F and Mrs M arranged things directly with their lender. What I must therefore decide is the second point of the complaint; as summarised at the outset.

2PWML failed to provide the service they were seeking, resulting in them securing a new product directly with the lender.

I have to decide whether the circumstances in which Mr F and Mrs M arranged their new product directly resulted in the fee being refundable or not. That’s where the crux of the complaint lies and, understandably, where the greatest conflict on the evidence is to be found.

2PWML readily accepts that it never reached the stage of giving advice and a recommendation on a new product. Its argument is that Mr F and Mrs M kept asking it to wait a few weeks, and the point-of-sale documentation and contemporaneous notes it made of the contact it had with them do support that position. The documentation also adds weight to 2PWML’s rebuttal of Mr F and Mrs M’s argument that it ignored the information they gave it about planning to move abroad and rent out the mortgaged property.

That’s not to say I disbelieve Mr F and Mrs M’s version of events; I’ve no doubt they’ve given their testimony in good faith and that it represents their best recollections. However, unless there’s a compelling reason to do otherwise, we will typically attach more weight to contemporaneous point-of-sale documentation as it’s more likely to reflect what happened at the time of the events now complained of. I haven’t found a compelling reason not to do that here. Having carefully considered all that both parties have said and provided, I find 2PWML’s evidence to be the more persuasive.

Based on everything I've seen, I find it more likely than not that Mr F and Mrs M *chose* to deal directly with the lender. In other words, they decided not to use 2PWML's service. It's a choice they were free to make, but in my view they knew (or at least should have known) that making it would mean they would not be eligible for a refund of the fee they'd paid. I can't fairly hold 2PWML responsible for the choice Mr F and Mrs M made.

Mr F and Mrs M aren't under any obligation to accept my decision, and if they don't, they'll be free to pursue their complaint against 2PWML in court, should they wish to do so. I would suggest, if Mr F and Mrs M decide to follow this course of action, that they take legal advice before doing so.

### **My final decision**

My final decision is that I don't uphold this complaint or make any order or award against 2 Plan Wealth Management Limited.

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 F and Mrs M to accept or reject my decision before 19 February 2025.

Jeff Parrington

**Ombudsman**