

The complaint

Mr and Mrs T are unhappy with what happened when they applied to take out a lifetime mortgage with Legal & General Home Finance Limited (“L&G”).

They’re unhappy that L&G said a strip of land had to be registered in order for the mortgage to proceed. This led to delays in the application which meant the mortgage offer expired, and when a new offer was issued it was at a higher interest rate and didn’t have cashback on completion.

What happened

Mr and Mrs T applied for a lifetime mortgage on 30 January 2020. They received advice from an independent mortgage adviser and applied for a £63,700 mortgage at a fixed interest rate of 5.65%. The product was noted to give 2% cashback at completion.

A valuation of their property was carried out, which gave a slightly lower figure than Mr and Mrs T had thought.

L&G issued a mortgage offer on 7 February 2020. That was for £59,150 with a fixed interest rate of 5.64%. The offer noted cashback of £1,183 would be paid when the mortgage completed.

A revised mortgage offer was issued on 10 February 2020, with the only change being the fixed interest rate was slightly lower at 5.37%.

L&G’s solicitor received the mortgage offer, and as part of the legal process it ran a title plan search to check the land to be charged under the mortgage. That search found a strip of unregistered land that was deemed to be a potential issue in the future so L&G wasn’t able to proceed until that was resolved.

L&G’s solicitor emailed Mr and Mrs T’s solicitor on 13 February 2020 saying *“We have reviewed the title plan and note there is a small strip of unregistered land in between the two sections of your clients’ title. It would appear that some neighbouring property have the same arrangement whereas others do not. Does this strip form part of your clients’ property? Do they use it exclusively? Can they make an application for adverse possession or is it some sort of pathway that is in use by other properties?”*

L&G’s solicitor reminded Mr and Mrs T’s solicitor on 20 February about the title issue. As Mr and Mrs T’s solicitor confirmed that the piece of land should be included in the title, L&G’s lending policy required it to be registered.

Then on 26 February it emailed Mr and Mrs T's solicitor saying:

"We thank you for your recent letter with enclosed documents. We are unable to proceed in the matter until all our client's requirements have been satisfied.

We note your client advised that there the strip of unregistered land should be included in the title. We require you to submit the application in the land registry and provide us the official copies for the unregistered land. Also confirm that there are no buildings in the possessory title.

If you have provided information with an expiry date, such as searches, redemption figures, buildings insurance or the like, you must note the expiry and provide updated documents ahead of completion.

Please note the mortgage expiry date 31/03/2020 and ensure you send the complete information to us in good time before the expiry."

I understand Mr and Mrs T's solicitor submitted an application to the Land Registry in March 2020.

Mr and Mrs T said, *"The Land Registry sent a letter saying they were coming to our property in March - then didn't come - (we never saw them until they came on 5th June 2020)."*

They've also told us that when they signed the mortgage deed on 18 February they were unaware of this issue as their mortgage broker didn't tell them until 19 February, and then their solicitor told them on 20 February. They said they wouldn't have signed the mortgage deed if they'd known about the issue.

As the title issues still hadn't been resolved in June, with no updates forthcoming from Mr and Mrs T's solicitor about how long it would take, the application was marked as aborted.

Mr and Mrs T's solicitor finally emailed on 15 July to say the strip of land had been registered and so matters could now be moved forward.

Unfortunately by then the product Mr and Mrs T had applied for had been withdrawn so a new product needed to be selected. This was a fixed interest rate of 5.41% but with no cashback.

A revised offer was issued on 20 July, and the mortgage completed on 3 August.

Unhappy with everything that had happened, Mr and Mrs T complained to L&G who didn't uphold the complaint.

Matters were then referred to us and our investigator didn't think L&G had done anything wrong. As Mr and Mrs T didn't agree it has been passed to me to decide.

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.

Mr and Mrs T have set out their account in considerable detail. I trust they won't take it as a discourtesy that I've condensed their complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome. This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and I don't act under either's instructions or take directions on how a complaint will be looked at and what issues should and shouldn't be considered.

I'm sorry to see what a difficult time this was for Mr and Mrs T, and I'd like to thank them for being so open with us. Things clearly couldn't have been easy, and I hope matters have improved for them now.

Mr and Mrs T said, in answer to our investigator's findings *"You found L&G did not act unfairly and said they had no causal responsibility for what happened. You separate them from the the intermediaries but we feel our complaint is about the composite working of all interested parties; below we find fault with their collective handling of our case."*

In deciding this complaint I'm only able to look at the acts (or omissions) of L&G. I'm not able to consider the acts (or omissions) of Mr and Mrs T's mortgage broker or their solicitor, nor can I consider the acts (or omissions) of the Land Registry. I also can't consider a complaint about the composite working of the parties. Mr and Mrs T appointed their own mortgage broker and solicitor, those parties were nothing to do with L&G and it has no responsibility for anything those other parties did or didn't do. With that in mind I'm sorry to disappoint Mr and Mrs T but there's simply no grounds for me to uphold their complaint. I'll explain why.

