

complaint

Mr P complains of poor service and overcharging by Nadeem Anjum Ayub (trading as Mortgage Management) (MM) on his mortgage application.

background

Mr P's complaint

Mr P consulted MM, a mortgage broker, about his application for a mortgage loan. He complains that he received poor service and was overcharged. The issues set out in his complaint form are:

1. MM provided an inefficient, unreliable and unprofessional service. Mr P had to chase MM for a service which should have come swiftly. MM had avoided phone calls, not replied to text messages on time, made him send documents over and over again, sent messages during work hours when MM knew he didn't have email or phone access at work, expected him to respond immediately and then blamed him for not responding on time.
2. MM had sent an invoice for £2895 for a product which never materialised, on top of a processing fee already paid. Mr P was extremely annoyed and surprised at being sent an invoice for a highly unprofessional, unreliable and negligent service. MM put him under undue stress and pressure to make payment for a service which had never materialised. Mr P shouldn't be charged for a service which was non-existent, stressful and made him lose out on time and money.
3. MM hadn't provided documentation he requested in support of the invoiced fee. Mr P had requested MM to provide him with a copy of the contract and documentation for the invoiced amount, but it hadn't done so.
4. On 13 August 2015 MM's phone was answered by a girl, with another in the background who giggled and laughed and poked fun at Mr P and refused to pass the phone on to MM. The personal information supplied to MM wasn't secure as its mobile phones and other electronic equipment were accessible to anyone. This could have an adverse impact on his employment.
5. Mr P had continuously requested MM to return his original documents which he hadn't received back. MM hadn't promptly forwarded any documentation to the solicitor.
6. MM misled him with respect to his rented dwelling by encouraging him to stay beyond the expiration of the tenancy, and let the landlord go to court to get a possession order against him while MM processed the mortgage application.
7. MM had asked him to make payments into different accounts, but rectified this when Mr P queried it. He wants that to be looked into.

To resolve his complaint Mr P wants his payment of MM's invoice to be refunded as it was for a service which he never received. He wants to see the information on the basis of which the invoice was generated. He wants all his original documents to be returned. He wants all his data to be securely destroyed or returned. He wants a written apology for fabricated allegations.

MM's response to the complaint

MM said that Mr P wanted to move to a catchment area with better schooling for his child, and owing to shortage of time, wanted to rent a house in that area and let his current house. But his existing lender wouldn't consent to let the house. He'd been unable to get a mortgage from his own resource or via the intermediaries he'd approached. Most lenders required prospective borrowers to have a residential home, in addition to the investment property. Mr P was thus outside most lenders' criteria. He then rented a house in the catchment area and was paying rent on this, as well as making his mortgage payments.

In January 2015 Mr P asked for various quotations but was undecided on a number of issues, particularly the amount of the deposit he would put down, how he'd source any shortfall in the deposit, which of four proposed homes he wished to buy and whether to apply jointly with his spouse, who was now back at work, or in his sole name. This would have amounted to a large number of illustrations, and MM advised it could only do 90% loan to value (10% deposit) and needed to know which property Mr P wanted to proceed with. Nothing was heard from Mr P until 1 May 2015.

Mr P failed to supply documents promptly and refused to supply some documents, which he'd stated he would if they were required. He was also not keen to supply his bank statements and didn't do so until late in the process. This would then case [sic] documents previously held on file and it created a catch 22 situation for which Mr P was responsible. For example, the documents sent and requested from him between 10-14 May, were supplied after two months and they had been altered and were thus unacceptable and further time was lost until fresh ones were sent.

MM said that Mr P's application was promptly handled. Mr P had said it took three months, but he only sent the documents after 15 July in hard copy and these were unacceptable so he resent them a week later. Even then they were incomplete and despite repeated requests, he didn't send the minimum documents required until after 25 July. Mr P's email of 22 July stated:

"PAGE 4 still outstanding will do in the evening as the system was crashing and I am getting late to work!"

