

The complaint

Mr and Mrs W complain that Leeds Building Society unfairly refused to let them port their buy to let mortgage to another holiday let property.

What happened

Mr and Mrs W had an existing mortgage and a mortgage product with a fixed interest rate for a fixed term with Leeds on a property used as a holiday let and wanted to sell it and buy another one. The product had an early repayment charge ("ERC") that was payable if the mortgage redeemed early.

Mr and Mrs W contacted a Leeds adviser and were told that they could sell their existing property, port the mortgage to a new holiday let and would have six months to get a new mortgage/property when their ERC would be refunded. Mr and Mrs W sold their existing holiday let on 18 September 2020 and had an offer accepted on another one. On redeeming the mortgage, they paid an ERC of £3,965.37 which they hoped to get back when they ported their mortgage product to the new property. Their broker set the wheels in motion. Mr and Mrs W say that their new property which cost £205,000 had a similar holiday let income to their existing one and would be cheaper to manage as they lived locally to the new one. On 28 September Mr and Mrs W got an Agreement in Principle for 70% of the house price or £143,500.00. So, they paid £665 for a survey and a funds transfer fee of £35. Their broker submitted an application to Leeds with income details of the existing holiday letting of the property that they intended buying.

There was a delay in doing the survey as Leeds's chosen surveyor couldn't survey the property on a Saturday which was the changeover day in the holiday let and suited the existing owners. The valuer valued the property in his report of 9 November at £205,000 but assessed the rental income on the assured shorthold tenancy (AST) basis as £575 per month. Mr and Mrs W say that this holiday let was heavily booked under the previous owner and lets at £445 per week low season, £639 per week mid-season and £875 per week high season. So, valuing on an AST basis undervalued the rental income.

The mortgage offer based on the assumed rent on the AST basis issued for £86,520 on 16 November 2020 rather than the £143,500 that Mr and Mrs W expected from the Agreement in Principle.

Mr and Mrs W through their broker asked for an urgent review but only heard on 11 December that Leeds could do nothing to assist. In the meantime, Mr and Mrs W told their seller of their difficulties with the mortgage. Their seller put the property back on the market where Mr and Mrs W say it sold immediately.

Leeds responded to Mr and Mrs W's complaint on 7 January 2021. It acknowledged that when Mr and Mrs W's broker challenged its decision on 23 November that it should have responded and told the broker that in order to review increasing the loan available that Leeds would require evidence of rental income for the subject property for the last 12 months. It acknowledges that *"Holiday lets are valued on a single AST basis and if the rental income does not meet then proof can be provided"*

Leeds offered a distress and inconvenience payment of £50. It said that as the application hadn't proceeded that it wouldn't refund the ERC but was willing to keep the window open for six months from 7 January if Mr and Mrs W found another property.

Our investigator's view

Our investigator felt that Leeds had done nothing wrong by relying on the valuation report and issuing a mortgage offer based on that. Although Leeds accepted that it should have told the broker on 23 November to get evidence of rental income for the subject property for the last 12 months, our investigator said there was no way to know what effect this would have had on the mortgage offer. But as Mr and Mrs W were denied the opportunity to present this information, he felt that Leeds should increase its offer of compensation to £250 and recommended that this complaint should be upheld on that basis.

Our investigator asked Leeds whether it would extend the six-month window further, but Leeds wanted further information about whether Mr and Mrs W were looking for a new property. Mr and Mrs W are unhappy with our investigator's view. They lost the ERC, lost the monthly income from the holiday letting and lost £630 on a survey and £1,291 on solicitor's fees. In relation to their plans, they say they haven't been looking for an alternative as the inflation in prices for holiday lets meant that what they would like or could afford to buy isn't on the market.

My provisional findings

I considered the complaint and as my view differed from that of our investigator, I issued a provisional decision as follows. I said:

"Mr and Mrs W submitted an application through their broker on 29 September 2020. I note that it's described as a porting application for a holiday let with an anticipated monthly rental income of £1,780.00. It seems that along with the application the broker submitted information from the letting agents including a spreadsheet with figures showing the income from the property for three years until April 2020.

