

The complaint

This complaint is about an application Mrs and Mr M made to re-mortgage their home onto a consumer buy-to-let (CBTL) basis and take a new residential mortgage for a new home. The transaction was arranged by a broker representing Blueberry Wealth Limited (BWL) and was intended to provide funds to go towards the purchase of a new-build home in a new location. After Mrs and Mr M had completed the purchase, they were told they needed to repay their existing mortgage. Mrs and Mr M haven't done so; the lender has allowed them to continue with it, but they are seeking compensation for the costs incurred, and for the stress events placed on them.

What happened

By way of a provisional decision dated 2 February 2022, I set out my provisional conclusions on how this complaint should be determined. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are well known to both parties. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here. Our decisions are published and it's important that I don't include any information that might result in Mrs and Mr M being identified. Instead I'll give a brief summary in my own words (and rounding the figures) and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mrs and Mr M had a mortgage of around £98,000 with a lender I'll call B. They were looking to relocate, and sought advice on their mortgage needs from BWL. It was decided to rent out their current home by raising a consumer buy to let (CBTL) on it. This would release equity to put towards the purchase of the new property; meanwhile, Mrs and Mr M would fund the rest of the purchase price by applying for a residential mortgage on the new house, also from B, at the same time porting the interest rate product of the existing mortgage over to the new mortgage.

Porting of the product with B involved the existing mortgage being repaid, and a new one taken out, secured on the new property. The mortgage would be made up of two components; one for an amount equal to the existing mortgage with the same interest rate terms carried over, and the other for the extra borrowing on a new interest rate deal. All of this was recorded in the initial point-of-sale documentation from BWL, and in the mortgage offer issued by B.

However, by the time the new house was ready to move into several months later, confusion had apparently set in. Correspondence that flowed back and forth between Mrs and Mr M, their solicitors, BWL and the lender B shows that no one was very clear about what should happen in respect to the existing mortgage debt, which by now had reduced to around £93,000. It wasn't immediately repaid, so Mrs and Mr M found themselves with three mortgages instead of two. Eventually, after B pressed them to do so, Mrs and Mr M repaid the outstanding mortgage, but complained that

they now had a bigger overall debt than they'd anticipated before embarking on the move.

Our investigator concluded that BWL had contributed to the confusion, particularly in a series of electronic messages its broker had exchanged with Mrs and Mr B. She recommended BWL pay Mrs and Mr M £300 compensation for the trouble and upset it caused. She didn't agree with Mrs and Mr M's request that BWL reimburse them the £93,000 of "extra" (as they see it) debt they now have. Instead, the investigator said that if Mrs and Mr M decided to end the residential mortgage with B early, BWL should pay half of any early repayment charge (ERC) they incurred.

Both parties have asked for the case to be referred to an ombudsman; Mrs and Mr M because they consider more redress is due, and BWL because it doesn't believe it was responsible for the confusion, hence it shouldn't have to pay Mrs and Mr M anything.

What I've provisionally decided – and why

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 failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

We have no regulatory function; that's the role of the Financial Conduct Authority; nor are we a consumer protection body. We're an alternative dispute resolution body; an informal alternative to the courts for financial businesses and their customer to resolve their differences.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.

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

If the available evidence is incomplete and/or contradictory, we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

It's for us to assess the reliability of evidence and deciding how much weight should be attached to it. When doing that, we don't just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture.

As a starting point, when a business gives consumers information that's inaccurate, contradictory (or incomplete) we don't seek to place them in the position they'd be in if the information they were given was right. We seek, *insofar as it is possible or practical to do so*, to place them in the position they'd be in if the correct (or complete) information had been given in the first place.

It seems to me that this is a case where every party has, at some stage sought to blame someone else for what I consider to be a very basic misunderstanding. Mrs and Mr M may have been porting the *product* of their existing mortgage to the

new mortgage, but the existing mortgage *debt* was always going to need to be repaid. Aside from anything else, the lender B required a first legal charge over Mrs and Mr M's existing property in order to secure the new CBTL mortgage. That could only happen if the legal charge for their existing mortgage was released.