There's no dispute that L&G progressed the initial application promptly, with an offer being issued less than two weeks after the application was made. Once the offer was made, matters were passed to the solicitors to deal with. That's completely normal industry practice and I'd never expect a lender to instruct its solicitor to start the legal work before an offer has been issued.

L&G's solicitor received its instructions to start the legal work on 10 February, and within three days – so on 13 February - it had identified this potential problem with the title and queried it with Mr and Mrs T's solicitor. I can't comment on why Mr and Mrs T's mortgage broker and/or solicitor didn't pass this information onto Mr and Mrs T until 19/20 February as that wasn't down to L&G.

Once Mr and Mrs T's solicitor had confirmed the piece of land should be included in the title, L&G's solicitor explained what needed to be done:

"We note your client advised that there the strip of unregistered land should be included in the title. We require you to submit the application in the land registry and provide us the official copies for the unregistered land. Also confirm that there are no buildings in the possessory title."

There was nothing further that L&G or its solicitor could do then until it received confirmation from Mr and Mrs T's solicitor that matters had been resolved.

Mr and Mrs T have said:

"This issue is very annoying to us. As far as we can deduce, a near 100 years possession by my wife's family and 46 years by us, should have been enough to validate our legitimate possession of land which like our "neighbouring properties", in a clearly residential area, surely met the Land Registration Act's 12 year criteria for "adverse possession". Still, we had no choice but to adhere to [their solicitor's] request to apply to the Land Registry; after all, we had already signed the mortgage deed!"

They also said that the issue hadn't been raised with previous mortgages, remortgages and an equity release mortgage they'd undertaken.

Whilst I understand Mr and Mrs T's confusion, all I can consider here is if L&G was following its own lending policy. I can't consider what other lenders may or may not have agreed to. L&G has provided me with a copy of its policy about this issue and that states that adverse possession will only be accepted where the borrower is registered at the Land Registry as the owner of the title. That isn't at all an unusual policy in the secured lending market – it certainly isn't unfair or unreasonable - and L&G are entitled to follow it. It also didn't have to release the funds with an undertaking the work would be completed at a later date.

But Mr and Mrs T didn't need to adhere to this request even though they'd signed the mortgage deed. That's because the deed isn't binding until the mortgage completes. That is something Mr and Mrs T's solicitor should have explained to them, that they had the right to walk away at that point if they weren't happy with what L&G required. It wasn't L&G's responsibility to explain that to Mr and Mrs T.

Mr and Mrs T have said

“However, what was not known to us, or explained by anyone, was that it would take until 15th July 2020 to give clearance to proceed. No-one had hinted that this procedure could have invalidated our offer. Surely, we felt. Land Registry business was related to specific, on-going mortgage contexts, and ours had been completed by us? Surely, Legal and General had the power or responsibility necessary to expedite Land Registry's actions in relation to this particular lifetime mortgage context?”

Unfortunately L&G had no power – or responsibility – to expedite things with the Land Registry. It also couldn't have explained the possible timescales to Mr and Mrs T as it wouldn't have known them, and they were entirely out of its control. L&G's responsibility ended at the point Mr and Mrs T's solicitor was notified of what needed to be done if Mr and Mrs T wanted to proceed with the mortgage. In fairness, L&G's solicitor also reminded Mr and Mrs T's solicitor that the mortgage offer had an expiry date. With that, L&G and/or its solicitor could do no more. It was then simply waiting for Mr and Mrs T's solicitor to confirm that work had been done, or that Mr and Mrs T no longer wanted to proceed.

Mr and Mrs T have queried the questions that were asked of their solicitor, I quote:

“In the letter of September 11th 2020 (Enc 6), we find the quotations one not identified and one from to Compliance Manager - unconvincing. In the unidentified one the questions seem spurious, as they must have been and satisfied by the valuer's report, which was charged with making “Checks for any problems” making the property “unsuitable” for Legal and General (see Enc. 3 Pages 2 & 3). The valuer took extensive measurements and photographs on February 4th 2020 and questions such as “Does this strip form part of your client's property?” and “Do they use it exclusively?” must have been evident and answered or why did they send the Offer of February 10th 2020? We have the same doubt about the Compliance Manager's question: “If it was a shared path then it would need to be checked?” Surely the valuer was satisfied this was not the case in his report!”

The roles of the surveyor and the solicitor are separate and discrete. The surveyor went out and viewed the property as it had been declared to be; that included the land in question. The surveyor wouldn't check the land registry information so they had no reason to query or highlight these issues. That's where the solicitor comes in – they check the title to ensure what has been declared as the property, actually can be covered by the legal charge. The questions raised are legal concerns, hence why they were asked of Mr and Mrs T's solicitor.

Mr and Mrs T have raised concerns that they were treated unfairly as the land registration issued wasn't disclosed to them before they signed the mortgage deed. They say they would have withheld their signatures until the matter was resolved if they'd known. It's not clear what difference Mr and Mrs T think this would have made, as if they hadn't signed the mortgage deed then the offer would still have expired when it did, and the registration wouldn't have taken place any sooner. They weren't legally bound by that deed until the mortgage completed so they could still have withdrawn their application and applied elsewhere.