This being a Friday evening would mean, at the earliest, Monday 25 July. Even then he didn't send the bank statements, stating in his email of 19 August:

"With regards to the bank statement, I will do only if it is and when it is required."

MM had written on 14 May, 4 June and 8 July and made voice calls, asking for bank statements. Once Mr P sent in the bank statements, these were promptly sent to the lender.

Mr P then decided to proceed with a cheaper alternative and asked MM to proceed but appeared to be stalling. MM was informed that he had applied to another bank for a mortgage. MM contacted him about this and Mr P just ignored this point. It became apparent that he wanted two strings to his bow. The lender had been stalled very much already and had given a deadline of 24 September. MM had exhausted all means and therefore closed its file on 2 October 2015 and sent Mr P an invoice for its services.

In relation to the alleged phone call on 13 August, Mr P hadn't raised the issue at the time. MM's principal's telephone handset in use was protected by a PIN. No one had access to the phone, not even his wife. This was because of the Data Protection Act. A different phone was used for personal calls. There were no two little girls either in his office or his home. Mr P's original documents had been sent by secure post, but were returned as he failed to collect them.

The adjudicator's view

Our adjudicator didn't recommend that the complaint be upheld. He said the fee contract and terms and conditions of business, which Mr P had signed, clearly set out the fees he would be charged, and that these fees would be charged whether or not an application succeeded. The fees had been charged in line with this agreement.

MM had no control over what information the lender asked for, the decision the lender made about the amount it would lend, or how long this took. All it could do was pass on the lender's requests for information and the outcome of the application, which it had done.

Although Mr P was unhappy with the way MM handled his complaint, it was up to each business how it ran its complaint handling process. And there was no requirement for it to have an independent complaints department. If the customer were unhappy with the business's response the complaint could then be brought to the ombudsman service.

MM had tried to return Mr P's original documents on 14 October 2015 but the letter was returned by Royal Mail as it needed to be signed for and no one called to collect it. It wasn't unreasonable for MM to ask Mr P to confirm his address before trying to resend the documents.

The adjudicator had reviewed all the correspondence provided. He didn't agree Mr P was given any incorrect information or that there was anything else to show his application was adversely affected by the actions of MM. Mr P had agreed to pay MM's fees for the work it did as a mortgage broker, regardless of the outcome of any application. MM had carried out the actions it agreed to in its terms and conditions so it didn't need to refund the fees paid.

Mr P asked for the case to be considered further. I took a different view of the complaint to the adjudicator. So I decided to issue a provisional decision, setting out my view of the case and inviting further comments. Both parties have now responded and so I issue my final decision.

my provisional decision

In my provisional decision, I said:

I will deal with Mr P's complaints following the numbering above.

1. In relation to the complaint that MM made Mr P send documents over and over again, I have a letter from MM to Mr P dated 4 June 2015 asking for documents, as "*the documents sent by you have expired*". The eight documents listed included two proofs of addresses, three tenancy agreements and proofs of a deposit and a gift. Only one, namely the three months' most recent bank statements, was of a type which could obviously expire.

However on 8 July 2015 MM wrote to Mr P again, in terms identical to the letter of 4 June, asking for the same eight documents. This letter doesn't state or imply that Mr P had failed

to send them in response to the letter of 4 June, and in that case MM was asking for a third set of the same documents.

MM's letter of 11 July 2015 to the proposed lender suggests there had been a delay due to unavailability of the property being purchased, but I have no details of this. It's apparent from that letter that Mr P had moved since the application was made, and this would account for the new proofs of addresses. But MM has given no explanation for twice requesting further copies of the other five documents.

In relation to the complaint that Mr P had to chase MM for a service which should have come swiftly, Mr P has evidenced this by sending a great number of emails. MM has done the same, so there is a very large amount of material. In addition MM has submitted 39 pages of SMS messages in extremely large fonts but I have found these very difficult to relate to the complaints. If MM wishes me to look at any particular parts of this material, I shall be grateful if it will so indicate in its response to this provisional decision.

