

## The complaint

Mr C and Miss N complain that they were misadvised by their mortgage broker, an appointed representative of The Right Mortgage Limited ("TRM"). He said a survey was free with their mortgage, but it wasn't, they didn't get one, and the property had expensive faults.

## What happened

This complaint is brought jointly by Mr C and Miss N, who are both named on the mortgage, but Miss N has taken the lead in liaising with our service, so I'll mainly refer to her below.

Miss N said she was a first-time buyer, although her partner had bought before. She said their mortgage broker, who works for TRM, told them their mortgage came with a free survey. Miss N said she'd been researching surveys before this, and had known the bank would pay for a valuation, but not a survey. Miss N said she'd definitely wanted a survey, but because she'd understood the bank was doing this, she didn't book one elsewhere.

Miss N only found out after the purchase that only a valuation had been done. And there were a considerable number of problems with the property. Miss N said it needed to be completely rewired, the kitchen had mould and damp, two bedrooms were full of mould due to damaged rendering, the roof leaked in several places, and there was a rotten joist. She's set out for us some of the costs she and Mr C have already paid, and other expensive repairs still needed.

Miss N said she and Mr C didn't notice the problems themselves when they viewed the property. Miss N said she thought a survey had to be done as it wasn't legally possible to purchase the house without this. That's why she didn't question it further once she was told it was being done.

Miss N said if she hadn't been told her bank would get a survey for her, she would definitely have booked one. And then she would've been made aware of the problems before the purchase. She said she would have negotiated a reduction in the price, and would also have negotiated having the work completed before they moved in. Miss N said she'd lost the chance to do this, because of the wrong advice given to her by the broker.

Miss N also said that she and Mr C weren't given any choice of mortgage provider by TRM's broker, and she said he then hounded them for a positive review.

TRM said it felt its broker did explain correctly to Mr C and Miss N that they didn't need to pay for a surveyor to get their mortgage, because they would get one free with the mortgage deal. TRM thought this was in line with Mr C and Miss N's goals to keep their costs low. But TRM felt its broker could have expanded the discussion to explain the three types of survey available, and that what would be provided free was a basic valuation.

But TRM said before Mr C and Miss N accepted a mortgage offer, the bank wrote to them saying it strongly advised they consider carrying out their own checks to satisfy themselves of the property's value and condition before proceeding. Mr C and Miss N decided not to do that. So TRM said the issues that have arisen with the property weren't the responsibility

of the broker or the lender. TRM had made a gesture of goodwill of £250, because it didn't think the broker had been sufficiently clear on survey options. It wouldn't pay more than this.

Our investigator thought this complaint should be upheld, and TRM should pay more compensation. He said Miss N was looking at quotes for surveys before she asked the broker about whether she needed to organise that. The broker said they didn't need to, they got a survey free with the mortgage. He didn't explain that this was just a valuation.

Our investigator thought the broker had given Miss N wrong advice, and that's why she didn't get her own survey. He felt Miss N would otherwise have got a homebuyer's survey.

Our investigator didn't think the broker had read a declaration to Miss N and Mr C, which explains the bank would only do a valuation, and they wouldn't get any information about the property from that. He said Mr C and Miss N had only found out no survey was done when they contacted the bank after the purchase to ask for a copy. Miss N then asked the broker about this, he said that the bank wouldn't share copies of the survey, but when Miss N said only a valuation had been done, the broker didn't reply.

Our investigator didn't think Miss N and Mr C got the level of service they were entitled to expect. But he said TRM had pointed out that Mr C and Miss N got an offer letter advising them to obtain their own survey. So they had another chance to check the position here. And Mr C and Miss N could also have been more proactive in asking to see the survey report before agreeing to buy the property.

Our investigator said if Mr C and Miss N had been given correct advice, he thought they would have arranged a homebuyers report. But that wouldn't have been likely to pick up all the problems Miss N told us about. And we couldn't know if the seller would have reduced the price. The valuation done for the lender presumably said the house was worth the money they were paying in its current condition.

Our investigator said the impact was greater than TRM had allowed for in its compensation offer, so he said it should pay a further £500 to make a total of £750.

Our investigator didn't think it was unreasonable for the broker to ask Miss N and Mr C to review his service. And Miss N and Mr C hadn't complained to TRM about only being offered one product, so our service wouldn't look at that until TRM had a chance to respond.

TRM didn't agree with our investigator, but it would pay the compensation he suggested.