But in any event, that would be a matter between them, their solicitor and their mortgage broker. L&G had no idea – and had no reason to know or ask - when Mr and Mrs T would be signing the deed and whether they'd been notified of the issue. If Mr and Mrs T feel they would have gone to a different lender if they'd been told sooner, then they need to raise that as a concern with their broker and/or their solicitor. It isn't something I can consider here as it wasn't L&G's responsibility to give Mr and Mrs T that information.

Mr and Mrs T have said that it isn't fair they lost out as they ended up on a higher interest rate and didn't receive the cashback that was available on the original product.

L&G's mortgage offer was clear that it was only valid for 50 days:

This Offer is valid for 50 days, unless we withdraw this Offer before then, which we can do at any time. We are not obliged to make any loan if we are not satisfied that we have received all confirmation required from our solicitors and the loan satisfies our lending criteria."

And that it was subject to L&G being satisfied with the legal title:

"Your lifetime mortgage will be secured by way of a first legal charge on your property. We cannot complete this lifetime mortgage until we have received all the documents we need and we are satisfied with the title to your property. The solicitors will be working on this, but please be aware that this can take some time.

The 'Understanding the legal process' brochure has a section entitled 'Frequently asked questions' which states:

"How long is my lifetime mortgage offer valid for?"

Your Legal & General lifetime mortgage offer is valid for 50 days and most lifetime mortgages complete within this time. However, if your lifetime mortgage doesn't complete within 50 days there is no need to worry. Your adviser can ask us for a new lifetime mortgage offer, as long as your circumstances haven't changed and it's been no longer than six months since we valued your property and carried out our checks.

"What happens if the interest rate changes?"

If during this time our interest rates have changed, and we provide you with a new lifetime mortgage offer, it could be on a higher or lower interest rate. If this happens, your adviser will explain this to you.

"Are there any circumstances that will affect the legal process?"

There are some situations where the legal process is more complex and where more information is needed for example, when repaying your existing mortgage, purchasing a property or following a divorce. This can make the process take longer It's important to keep in touch with your solicitor to get regular updates."

It is clear from this that the offer is only valid for 50 days and if the rates have changed then any new offer would be on that new higher or lower rate. Whilst it doesn't specifically state about cashback in this section, as that is part of the pricing of a product it automatically follows that if a new product (interest rate) is needed, then whether or not cashback is still available depends on whether or not that product also offers cashback. Here the replacement product didn't offer cashback, so it is right that L&G no longer had to offer that to Mr and Mrs T.

The fact the application was formally aborted in June is just a technicality, and a red herring. Even if Mr and Mrs T had come back to L&G at the start of June to say everything was in place, they still would have needed to transfer to a new product without cashback as they were so far over the 50 days allowed within the 10 February offer.

If Mr and Mrs T weren't happy with the replacement product that was offered by L&G then they needed to discuss that with their mortgage broker at the time so he could search the market to see if this was still the right product for them. If Mr and Mrs T weren't aware of the change in the product – or they feel it wasn't suitable for them – then that's something they'd need to raise with their broker directly.

The mortgage offer had expired some months earlier and that product (with cashback) was no longer available. At the time Mr and Mrs T were ready to proceed L&G issued a new offer – as its frequently asked questions document said it would – on a product it had available at the time. It had no responsibility to make the earlier withdrawn product available to Mr and Mrs T as it hadn't done anything wrong to cause the delays.

Mr and Mrs T have said, I quote:

“Then on September 11th 2020 (Enc. 6) she says an extension is only provided as an exception, generally when a case is due to complete within the next few days.” (Where is this information in their legal processing brochure we ask? (Enc 4) If, as she says, further on, that Legal and General “do not have any influence” with Land Registry, how could they have been certain then that it could not have been completed soon after the expiry date or March 31st 2020 (The letter of April 1st 2020 (Enc 8) implied it was a possibility)”

L&G couldn't have been certain that the registration wouldn't have been completed soon after the expiry date on the offer. But that's irrelevant because the application wasn't marked as cancelled until June. If the registration had happened soon after 31 March, then I've no doubt that L&G would have considered the option of that short extension to allow things to complete, and if the extension wasn't given then Mr and Mrs T could have complained about that at the time. But as registration didn't happen soon after 31 March the point is moot.

Finally, Mr and Mrs T have raised some new issues about a sheet of paper that was enclosed with their mortgage offer saying a desk-top valuation had been carried out. Those issues didn't form part of the original complaint made to L&G. Our rules state that a business must be given the opportunity to investigate and respond to any issues first, so Mr and Mrs T would need to raise those issues directly with L&G as a new complaint if they want them looked into. Mr and Mrs T may then be able to bring that as a new complaint to this service – subject to our rules – if they remain unhappy with the outcome.

Whilst I've a great deal of sympathy for the situation Mr and Mrs T found themselves in, none of that was due to any act (or omission) on the part of L&G and that is all I can consider in this decision. As L&G did nothing wrong here, I can't uphold this complaint, however much Mr and Mrs T may want me to.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 28 October 2021.

Julia Meadows
Ombudsman