Leeds used a valuer who assessed that the property's monthly rental yield on the AST basis would not support the mortgage that Mr and Mrs W were looking for. Leeds is entitled to assess an application using its own lending criteria and I've been supplied with a copy of the document relevant to this type of lending. That document recognises that a valuation based on a single AST may be inadequate but that the rental can be verified by a letter from an acceptable Holiday Letting Agent. The document sets out a list of those agents which does not include the letting agents that were letting out the property that Mr and Mrs W wanted to buy. My understanding of this document is that the information that Mr and Mrs W submitted about the rental income for the property which they believed would support their application, because it did not come from an agent on that list, would have been unacceptable to Leeds had Leeds considered it.

But it's not clear to me that Leeds did in fact consider the contents of the application. Leeds responded to our enquiry about this in an email of 10 June 2021:

"I have checked our records and there is nothing on file to say that we received the documentation you provided with your previous email (i.e. the figures from the letting agent submitted by the broker). However, this wouldn't be sufficient proof that the property had achieved the stated rental income for at least twelve months. It is also worth bearing in mind that the applicants were porting this mortgage to a property they wished to purchase so it would be very difficult for them to prove the rental income on a property they didn't own."

I've seen a screenshot of the broker's application and attached is the spreadsheet of rental income that I refer to above, so I believe it's likely that Leeds got that but appear not to have considered it. I say this because in its final response letter of 7 January to Mr and Mrs W, Leeds says that it should have responded to their broker's request on 23 November and advised that in order to review increasing the loan available it would require evidence of rental income for the subject property for the past 12 months. Clearly Leeds shouldn't have needed to ask for that as they already had it. But as I say above, my reading of Leeds's lending guidance is that as the evidence of Mr and Mrs W's income was not coming from one of the letting agents on its list that Mr and Mrs W's evidence of rental income would be unacceptable in any case.

Mr and Mrs W were applying to port their mortgage product and that required them buying a property that met Leeds's lending criteria at the time of application. My view having considered Leeds's criteria is that Mr and Mrs W would not meet that criteria because as they didn't have the figures from an agent on Leeds's list, they weren't in a position to satisfy Leeds that their rental income would pay the mortgage. But it seems to me that this should have been obvious to Leeds early in the application process and Mr and Ms W should have been made aware of the problem. In fact, this issue - that the information they supplied for rental income was unacceptable to Leeds because it wasn't from an agent on their list - never seems to have been identified to Mr and Mrs W.

As Leeds didn't make Mr and Mrs W aware of the issue early in the process and that their application wouldn't be successful, I intend to uphold this complaint. In order to decide what compensation is appropriate I have to consider if Mr and Mrs W had been made aware of the issue at an earlier stage how that would have affected them. I also bear in mind that this mortgage wasn't recommended to Mr and Mrs W by Leeds but by a broker.

This application was always subject to Mr and Mrs W meeting Leeds's lending criteria so when Mr and Mrs W sold their property on 18 September 2020, their ability to port and get a refund of the ERC depended on them being able to satisfy Leeds's lending criteria. I'm satisfied for the reasons set out above that this application wouldn't meet that lending criteria and so, wouldn't lead to a refund of the ERC. I do agree that because Leeds didn't identify the reason that this particular application was refused that it would be reasonable for Leeds to extend the period within which the mortgage product could be ported. Leeds did offer that, and I believe that's a reasonable response to that issue. I understand that Mr and Mrs W couldn't avail of it because of the inflation in the price of holiday lets but that is an issue outside Leeds's control.

My view is that the problem of the figures being unacceptable to Leeds should have been identified earlier in the process. These were the figures that Mr and Mrs W were relying on to substantiate the affordability of the mortgage. I would have thought that after a period of two weeks of triaging the application that Leeds should have been able to identify that these figures weren't produced by an agent that met their lending criteria and informed Mr and Mrs W accordingly. This would have been in time to cancel the valuation. So, I would require Leeds to refund the valuation fee that Mr and Mrs W paid.

Mr and Mrs W had some legal costs. I've been supplied with a bill but not a breakdown of when the costs were incurred. If I can have a breakdown of when the costs were incurred, I would require Leeds to refund any costs incurred on behalf of Mr and Mrs W on this purchase from 12 October 2020 when I believe that it would have been reasonable for Leeds to have identified to Mr and Mrs W that their purchase couldn't continue.