Miss N didn't agree. She thought the problems with the house would have been picked up on a full survey, because another professional who had visited the property for a different reason could see some of the problems immediately. Miss N said the chance to negotiate a lower price, or even to make an informed decision whether to buy, had been taken away from her by the broker. Miss N set out the impact this had on her and her family.

Our investigator didn't change his mind. Although he accepted that what the broker said impacted on whether they got a survey, Miss N's solicitors could also have advised her on this, and she could have asked to see the reports before accepting the mortgage offer.

Miss N didn't think the offer reflected the situation she and Mr C were in. She said neither she nor Mr C could tell if a property needs major work. So it was important to seek advice on getting a survey. But she was told she didn't need to. She said if she'd been given correct advice, she would've got a thorough survey because of the property's age.

Miss N said she only had a ten minute window to view the property, so she'd put her trust in

a specialist, who would pick up and disclose any issues in a thorough surveyor's report. Miss N then said, looking at what is covered by a survey, she felt more would have been revealed than our investigator had suggested.

Mr C and Miss N wanted their complaint to be considered by an ombudsman, so this complaint was passed to me for a final decision.

I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

I'd like to say before I begin how sorry I am to hear about the situation that Miss N and Mr C have found themselves in, with their new home. I can see how upsetting and stressful this must be for them. But unfortunately, I don't think that I can fairly ask TRM to pay for all the repairs they are facing. That's because I haven't reached the same view as them on the level of responsibility that TRM or its broker carries for what has gone wrong here.

I do think it was important, in this case, for the mortgage broker to be quite clear with Mr C and Miss N on exactly what their mortgage deal included. So I think the broker should not have told Miss N she would get a "survey" free with the mortgage deal. He should have said this was a valuation, and no survey would be provided – they would need to arrange this themselves if they wanted one.

I don't think this was made clear by the broker when dealing with Miss N and Mr C. I think this was a missed opportunity to avoid the problems which have arisen here, and for that reason, I agree with our investigator that TRM should pay more compensation.

But I don't think this was the only opportunity to avoid the problems which have arisen, and perhaps not even the most important one.

I note that only a few hours after TRM's broker had said their lender would provide a survey, a survey firm emailed Miss N to say that they weren't doing a survey for her lender, only a valuation. Miss N told us she read this email, and she sent it to us. But she didn't recheck the position with the broker then.

And when Miss N and Mr C changed solicitors, they received a new mortgage offer. TRM has shown us this was sent to them, and that it said clearly the lender wasn't providing a survey. But again Miss N and Mr C didn't recheck the position.

Miss N said she and Mr C only looked at the house briefly. But they felt they could rely on a specialist to check the building and alert them to any problems. And Miss N thought this check was being done on their behalf by the lender. But if this was important to Miss N and Mr C, then it's not clear why they didn't ask to see a survey report before the sale completed.

I think this is perhaps the main reason why Miss N and Mr C didn't get any information on the condition of the property, or confirmation that this had been checked by a professional. Because they didn't ask to see a report, the misunderstandings here weren't picked up before it was too late.

I do think that, because Miss N and Mr C didn't ask to see a survey, this raises questions about what they've said on the importance to them of a survey being carried out. Miss N told us she would definitely have booked a survey if she hadn't been given wrong information, to use either in renegotiating the purchase price, or in deciding whether to proceed at all. She's shown us she was looking at the cost of surveys. But she also told us she understood having a survey was a legal obligation, she couldn't purchase without one. So I have to bear in mind that it's equally possible the reason she looked for quotes for a survey, and enquired about this with her mortgage broker, was just to make sure this requirement was met.

For those reasons, I haven't been able to decide here that Miss N and Mr C would definitely have obtained a survey without the incorrect information that they were given. And that means I'm not able to hold TRM responsible for the cost of repairing problems which they weren't aware of until they started to live in the property.

I also think it's not unreasonable for TRM's broker to ask Mr C and Miss N for reviews of his work. I don't think he placed undue pressure on them. And, like our investigator, I haven't been able to see that Mr C and Miss N have already complained to TRM they weren't given a choice of mortgage products, so I'd ask them to discuss this with TRM in the first instance.

I understand that the payment I'm recommending won't pay for all the repairs Mr C and Miss N have told us about, but I've set out above why I've not felt able to ask TRM to do that. I realise Mr C and Miss N will be disappointed, but I do think a payment of £750, which TRM has agreed to make, provides a fair and reasonable outcome to this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Miss N replied, TRM did not.

### **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.

Miss N said I'd referred to an email which arrived not long after she'd been reassured by the broker that a survey would be done by the bank. Miss N said that wasn't right, the valuation email arrived on 4 May, and she started looking at quotes on 6 May. Miss N drew our attention to the time of those quotes, 4am, which showed she was worried enough to lose sleep over this.