My decision here only deals with the acts and omissions of BWL, and I agree with our investigator that BWL's broker created a substantial amount of needless confusion. But in reaching that decision, I've taken the view that all of the involved parties should have understood what needed to happen. To be clear, and without being unkind, I have to include Mrs and Mr B here to some degree.

BWL has commented that Mrs and Mr M hold positions of employment that infer a level of financial sophistication. I've disregarded that argument; what Mrs and Mr M do for a living is entirely irrelevant. That's because I don't consider specialist knowledge was needed to understand that a mortgage debt can't be in two places at the same time.

Mrs and Mr M say they only ever anticipated having a total debt of around £740,000 across the CBTL and new residential mortgage; they never budgeted for owing over £830,000, and they are now suffering from the strain of owing so much. I'm not persuaded that's a sustainable argument. Mrs and Mr M were buying a new house for around £700,000; they already owed just under £100,000 (at the start of the transaction) on their existing home, and they weren't selling it.

So it should have been evident to them that they'd need a combined mortgage debt of around £800,000 to buy the new house; *before* any of the transactions costs (moving, conveyancing, second property stamp duty land tax etc.) were factored in. With those costs included, a total debt over £830,000 should have been foreseeable.

I'm wholly unpersuaded by BWL's arguments as to why it should not be liable for the broker's confusing messages. Regardless of her official status at that time, the broker still represented BWL, and there's nothing to suggest Mrs and Mr M had reason to think otherwise. So BWL has to accept responsibility for her acts and omissions. Aside from that, the broker did more than simply confuse the situation in her messages with Mrs and Mr M.

I said above Mrs and Mr M should reasonably have foreseen having to borrow in the region of £830,000; and the professional on which they were relying, BWL's broker should *definitely* have foreseen that too. Yet the two mortgages she arranged for them only added up to around £740,000; in other words, BWL's broker failed to do her sums correctly right at the outset. She forgot to factor in that the existing mortgage needed to be repaid.

Mrs and Mr M say they wouldn't have gone ahead with the move if they'd known how much they'd have to pay on the two mortgages. The reality is that they did move, and that's not a change of position that can readily be unwound, plus they had a *need* to relocate; it wasn't just a whim. Mrs and Mr M have told us they've made a first-year loss on the CBTL; I appreciate that's disappointing for them, but it has no bearing on the outcome of the complaint against BWL.

Taking everything into account, I find that the broker's fundamental failure of arithmetic at the outset means the cost of servicing their mortgage debt is bigger than the point-of-sale documentation led Mrs and Mrs M to think it would be. But I'm not persuaded Mrs and Mr M wouldn't still have carried on with the two linked transactions if they'd been given the right information at the outset.

I know they say otherwise now, and I don't doubt that's what they feel presently; but that viewpoint is also infused with an element of hindsight that I have to discount. As I've said, Mrs and Mr M needed to move, and I think they'd still have done so in the way they did, and made the necessary adjustments to their household budget and work arrangements, but in a planned and organised manner instead of having the changes forced on them.

So, overall, I don't think Mrs and Mr M are in a significantly different position now than they would have been but for what really is the most basic of errors on the part of BWL's broker. But they'd have reached that position in a more orderly fashion, without the considerable shock and stress they've encountered along the way.

For that reason, I have provisionally decided that BWL should not be required to reimburse Mrs and Mr M any ERC they might incur if they decide to repay (or even reduce) the mortgage, as the investigator suggested. But I have decided that they are due substantially more compensation for distress and inconvenience that has been offered thus far. Subject to the further comments from both parties in response to this provisional decision, I am of the view that £750 would be broadly fair."

I gave the parties two weeks to reply to the provisional decision; we've heard from both already. Mrs and Mr M made a number of points which I summarise below.

