

The complaint

Mr P owned a property in mortgage to lender V. There was a fixed interest rate product at 1.39% which was due to expire on 31 December 2019. After that date the mortgage would go onto V's standard variable rate (SVR) of 4.99%.

Mr and Mrs P decided to re-mortgage in joint names and consulted mortgage broker London and Country Mortgages Ltd who recommended an application to lender S. This was ultimately successful, but Mr and Mrs P complain that:

1. the application was delayed because L&C hadn't realised it didn't fit S's lending criteria. This caused them to have to pay V's SVR for a time;
2. it was further delayed by miscommunication between L&C and S;
3. they had to pay stamp duty which L&C hadn't warned them about.

What happened

Complaint 1

Mr and Mrs P say they started the application with L&C on 28 October 2019, nearly ten weeks before the existing product was due to expire. An application was made to S, but this was automatically refused because the property had over ten acres of land. Mr and Mrs P say it wasn't unusual for properties in that part of the country to have large amounts of land, but L&C didn't ask how much land there was.

There followed an appeal process which was successful but could have been avoided entirely had L&C recommended a lender who didn't take exception to properties with this amount of land. This took some weeks to sort out. S confirmed the appeal had been successful on 9 January 2020 and the new mortgage was completed on 20 January 2020.

Mr and Mrs P say they were then charged £2,085.94 by V for those 20 days at 4.99%, whereas at the 1.39% rate that they should have been on, it would have only cost £402.95. The difference is £1,682.99. This is calculated on the total capital sum borrowed of £529,416.02.

Complaint 2

Mr and Mrs P say that after this there was a further delay of about 7 days. Mr P was told by L&C on 9 January 2020 that a mortgage offer had been made, only to discover a week later that their solicitors hadn't received it because of some miscommunication between L&C and S.

Complaint 3

Mr and Mrs P say that as part of the process they transferred the property from the sole name of Mr P into their joint names to enable a joint mortgage application. Stamp duty of £3,236 was charged to them without any warning. L&C failed to advise them that they would be charged stamp duty on Mrs P's 50% share of the transferred mortgage debt.

L&C didn't uphold the complaint. It said:

Complaint 1

Mr and Mrs P hadn't said the property had over ten acres of land. L&C had asked them whether there was anything unusual about the property, other than a flat roof already disclosed, and they had confirmed there was nothing else. At the end of the discussion L&C had asked if there was any other information they wished L&C to know, and they had said there wasn't.

Complaint 2

L&C had pointed out to S on 9 January 2020 that it had a better rate. S had faxed a copy of the mortgage offer directly to Mr and Mrs P's solicitors the same day but this was for the incorrect previous rate. L&C didn't receive a copy. The delay caused by this wasn't due to any error by L&C.

Complaint 3

In their online enquiry form Mr and Mrs P had said that they both owned the property. In the subsequent discussions with L&C they didn't mention that they were transferring from sole to joint ownership. Had they done so, L&C would have told them that additional costs would be incurred and that they should seek legal advice. But as this wasn't disclosed to L&C, it was unaware of the situation.

Mr and Mrs P weren't happy with this and brought their complaint to our service.

In its submission to our service in reply to the complaint L&C said that following an online enquiry Mr and Mrs P had made contact on 29 October 2019. L&C had recommended a product from S and the details and illustration had been sent to Mr & Mrs P the same day.

This met with their approval and on 6 November 2019 a formal application was submitted to S. The valuation took place on 19 December 2019 but it said that the property was believed to contain 11.5 acres of land which did not meet S's lending criteria. The land exceeded ten acres and an appeal was made for this to be considered outside lending criteria. On 9 January 2020 S confirmed the appeal had been successful and the application had been accepted.

An amendment was made to the application as a lower rate had by then become available and the formal mortgage offer was issued on 16 January 2020 and completion took place on 20 January.

At no time did Mr and Mrs P inform L&C that the property had over ten acres of land.

L&C repeated its position on complaints 2 and 3.

Mr and Mrs P's complaint was then looked into by one of our investigators who didn't uphold it.

Complaint 1

The investigator didn't think L&C should reasonably have known the property had more than ten acres and wouldn't fit S's lending criteria. L&C had asked Mr and Mrs P whether there was anything unusual about the property to which they had answered 'no'. The investigator wouldn't expect L&C to have knowledge about the size of the property or the size of properties across the UK. L&C had no reason to think the application didn't fit S's lending criteria. So the investigator couldn't attribute this delay to L&C.