Finally, I have to consider Mr and Mrs W's distress and inconvenience. Mr and Mrs W submitted an application for a mortgage and that application wasn't properly considered by Leeds. Leeds prolonged the process for a period of three months when on a proper

assessment it should only have taken a couple of weeks to tell Mr and Mrs W that the application wouldn't be successful. In the end Mr and Mrs W weren't ever told the proper reason that their application wasn't successful. I imagine that this was deeply frustrating for Mr and Mrs W over a prolonged period of time. I believe that this would have caused them considerable distress and, so, I believe that a figure of £600 is appropriate compensation for that."

I issued my decision and invited further submissions from Mr and Mrs W and from Leeds. Mr and Mrs W responded to say that, as the company they used is an associate company of one that is on Leeds list, the lender should accept projections from that company as well. Mr and Mrs W also queried as to why Leeds wouldn't use the projected income from the letting company when they were going to use the projected income from the valuers anyway. Leeds did not respond to my provisional decision.

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've looked at Mr and Mrs W's further comments. My view was that Mr and Mrs W's application simply didn't meet Leeds lending criteria and that Leeds should have identified that at an earlier stage than it did. That remains my view. Mr and Mrs W asked me to consider the fact that the company they used is an associate company of one that Leeds found acceptable. But the company they used to verify actual income - the then letting agent for the property - is not on Leeds list and it's not my role to tell Leeds what companies should be acceptable letting agents for their list. I can only go by the list they produced and as the company Mr and Mrs W used to provide historical information isn't on it, I can understand why Leeds would have found the information supplied by that company unacceptable.

I note that Mr and Mrs W used a different company to provide the projected holiday let income and wonder why Leeds don't use this projected income for the holiday let as they would accept the projected rental income produced by the valuer on an AST basis. I understand that there are different criteria used between valuing on an AST basis and a holiday let basis and the latter requires proof of actual rental income from an acceptable letting agent, not just a projection of future income.

So, for the reasons set out in my provisional decision I am upholding this complaint and believe that the compensation set out in that provisional decision is fair. The compensation includes £600 for Mr and Mrs W's distress and the refund of the valuation fee. I also believe, as I set out in my provisional decision, that Leeds should pay Mr and Mrs W's legal fees for the period from 12 October 2020 in relation to this aborted purchase. I asked Mr and Mrs W for further documentation from their solicitor to help me assess what these fees are. I have been able to ascertain the following.

1. Mr and Mrs W paid search fees of £211. The invoice for those fees from the searcher was dated 16 October 2020 for searches carried out on 15 October 2020. As this was after the 12 October 2020, Leeds should refund those fees to Mr and Mrs W.
2. Mr and Mrs W paid an interim bill to the solicitor of £64 including VAT.
3. The solicitor's costs (excluding disbursements) is £1080 including VAT so Mr and Mrs W owe the solicitors £1080 less £64 already paid.
4. I asked the solicitors to assess how much of the work they did on this aborted purchase was pre and post 12 October 2020 and they say that 60% was prior and

40% was after that date. That apportionment seems fair.

5. So, my assessment is that Mr and Mrs W be paid for the solicitor's legal fees - £211 that they paid for disbursements incurred after 12 October 2020 and solicitors costs of £432 (40% of £1080) for work that the solicitor did after 12 October 2020. That in total is £643. Mr and Mrs W's solicitors confirm that they have no objection to Mr and Mrs W being paid this money directly.

Putting things right

Leeds Building Society should refund Mr and Mrs W the valuers fee, pay them £600 compensation for their distress and inconvenience and pay hem £643 to cover part of their solicitor's bill.

Leeds should also pay simple interest on the valuer's fee at 8% pa from the date it was paid by Mr and Mrs W to the date it was refunded. In respect of the solicitors' costs so far Mr and Mrs W have paid £211 on 15 October 2020 and £64 on 4 June 2021. So, Leeds should pay simple interest at 8% pa on those sums from date they were paid until the date they were refunded to Mr and Mrs W. If Leeds considers that it's required by HMRC to deduct income tax from that interest, it should tell Mr and Mrs W how much it's taken off. It should also give Mr and Mrs W a tax deduction certificate if they ask for one, so they can reclaim the tax from HMRC if appropriate.

My final decision

My decision is that I uphold this complaint and require Leeds Building Society to pay the money to Mr and Mrs W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 20 July 2022.

Gerard McManus
Ombudsman