Having considered the correspondence I agree with the adjudicator that it doesn't evidence that Mr P was given any incorrect information or that there is anything else to show his application was adversely affected by the actions of MM. Although there are some instances of delay, its actions were, on the whole, reasonably prompt.

2. Mr P made a written contract with MM. It's signed by both parties and dated 14 May 2015. MM's invoice is made up as follows:

broker fee	2727.00
loss of proc fee	2160.00
clause 8 rebate	(1404.00)
clause 19 rebate	(551.00)
total	2895.00

Those figures add up to £2,932 not £2,895 so there's an undercharge of £37.00.

The broker fee is charged under clause 16 of the contract which reads:

"You agree to pay our upfront non-refundable broker fee of £2,727.00 on application for funding."

Accordingly this fee became payable when MM made a mortgage application. MM wrote to Mr P on 15 May 2015 saying the application had been submitted to the lender, and I have seen a copy of the application. I therefore agree with the adjudicator that this fee was properly charged.

The invoice says the loss of process fee is charged pursuant to clause 17 of the contract which reads:

"If your application does not proceed for any reason, or you fail to produce documents required, or the lender declines your application, you will be liable of our fee stated in clauses 9 and 16."

Clause 9 reads:

"You will pay any loss we suffer, including any refund of fees that we may have to make to the lender or a fee that we may have earned had the matter not been tainted with fraud. This means that you will pay our broker fee stated under clause 16 and, and the fee that we may have earned from the lender, which will be up to 1% of the gross loan amount. This fee will be shown in the Key Fact Illustration (KFI)."

The KFI says:

*4A. What will you have to pay us for this service?
(a) A non-refundable Process Fee of £599.00 plus £100.00 for each £100,000 or part thereof that the property increases in value above £100,000, at the offset.*

I assume "offset", should read "outset". "Tainted with fraud" doesn't have its usual meaning, because clause 6 of the contract says:

"A fraudulent application is classed as that in which incorrect or no information is provided in respect of answers asked by the service provider or any of its agents or intermediaries."

It follows that under clause 9 of the contract the process fee is payable if Mr P fails to provide information requested by MM. Under the KFI it's payable in any event. Under clause 17 it's payable if the application doesn't proceed for any reason.

As the application didn't proceed, the process fee is payable under clause 17 so I don't think any useful purpose would be served by trying to decide whether Mr P had failed to provide information, clearly a very contentious issue here.

In the mortgage application the property value is stated to be £240,000 which produces a process fee according to the KFI of £599 plus £200 = £799. There is therefore an overcharge of £1,361.00.

The clause 8 rebate is described in the invoice as: *"Treating customers fairly policy rebate – Clause 8"*, and clause 8 so far as relevant says only: *"We will treat you fairly and in the spirit of the FCA and the PRA"*. Therefore the reason for the rebate of £1,404 isn't apparent to me, but nothing seems to turn on this. The clause 19 rebate appears to be a reduction for prompt payment.

Mr P says he circled the "payment clause" and crossed it out saying that he didn't agree with it. But the copy provided to me, which bears Mr P's signature, doesn't show this.

3. These documents have now been made available as seen above, presumably since the complaint to this service.

4. MM says the principal's telephone handset in use at the time was protected by a PIN and nobody else had access to it, and there are no such girls. There is no documentary evidence to assist me on this issue, and I will say only that I have seen nothing to persuade me that the security of Mr P's personal information has been compromised.

5. I have set out above the adjudicator's view on this issue. In response to that view, Mr P said MM may have tried to return the documents, but there was no indication of the post being sent. However MM has produced confirmation from Royal Mail that a notice was left

and that the item wasn't called for. I haven't seen any solicitors' chasing letters or other evidence of delay in forwarding documents to a solicitor.