Complaint 2

The investigator said that on 9 January 2020 S had issued its mortgage offer following the successful appeal. L&C emailed S the same day to make sure it was changing to the lower rate.

S responded on 10 January 2020 saying "*Offer now issued and faxed to solicitors*". L&C then emailed S again saying that the mortgage offer had been issued with the previous interest rate and asked for the status of the updated offer with the lower interest rate. L&C chased S again and on 15 January 2020 L&C spoke to S who confirmed it would be issuing the new mortgage offer the following day, which it did.

The investigator didn't find that it was L&C's fault that the previous interest rate was issued. L&C had tried to make sure that the offer was issued with the lower rate. The mortgage offers were issued by S and sent to the solicitors by S. Any delays were because S didn't switch the interest rate when asked to do so. They weren't the fault of L&C.

Complaint 3

The investigator said Mr and Mrs P had told L&C that they owned the property jointly, and she couldn't see that they'd corrected this information or asked L&C about transferring ownership. She therefore didn't think L&C's service was lacking or that it was responsible for the additional stamp duty Mr and Mrs P had to pay. Ultimately, their solicitors oversaw the legal aspects of the re-mortgage.

Mr and Mrs P didn't agree with the investigator. On complaint 1 they said that prior to the valuation, no-one from L&C had ever asked them how much land came with the property. But when the valuer arrived he quickly ruled out doing any work on the valuation as the property would be unacceptable to S as it had over ten acres. That was the first they'd heard of this particular qualification.

Had they been asked, at the start of the mortgage application, how much land there was, they'd have answered 11.5 acres. It wasn't something they had any idea could possibly be a red flag for mortgage providers. It wasn't a problem when Mr P got the original mortgage. And it wasn't unusual for properties in that area to have ten or more acres.

Mr and Mrs P didn't comment on the investigator's view of complaint 2. They accepted her view of complaint 3, the stamp duty issue, and that they should have been responsible for taking legal advice on this.

Mr and Mrs P asked for an ombudsman's second opinion. They also made some further submissions:

As to whether there was anything unusual about the property, most people would approach that question from the viewpoint of the lender. This was an opportunity to tell the lender about any out of the ordinary characteristics which it would need to factor in, which might be

detrimental to the property's value or marketability, Such as if the house were built underneath a motorway, or were on the edge of a cliff.

But having 11 acres of land was not unusual for a property in that area, and most people would assume that this made a property more appealing rather than less. It certainly made it more valuable.

A mortgage broker should know the basic criteria under which the lenders it dealt with were prepared to lend and should ask its customers to let it know if their properties did or didn't meet those criteria, so that it could offer products which were suitable for them.

Mr and Mrs P gave the following example of what they meant:

Suppose the broker knew that:

Bank A wouldn't lend on properties with flat roofs;
Bank B wouldn't lend on properties which had more than 6 bedrooms;
Bank C wouldn't lend on properties which had over ten acres of land.

These were easily understood and measured criteria. They weren't "living under a motorway" type criteria. So when the broker was working out which products were suitable for the customers, it would be sensible to ask them:

Does your property have a flat roof?
Does your property have more than 6 bedrooms?
How much land does your property come with?

Or would the broker instead just ask: "*tell us what's not standard about your property?*" and hope that the customers knew what was deemed standard and what was deemed not standard? Mr and Mrs P say that if a product had a specific exclusion, a broker shouldn't just assume that the customer would flag it up.

I took a different view of the complaint from the investigator. 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:

"It's common ground that Mr and Mrs P didn't tell L&C that the property had over ten acres of land. The question is whether they ought reasonably to have done that and whether L&C ought to have asked about it.

It was L&C's job to check that Mr and Mrs P would fulfil S's lending criteria. If they wouldn't, there was no point in applying to S. L&C knew, or ought to have known from S's intermediaries' website, that S didn't accept properties with more than ten acres of land.

Mr and Mrs P on the other hand weren't to know the significance of the 10+ acres. It was a remortgage of Mr P's existing property, and this hadn't been a problem for the previous lender. Mr and Mrs P didn't know that a lender might regard this acreage as a disadvantage, and as a reason to exclude a property from lending criteria. But L&C did know that, or ought to have known it.

