

The complaint

Mr and Mrs M complain that London and Country Mortgage Ltd (London and Country), didn't provide them with a correct illustration stating that the valuation fee was non-refundable. Mr and Mrs M also had concerns about when the valuation had taken place.

What happened

Mr and Ms M applied for a mortgage through their broker, London and Country.

A discussion was had on the 16 April 2020 and an illustration was provided to Mr and Ms M about the mortgage, which also stated a valuation fee of £480 was to be paid on application.

Mr and Mrs M said they were sent a link to a web portal on the 17 April in order to make the application. But they had issues submitting their documents, so they posted the documents to London and Country on 24 April.

On 10 June Mrs M was furloughed by her employer, so Mr and Mrs M made the decision to withdraw their mortgage application. Mr and Mrs M contacted London and Country to withdraw the application and to also ask for the valuation fee to be refunded. Mr and Mrs M said that London and Country contacted the lender and they were told that the valuation hadn't been instructed but were then told a few days later the valuation was in fact carried out on 21 April. So, they were told the fee would not be refunded.

Mr and Mrs M said that on the 21 April, they hadn't yet consented to the mortgage declaration as they only posted the forms back on 24 April. Mr and Mrs M said the forms were only sent to them by London and Country on the 21 April so the valuation should not have been instructed any earlier by the lender.

Mr and Mrs M complained to London and Country and they were told that the illustrations stated the fee was non-refundable, but Mr and Mrs M said the illustration they had didn't state this. Mr and Mrs M sent the illustration they had to the lender, who said that was not the illustration they sent to London and Country. And if London and Country hadn't sent the right illustration to Mr and Mrs M, they would need to take the matter up with them.

Mr and Mrs M complained to London and Country who explained that the instruction of the valuation falls with the lender and they cannot be held responsible for when it was instructed. They also said they relied on what the lender had told them with regards to the confusion as to whether the valuation had been carried out or not – so didn't feel they had done anything wrong.

Mr and Mrs M then sent London and Country the illustration they had received from the lender, which did show that the fee was in fact non-refundable and argued they should have been told. London and Country sent another letter to Mr and Mrs M acknowledging that both illustrations were different, but under the rules of the regulator, they provided the correct information in line with those requirements – so they didn't agree that the valuation fee should be refunded by them.

Mr and Mrs M were unhappy with what they were told so they brought the complaint to our service where it was looked at by one of our investigators. Our investigator didn't think that the valuation fee should be refunded because he thought that Mr and Mrs M would still have proceeded with the application anyway, and the valuation had already taken place. But he

did think that London and Country should have told Mr and Mrs M that the fee was non-refundable by providing them with the correct illustrations– so he asked them to pay £100 compensation to Mr and Mrs M.

London and Country didn't agree with what our investigator said. They explained the mortgage conduct of business (MCOB) rules for ESIS (European standardised information sheet) only require them to show the fee amount, to whom the fee is paid and when the fee is to be paid. They said there is no requirement to show whether a fee is refundable. The MCOB rules for the ESIS also state that the illustration must contain only the material prescribed in MCOB 5A.5, and no other material.

As they disagreed, they asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

My provisional decision

I issued a provisional decision on 3 December 2021. I said:

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

I accept there has been some confusion around when the valuation had in fact been instructed and I have taken note of what Mr and Mrs M have said. But I think that in these circumstances, London and Country have been given information on what they thought was in fact correct. And I note that Mr and Mrs M asked to withdraw their application in June, so it was likely that the valuation had already been instructed. Either way, I think London and Country gave the information they were initially provided by the lender, which is reasonable. There would have been no benefit to them giving information to Mr and Mrs M that was incorrect – so I can't say they have done anything wrong here.

Moving on to the mortgage illustrations, I have reviewed the one dated 16 April 2020 that was issued by London and Country. This illustration shows that a valuation fee of £480 is payable to [lender] on application. It makes no reference as to whether the fee is refundable or not. This illustration was provided to Mr and Mrs M before a formal mortgage application and or offer was made.

I have then looked at a welcome letter that was sent to Mr and Mrs M by the lender which was dated 20 April 2020. Under the section for valuations, it confirms that the fee is not refundable if the mortgage application is declined by the lender, or if the borrower changes their mind. So, I accept these documents differ and can understand the point that Mr and Mrs M are making.

Mr and Mrs M have highlighted they signed the mortgage declaration on the 21 April 2020. They said that within the declaration under section 4 fees, it stated 'I agree that where it is indicated in the Mortgage Illustration or Offer that a fee is not refundable, I am aware of this'. I agree this declaration is clear, but I can see that the welcome letter sent to Mr and Mrs M dated 20 April, did confirm that the valuation fee is not-refundable – and I think this was clear.

The crux of the matter here is whose responsibility it was to inform Mr and Mrs M that the fee was in fact non-refundable and I do agree with London and Country that it was not for them to show this on the initial pre-contract illustration.

Under the mortgage rules, MCOB 5 specifically relates to pre-application disclosure. MCOB 5A.5 sets out the required content of an ESIS provided to a consumer by a firm. An ESIS is a pre- contractual disclosure document that is provided to a consumer before an application is made. MCOB 5A.5 states:

Content: required information states the ESIS provided to consumers must:

- (1) Contain only the material prescribed in MCOB 5A.5 and no other material;*

and

- (2) *Be in a document separate from any other material that is provided to the consumer.*

The information required under the rules confirm that the ESIS should show the full fee amount, who the fee is payable to and when the fee is to be paid. There is no requirement for the ESIS to show whether the fee is refundable or not. Having looked at the illustration that was sent by London and Country, the illustration adhered to these requirements so they were not wrong in not specifying that the fee may not be refundable.

Our investigator thought that London and Country should have still informed Mr and Mrs M that this fee was not refundable and while I agree it would have been helpful for London and Country to do this, they didn't have to. And even if they did, the outcome would have still been the same. The application went ahead, and I have no reason to believe that even if London and Country did inform Mr and Mrs M that the fee wasn't refundable, that Mr and Mrs M wouldn't have gone ahead with the application.

I therefore don't agree that London and Country should pay any compensation to Mr and Mrs M because I'm satisfied they did what they needed to do under the rules and regulations.

Developments

London and Country and Mr and Mrs M responded to my provisional decision. London and Country said they had no further comments to make. Mr and Mrs M said they didn't agree with the outcome but didn't have any further comments to make. They felt that compensation should be warranted but they said they understood that London and Country didn't have to issue the correct illustration.

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.

As there are no other comments for me to consider and no new information for me to take into account, I see no reason to depart from my provisional decision.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 18 January 2022.

Maria Drury
Ombudsman