- The original mortgage with B is still outstanding, along with the CBTL, and the extra cost of paying both, as well as the new mortgage, means they're now having to sell the original property in order to repay the original mortgage. This will also mean repaying the CBTL. When they do that, they'll incur combined ERCs on the two mortgages of over £18,000; they've asked that BWL be required to reimburse those.
-
- They agree they would still have moved to the new development if they'd known the true cost in advance; but they'd have bought one of the lower priced homes that were on sale at the time.
-
- They don't accept they should be held partly responsible for not noticing the amounts were short. They put their trust in a professional who was convinced the figures were right. They had no reason to question the accuracy of the advice they'd received, and for which they'd paid a broker fee of £595.

We passed Mrs and Mr M's comments to BWL. It replied to say it has nothing to add in response to either my provisional decision or Mrs and Mr M's comments on it.

Having looked at what Mrs and Mr said, by way of a second provisional decision, I revised my view of the redress I consider BWL must provide to resolve this complaint. Such was the failure in the level of care taken by the broker, I considered it neither fair nor reasonable that Mrs and Mr M should have paid for the service they received. However, I referenced the fee to be refunded at as £575 by mistake.

I was less persuaded by the argument for BWL to cover the ERCs Mrs and Mr M will incur if they sell their original property. They'd said they need to do this because they can't afford the cost of servicing all three of the mortgages they have presently. Selling the house would relieve Mrs and Mr M of approximately £1,840 in monthly mortgage costs, but it would also take away the income they accrue from renting it out. That's currently £1,700 gross per month; just under £1,500 after deducting agency commission.

So the immediate improvement in their monthly cashflow would be less than £350, and Mrs and Mr M could accrue around £200 of that simply by managing the rental directly instead of paying an agent to do it for them. Based on what I'd seen to that point, I wasn't convinced the case for Mrs and Mr M selling the original property (or the absence of an alternative strategy for managing the current situation) was so compelling that BWL should be made to reimburse them, either fully or partly, the ERCs that would result.

That left Mrs and Mr M's comment that if they'd known the correct figures from the outset they'd still have moved, but would have bought a lower-priced property on the development. The research I'd done into the development indicated that would have been possible. The difficulty there, as I'd alluded to in the first provisional decision, is that unwinding the purchase they made and substituting in its place the purchase they would have made is not something that is readily achievable. Meanwhile, it's reasonable to infer that the home they did buy provides them with greater space and utility than a lower-priced one would have.

Lastly, I fully appreciated that Mrs and Mr M feel uncomfortable with the notion that there was a contributory element on their part. They'd sought the advice of the expert, and relied on what the expert told them; that was understandable, and also reasonable, up to a point. But I made the point that this wasn't just a failure of technical knowledge; it was also a failure of arithmetic, and therefore not the sole preserve of the expert.

As before, the parties were again given two weeks in which to respond to the second provisional decision. BWL didn't have anything to say; Mrs and Mr M corrected me on the amount of the fee, said they had to sell their original home in order to redeem the original residential mortgage, and pointed out that the rental income was subject to higher rate income tax, leaving them with an annual loss of around £4,000.

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.

Having done so, I won't be departing from my second provisional decision. I apologise to Mrs and Mr M for quoting the fee amount incorrectly in the second provisional decision. As for the other points they make, I've noted what they've said about the rental income attracting higher rate income tax; it's reasonable to assume they'd have known in advance that would happen.

Of course, Mrs and Mr M didn't anticipate the overall mortgage costs being as high as they are. But in reality the extra expense represented by the continuation of the original mortgage is actually a cost of living in the new house, rather than of renting the old one. I've already explained why unwinding the purchase of the new house is neither an appropriate nor a feasible way to approach redress.

Overall, I remain unconvinced that the need to sell the original property - or the absence of an alternative strategy for repaying the original residential mortgage with B - is so overwhelming that BWL must reimburse them, either fully or partly, the ERCs that would result.

My final decision

My final decision is that I uphold this complaint in part and order Blueberry Wealth Limited to:

- refund the broker fee of £595;

- pay interest on the refunded fee at 8%* simple per annum from the date it was paid to the settlement date; and
- pay Mrs and Mr M £750 compensation for their time, trouble and upset.

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 Mrs and Mr M to accept or reject my decision before 29 March 2022.

Jeff Parrington

Ombudsman