

## **complaint**

This complaint is about an attempt Mr C made to obtain a re-mortgage through mortgage broker Marilyn Parkins, who trades as Designed Mortgages ("DM"). DM didn't succeed in securing a mortgage for Mr C, and he says it should return the broker fee (£1,850) he paid it.

## **background**

By way of a provisional decision dated 3 September 2020, which is attached below and forms part of this final decision, I set out, with reasons, the basis on which I was minded to determine this complaint, subject to the further submissions of the parties.

I gave the parties until 3 October 2020 to reply. Both have done so already. DM accepted my provisional decision; Mr C made further submissions, which I summarise below:

- Regarding the location of the holiday home, Mr C said DM had falsely amended his email of 1 December 2018, substituting the word "second" for "Spanish" when describing the property he was intending to buy. He provided a pdf of the email as he'd sent it.

Mr C provided a copy of his bank statement for December 2018 that'd he supplied to DM in January 2019. This showed a payment to a Spanish bank account. He said he'd expect DM to have asked why he had an account in Spain if she didn't know he was buying a property there.

- Regarding the car purchase, the bank statement also showed a payment to the car dealer. The payment reference included the vehicle registration, so DM should have known what that was for. Mr C said he'd given DM access to his credit file so she could check it periodically; had she done so, she'd have seen the new credit facility for the car.

## **my findings**

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

Mr C has taken great exception to what he considers as me calling him a liar over the 1 December 2018 email. In fact, I did no such thing; in my provisional decision, I specifically said I *wasn't* suggesting he'd deliberately falsified the email content when he summarised it in his timeline, but was happy to treat it as an innocent mistake.

It's possible Mr C read my provisional decision in haste and was mistaken in his understanding of it. But his comments do sit a little uneasily alongside the readiness with which he's levelled the same accusation at DM.

Mr C says he's prepared to involve the Police if need be. That's his prerogative of course, but I'm not sure this is a matter for the Police. Insofar as there's an inference of defamation, it would appear to be something more suited to a civil court action.

In any event, I must disregard the accusation and counter-accusation element here (and to emphasise the point, no such accusation was made by me). The fact is that, having now seen two different renderings of the 1 December 2018 email, I've no way of telling which version is genuine and which one has been changed, and I'm not prepared to speculate either way.

On the other evidence of the bank statements and credit file login, I'm not persuaded these help Mr C's case as much he thinks. The context here is that his obligation to DM was to *disclose* material facts to DM. Supplying bank statements and expecting DM to decode what's in them isn't disclosure. And even if DM had said she'd periodically check Mr C's credit file, it wasn't something that she was *required* to do, and it didn't relieve Mr C of the obligation to disclose relevant information directly. Mr C has said he did so in phone conversations; DM says he didn't and again, whose recollection is the more reliable is unknowable.

Put all of the above together and the additional material Mr C has provided hasn't changed the position I set out in my provisional decision. That is, that I'm not persuaded that his version of events is any more than just as likely as DM's version. As I explained, *just as likely* isn't enough for me to find in his favour and order the refund of his broker fee.

### **my final decision**

For the reasons set out, above, I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 October 2020.

Jeff Parrington  
**Ombudsman**

## CONTENT OF PROVISIONAL DECISION

### complaint

This complaint is about an attempt Mr C made to obtain a re-mortgage through mortgage broker Marilyn Parkins, who trades as Designed Mortgages ("DM"). DM didn't succeed in securing a mortgage for Mr C, and he says it should return the broker fee (£1,850) he paid it.

### background

The details of this complaint are well known to both parties so I won't repeat them again here. Instead I'll focus on giving the reasons for my decision.

### my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. If I don't mention anything, it's not because I've overlooked it; rather, it's because I didn't consider it relevant to the outcome of the complaint.

The starting point here is the agreement between Mr C and DM. The broker fee is not refundable if, after a full application has been submitted, any of the following circumstances apply:

- if Mr C failed to provide sufficient satisfactory documentation;
- if new information came to light that Mr C hadn't previously disclosed; or
- if the property survey or valuation failed.

Neither the first nor third circumstance applies here; the case turns on whether information that contributed to the application failing was disclosed before or after the fee was paid and the application submitted to the lender.

Having considered everything that's been said and provided, I'm satisfied that there are two key pieces of information that will have had a bearing on the likelihood of Mr C's mortgage application succeeding. These are:

- that in December 2018, he entered in to a new finance agreement for the supply of a car on credit; and
- that the holiday home he wanted to buy with the money being raised from the re-mortgage was located overseas.

The relevance of the latter point is that whilst lenders will generally agree to lend for the purpose of finding second homes in the UK, they rarely do so for overseas property.

Mr C says DM was made aware of these pieces of information before the fee was paid and the application submitted to the lender; that was in mid-January 2019. DM says the first it knew of either was much later when discussing with Mr C the ramifications of the lender having reduced the amount it was willing to lend, and he was asking for his fee back.

That's what the complaint turns on. I've weighed up the conflicting arguments and the evidence underpinning them very carefully, and on both points, the position isn't clear either way.

DM completed a fact-find in early December 2018. The fact-find records that Mr C was raising capital to buy a holiday home. But there's no mention of the location; specifically no reference to the planned purchase being overseas.

Mr C's evidence is that the location was mentioned in his original email introducing himself to DM, which was on 1 December 2018. However, that evidence is part of a time-line he put together when referring his complaint to us. DM has provided a copy of the email as it was actually received on 1 December 2018, and the content simply refers to buying a second home. There's no mention in the original email of the holiday home being overseas, and I've not found any reference to it being overseas prior to the fee being paid and the full application being submitted to the lender.

I'm not suggesting for one moment that Mr C has deliberately falsified the content of the 1 December 2018 email in his time line; it may simply be an innocent mistake on his part. But it does diminish the reliability of his evidence, and limit the weight I can place on it when deciding the complaint.

There's a similar ambiguity regarding the car loan. The fact-find captured details of Mr C's existing credit commitments – they're listed in a section marked "Financial Details". The commitment for the new car isn't listed amongst them, and I wouldn't expect it to be. According to the document Mr C later provided to us, he entered into the agreement on 20 December 2018, a little over two weeks after the fact-find was completed.

There is a note on the fact-find saying that Mr C has got rid of one of the existing commitments and borrowed £45,000 to buy a car. This note is written in the margins of the form and for the reason already outlined, must have been added after the form was initially completed. There's no way of knowing for certain *when* it was added, and nothing that would enable me to decide one way or another if it was before or after the fee was paid and the full application submitted.

I need to base my decision on the balance of probabilities. When considering any complaint like this, as Mr C is the one bringing the complaint against DM, to uphold the complaint Mr C's version needs to be *more likely* than DM's version; not *just as likely*. Having considered everything before me presently, I can't say Mr C's version is anything more than, at best, *just as likely*, which isn't enough for me to uphold his complaint.

On balance, having considered everything both parties have said, the available evidence doesn't persuade me that DM was aware of the location of the holiday home or the car loan at the time the application was submitted to the lender. Given this, I'm not persuaded DM has done anything wrong.

### **my provisional decision**

My provisional decision, further to the final comments from both parties, is that I don't intend to uphold this complaint or make any order or award against Marilyn Parkins trading as Designed Mortgages.

I'll review the case and issue my next decision after 3 October 2020, or sooner if both parties confirm they've said and provided everything they want in response to this provisional decision. Neither party need repeat anything they've said already.

Jeff Parrington  
**ombudsman**