6. My understanding from the documents is that Mr P didn't in fact do this, so even if the advice was wrong he can't have suffered any loss as a result of it.

7. I would invite Mr P, in response to this provisional decision, to identify the letters or emails in which MM asked him to make payments into different accounts, and indicate what loss he suffered as a result.

Summary

My provisional view is that:

- with reference to the third paragraph under number one of my provisional findings, MM should pay to Mr P compensation of £75 for the trouble and upset caused by twice requesting further copies of documents already supplied;
- with reference to number two of my provisional findings, MM should refund to Mr P £1,361.00 being the amount overcharged for the process fee, less the £37.00 undercharge, making £1,324.00.

the responses to my provisional decision

Both parties responded to my provisional decision.

Mr P commented on MM's responses to his complaint, and also on my provisional decision. With regard to the latter he said:

1. He had suffered substantial losses owing to the unprofessional service provided by MM. The monetary losses were:

1. Payment to Solicitor £300 (1 July 2015)
2. Payment to MM for Processing Fee £799 (2 June 2015)
3. Charge made by MM £2895 (October 2015)
4. Car Parking Charges when visiting Derby City Council and Citizens Advice Bureau Derby (June 2015)
5. Time off from work – 2 days to sort the matters out.
6. Removals charge.

Most importantly, the stress and inconvenience caused to him, his wife and his children over a period of six months could not be compared with anything.

2. He stood by his statement that he had crossed out the payment clause. He produced a message from MM:

"You need to resend the fee note. It has comments and added words that are unacceptable....Please resend without any additions, comments or amendments."

And an email he had sent to MM:

"I still do not get the fee and believe it is well above the market rate, however there may be some sort of rebate/discount which you applied last time which may have been missed out in our conversations."

4. Mr P produced a "snapshot" from his phone company showing calls to the mobile number of the proprietor of MM. He said his concern was that the proprietor's phone could get into the hands of strangers in his absence or while he might be attending other business. The proprietor should be requested to provide where he was on the day and time when the call was made, which might provide further evidence to confirm or clear the concern.

7. Mr P produced a message from MM asking for the process fee to be paid into an account of another named individual. He said that when he had questioned this, he was provided with the MM account details and the payment was made to the MM account. In reply to my question what loss he had suffered as a result, he listed six items of loss caused by MM's unprofessional service.

MM commented as follows:

1. In relation to my provisional finding that MM should pay to Mr P compensation for twice requesting further copies of documents already supplied, MM said it accepted that it was wrong to do that. However looking at the context, I believe there is an error and that MM meant to say that it didn't accept it was wrong. MM's position was:

"...it was a legal requirement and was also necessary in accordance with:

- 1) Due diligence*
- 2) MMR*
- 3) Regulatory requirement*
- 4) Fraud prevention*
- 5) Lender requirement*
- 6) Document certification*

I do not accept that these damages are fair for requesting Mr P for the documents more than once.

Mr P provided some, not all, documents electronically but failed to supply the originals as per legal requirements until much later. Some documents were non-compliant and such were not acceptable. He was asked to provide them again.

Thus the repeated requests were not only required but were necessary as stated above. Whilst electron [sic] documents can be used to work with to asses an application and even issue and AIP / DIP they cannot be used beyond this."

2. I had assumed incorrectly that "proc fee" meant the process fee. In fact it meant "procreation fee", and both fees were chargeable:

- the process fee was £799 under clause 11 and was charged in a separate invoice dated 14 May 2015, of which MM enclosed a copy.
- the procreation fee was chargeable under clause 9, which is quoted above. The figure of £2160.00 was therefore 1% of the loan amount, being a fee which MM may have earned from the lender if the application had proceeded. In fact the fee which

would have been earned from the lender was £756, and the difference of £1404.00 was the reason for the rebate of that sum in MM's invoice.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Following the same numbering:

1. I've noted the monetary and non-monetary losses set out by Mr P, but I'm not minded to change my provisional view on this item. He hasn't persuaded me that these losses were caused by failings on the part of MM.