Mr and Mrs P were offered a mortgage by S on 16 January 2020. They say that but for the delay caused by the initial rejection and the need to appeal, an offer would have been made before the product expiry on 31 December 2019. I see no reason to doubt that.

The approach to L&C having been made on 29 October 2019, and the application to S on 6 November 2019, it's my view that but for the initial rejection and the need to appeal, an offer would have been made in sufficient time for the re-mortgage to be completed immediately upon the product expiry on 31 December 2019. Because that didn't happen, Mr and Mrs P had to pay V's SVR until 20 January 2020.

As matters stand that loss has fallen upon Mr and Mrs P. However I don't think that's fair. I consider it fairer that the loss should fall on L&C because L&C was the party who knew about S's criteria. It was L&C's business to check that the application didn't offend those criteria. Just asking whether there was anything unusual about the property wasn't in my view sufficient. I agree with Mr and Mrs P that in that rural part of the country, the amount of land wasn't unusual. In an inner city area the position might be different. For the L&C adviser, knowing of S's land restriction and seeing the address (and indeed the name) of the property, the question should have been asked.

In their response to the investigator's recommendation, Mr and Mrs P didn't dispute her view of complaint 2. However as the SVR would have been avoided altogether but for the complaint 1 delay, this is academic. Mr and Mrs P accepted the investigator's view of complaint 3."

the responses to my provisional decision

Both parties responded to my provisional decision. Mr and Mrs P accepted my decision. L&C didn't. It said:

- It didn't know the property, or the area. It wasn't a mortgage broker's responsibility to research the property, its nature or its condition. The responsibility for providing details of the property rested entirely with the client and L&C could only base its research on the information provided by them.
- Mr and Mrs P hadn't said the property had substantial land attached. It was unreasonable to say that L&C should have been aware of properties in that area, as residential properties in general did not have either woodland or substantial acres of land. L&C had no reason to question Mr and Mrs P further in this area. Lenders' criteria might contain any number of limitations but it was impractical to discuss each and every one in detail unless the client makes L&C aware of something that may fall under them.
- It was unusual for a lender to include the amount of land in its published criteria. It wasn't a specific question in the application. This situation would have occurred whether Mr and Mrs P had applied through L&C or directly to the lender.
- The first L&C knew about the land was after the valuation on 24 December. At that point Mr and Mrs P believed the land was less than 11.5 acres. That wouldn't have been outside S's lending criteria. Therefore even if Mr and Mrs P had mentioned this at the outset, it was unlikely to have altered the outcome. L&C's recommendation would have been suitable based on Mr and Mrs P's knowledge of their property.
- It wasn't until Mr and Mrs P applied for additional information from the land registry that this was clarified and L&C was able to appeal in January that the land was confirmed as over 11.5 acres. So L&C wasn't responsible for the delay or the SVR.

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.

I don't agree that it was Mr and Mrs P's responsibility to volunteer information about the acreage. They had no reason to think it might be important, still less that it could be a problem. It was only L&C who knew, or should have known, that S would not lend if the acreage exceeded a certain figure.

I agree with Mr and Mrs P that if a product has a specific exclusion, a broker shouldn't just assume that the customer will flag it up.

The fact that S's land criterion was unusual was even more reason for L&C to ask Mr and Mrs P about it. And also more reason for their having no cause to think the amount of land might be important. I agree the same thing would have happened if they hadn't employed a broker. Brokers' knowledge of lenders' criteria is one of the reasons for doing so. Mr and Mrs P's case is that as they did employ a broker, it shouldn't have happened.

I don't see that Mr and Mrs P's belief that there was less than 11.5 acres is relevant. Anything over ten acres would have been outside S's lending criteria.

Putting things right

For these reasons I'm not persuaded to depart from my provisional conclusion that it's fairer that the loss should fall on L&C because L&C was the party who knew, or should have known, about S's unusual criterion. It was L&C's business to check that the application didn't offend S's lending criteria.

My final decision

My decision is that I uphold this complaint in part and order London and Country Mortgages Ltd to pay Mr and Mrs P £1,682.99.

It should also pay interest at 8% simple per year from the date of each interest payment they made to V in respect of the period 1-20 January 2020, until the date of settlement.

If L&C considers that it's required by HM Revenue & Customs to deduct income tax from the interest, it should tell Mr and Mrs P how much it's taken off. It should also give them a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 26 June 2021.

Edward Callaghan

Ombudsman