The email I referred to is one Miss N sent to us, which comes from the survey company booked to provide a valuation for her property. The email makes clear that the company has only been asked by the bank to provide a valuation, and it suggests that Miss N should book a survey herself, if she wants one. It sets out the difference between a valuation and a survey, and recommends a survey, for Miss N's peace of mind. It is dated 6 May, at 6.24pm. Miss N had messaged the broker about a survey for her purchase, and been told *"U do nothing..all organised n done by the bank"* at 3pm on 6 May. And her survey quotes were done in the very early hours of 6 May, as she said. So I still think that, after Miss N searched for survey costs, and after her broker told her that the bank had booked a survey, the survey company itself emailed to say it was only providing a valuation.

Miss N also said she should be able to rely on what her broker says to her. She had, after all, employed a professional to help her. I understand what Miss N says here, but unfortunately, mistakes do happen. And I've explained that I don't think the only mistake

here was in the advice the broker gave. I do also think it's relevant that when Miss N received other documents, including the email from the survey company but also the mortgage documents themselves, and they didn't match with what the broker said, these opportunities to correct things were missed.

Miss N said it's the broker's responsibility to make sure she's properly informed, that's why he's supposed to read out a declaration, which he didn't do. And she said brokers should assume that documents have not been read or not been understood, that's why the mortgage company says the advisor should be making sure clients understand and read documents by being heavily involved in that process, and reading this out to them.

I cannot agree with Miss N that a broker is responsible for making sure his clients read the documents that are sent to them, or that he's solely responsible for what goes wrong if they don't do that. Nor do I agree that it's part of the mortgage company's policy to place this responsibility on the broker. The documents that Miss N received about her mortgage make clear on their face that they are important, and detailed, and should be read in full.

Miss N said she felt her broker had understood that she only had a valuation booked, and he was effectively advising people to go ahead with a house purchase, without a survey. She said that went against the advice of mortgage companies, and it made no sense.

I don't think it's likely that the broker intended to give this advice. I think it's more likely that he was intending to refer to the valuation that Miss N did get free with her mortgage, and used the wrong wording for that.

Miss N said she didn't ask to see a survey before the purchase was completed, because she was drastically limiting her contact with the broker, at his request. She said he'd told her "*U do nothing*" and that's what she did. Miss N wanted to stress the importance to her of a survey. She wrote again, to say that if she had obtained a survey, some of the problems with the house were so obvious, she felt sure that a professional would have drawn them to her attention.

I think it might help if I set out here why I think Miss N not asking for her survey before the sale was completed, was a key issue in this complaint. If a survey had been provided by the bank after all, then I do think it's likely that at least some of the property problems Miss N has told us about would have been noted in that survey. But I note that Miss N expressed surprise, after the purchase was completed, that her bank would have lent money without a survey. She said it was "*..saying they only did a valuation, surely they wouldn't have lent money on a house that didn't have a survey*".

Once any survey is done, the responsibility for deciding what to do then lies with the purchaser. All a lender is likely to do, is to make sure the valuation of the property covers the money its lending (and this is set out in the email that the valuation company sent to Miss N and Mr N on 6 May, recommending they do a survey). Miss N and Mr C are responsible for reading their survey, considering the contents, and assessing what they might do about any problems they are alerted to. They take the decision whether or not to go ahead with a purchase, based on the survey.

Miss N and Mr C went ahead with a purchase without ever seeing a survey. So I cannot ignore that they would be in the same position now, if a survey had been done, but then just got lost in the post. That's key to why I don't think that the mistake the broker made here is the only reason things went wrong. And it's also key to why I don't think it's reasonable to ask TRM to cover the costs of the work that they now face.

Miss N also said she'd paid more in fees than I had awarded in compensation, which she didn't think could be fair. I can see on her offer letter that she and Mr C paid £200 to the broker directly, and paid the bank a fee of £995. The bank paid a further £912 in commission to the broker.

I understand why Miss N feels it's unfair to get less than this back. But I have to assess what I consider to be the impact of the broker's mistake here. I've explained why I don't think that what has gone wrong was solely or even mainly his fault. So I do still think a payment of £750, which TRM has agreed to make, provides a fair and reasonable outcome to this complaint.

I do understand how deeply disappointed Miss N and Mr C will be by this decision, but I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that The Right Mortgage Limited must pay Mr C and Miss N a total of £750 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss N to accept or reject my decision before 11 November 2022.

Esther Absalom-Gough  
**Ombudsman**