I've also noted MM's explanation for the repeated document requests, but none of these matters seem to have been explained to Mr P. The letter of 8 July was substantially the same as the letter of 4 June and sought many of the same documents without stating or implying that Mr P had failed to send them in response to the letter of 4 June. The position wasn't made clear (as MM partially accepts) and this created the unfortunate impression that MM had simply ignored or mislaid the material which Mr P had sent.

2. The message referred to by Mr P confirms only that he proposed some amendments to the payment terms which weren't accepted by MM. The matter nevertheless went on and Mr P signed the unamended contract which I have. His proposed amendments were therefore not incorporated into the contract. The email certainly confirms he considered the fees to be too high, but there's no evidence on which I can conclude that any different fees were agreed upon.

I accept MM's point that the process fee isn't the "proc fee" as I had assumed, and it is indeed charged separately, under clause 11 of the contract, in MM's earlier invoice dated 14 May 2015, which I hadn't seen previously.

Brokers often receive a commission from lenders which is known as a procreation fee. I understand MM's explanation that what the invoice does is to charge 1% of the loan applied for (£2,160) and then apply a rebate of £1,404 to bring the fee down to £756, the procreation fee which the lender would have paid MM if the mortgage had been completed. And the KFI does say in paragraph 13 that MM would have been paid £756 by the lender in that event. But I can't see that this was explained to Mr P, and it isn't clear from either the contract or the invoice. There's no obvious reason why the invoice doesn't simply charge £756.

Be that as it may, the question is whether MM is entitled under the contract to recover that sum from Mr P. The invoice says it is payable under clause 17 which says:

"If your application does not proceed for any reason, or you fail to produce documents required, or the lender declines your application, you will be liable of [sic] our fee stated in clauses 9 and 16."

Two fees are stated in clause 9, namely the broker fee (which is a separate charge in the invoice) and *"the fee that we may have earned from the lender"*.

I should add that clause 9 also refers to *"the fee that we may have earned had the matter not been tainted with fraud"*. As mentioned in my provisional decision, this connotes a failure by Mr P to provide correct information, but it's not necessary for me to decide that point

because the fee is payable under clause 17 anyway, as the application didn't proceed to completion.

4. Mr P's point appears to be that he believes the proprietor of MM was in Ireland at the time of the call. But even if that were the case, I can't see that it provides evidence that the security of Mr P's personal information was compromised.

7. Mr P's six items of loss relate to his complaints about MM's service and not to the request to make payments into a different account. He hasn't shown that that request caused him any loss.

Summary

I confirm the award of £75 compensation for trouble and upset. This is because although I haven't upheld Mr P's complaint that MM provided an inefficient, unreliable and unprofessional service, I do consider that MM made confusing or unclear communication in two areas:

- the first was the multiple requests for the same documents. I have understood MM's explanations why the repeated requests were necessary, but these weren't clearly communicated to Mr P at the time and I can see why he thought MM was asking for documents he'd already provided;
- the second was in relation to the invoice dated 2 October 2015. "Proc fee" is a reference to a procreation fee which might be paid by a lender to a broker, but there's no explanation in MM's covering letter to Mr P. Instead of charging the "lost" procreation fee of £756, MM confusingly charged £2,160, reducing this to the correct amount of £756 by applying a rebate of £1,404 which could only be obtained by paying the invoice in seven days. This wasn't fair or reasonable.

I don't confirm the refund of overcharged fees as I'm satisfied from the explanations given that the fees were properly charged in accordance with the contract. In all other respects I confirm my provisional decision.

my final decision

My decision is that I uphold this complaint in part and order Nadeem Anjum Ayub (trading as Mortgage Management) to pay Mr P compensation of £75 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 31 May 2016.

Edward Callaghan
ombudsman