

## **The complaint**

Mr Q's complaint about David S Lowe Financial Management (DL) relates to the delays in the processing of a mortgage application he instructed DL to make to a mortgage lender I'll refer to as C.

## **What happened**

Mr Q instructed DL to make a mortgage application to C on 22 September 2021 and he paid DL an application fee of £100. The product he wanted had a rate of 1.09% fixed for two years until 31 December 2023. DL asked Mr Q to provide supporting documentation on several occasions, which he did, and this was then forwarded to C by DL.

As Mr Q hadn't heard anything about his application for a while he emailed DL on 5 January 2022 to ask for an update. He didn't get a response and so chased DL a number of times finally receiving a response on 7 February 2022 telling him that C had cancelled the application for that particular product but were offering alternatives.

Mr Q believes that C cancelled the application because it hadn't received the information it had asked for from DL, not because of any failure on his part.

Mr Q decided to arrange his own mortgage after that and obtained one with another lender at a rate of 1.84% fixed for five years until 31 May 2027. Mr Q complained to DL but didn't receive a final response letter (FRL).

Mr Q was unhappy with DL's lack of final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that DL weren't responsible for C cancelling the application but did think DL should have responded to Mr Q's request for information sooner. As such the investigator did not believe DL should refund the £100 application fee or compensate Mr Q for the difference in cost due to the increased interest rate. He did however suggest DL compensate Mr Q by paying him £150 for the delay in responding to him.

Mr Q didn't agree and asked for the complaint to be passed to an Ombudsman for a final 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 issued my Provisional Decision on 18 February 2023 and both Mr Q and DL have responded. Mr Q has accepted the decision, but DL has not, providing some further information and making further representations, which I shall deal with below. In short terms DL does not accept my findings that it failed to provide the information requested of it by C. It does not believe it should be responsible for Mr Q's employers failing to operate a payroll

system which shows a payroll number on employee's payslips. DL challenges that Mr Q suffered any trouble, upset, distress, and inconvenience and also points out that the 1.09% mortgage product was never guaranteed. DL also dispute that the £100 application fee should be refunded.

My summary of what happened is brief and I know the parties went into a lot more detail. I'm going to focus on what I think are the key issues. Our rules allow me to do this, and it reflects the nature of our service as an informal alternative to the courts. So, if there's something I've not mentioned, it isn't because I've ignored it, it's because I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I've taken account of both sides' views and I've looked at the issues raised and considered all the available evidence. Where evidence is not complete, I think about what is more likely to have happened in the light of the evidence which is available.

I've looked at the evidence provided by Mr Q, DL, and C and from that the timeline of critical events shows that there was a telephone call between DL and C on 12 October 2021 during which C wanted to know why there were no Year to Date (YTD) figures on the payslips which had been provided. C asked DL for a copy of a payslip showing this information. After the call, an email was sent to DL the same day confirming what was required, and it should be supplied within seven days failing which the application would be cancelled. It did however advise that in that event it could be reinstated if the information was provided within 28 days of the cancellation.

C's notes next show that on 11 November they once again checked Mr Q's payslips and P60 noting there was no work/payroll number. I have seen payslips from Mr Q's employer for months three, four, five and six in 2021 and they do not show YTD figures or a work/payroll number.

C rang DL on 11 November 2021 to chase matters along and the notes record that DL told them that 'explanations' had been sent on the "20<sup>th</sup>". This I assume must be the 20 October 2021 since it is the only 20<sup>th</sup> date falling between the 12 October 2021 and 11 November 2021. C confirmed they hadn't received the 'explanations' and DL said they would send them again although mentioned the 'App was struggling to get them so format might be unusual'. I make the assumption that 'App' is shorthand for 'Applicant' and must relate to Mr Q.

I have also seen a second set of payslips in slightly different format to those I describe above, and these are for months four, five and six of 2021. They bear a certification of authenticity stamp from DL dated 20 October 2021 and so it would seem that these are most likely the documents DL sent to C on the 20 October 2021. These payslips do not bear a work/payroll number and it is not clear whether there is a YTD figure. There does appear a box headed 'Total Pay' and the figure which is entered increases each month by the monthly pay figure, so one might assume that it may well be a YTD figure. But the point remains that it is not clear.

On 11 November 2021 C sent another email to DL asking for an explanation for Mr Q being a director of a company registered at the same address as his employer. This email also bore the same warning about cancellation of the application as the earlier email of the 12 October 2021.

On 12 November, DL wrote to C on and stated, 'Client Director of dormant company 50% shareholder no connection with his employer'. DL also attached two pdf documents headed Payslips and P60 for Mr Q. C say this was the last communication they received from DL and C cancelled the application on 13 December 2021.

From this I can see that in fact C were correct in cancelling the application as information it had requested remained outstanding. No work/payroll number had been supplied and there were no clear YTD figures. I know DL has repeated in its response to my provisional decision that it feels it did provide all documents requested, but I disagree. DL never provided a payslip showing Mr Q's payroll number and neither did it provide any explanation to C as to why it couldn't. Similarly, so regarding the YTD figures. I accept that there is a Total Pay figure on the payslip but again DL did not answer the question which was put to them.

Mr Q emailed DL on 5 January 2022 asking for an update and he received no reply. He followed that up on 2 February asking for an explanation as to the hold up. That was chased by Mr Q on 5 February 2022, and it wasn't until 7 February 2022 that DL responded. By that time the 28-day period following cancellation which C warned in their earlier emails had expired and so the application could not be reinstated.

DL did offer some alternatives for Mr Q suggesting a 1.75% fixed rate for two years again with C, or the option of a 1.64% or 1.99% fixed rate for two years with two other lenders.

### **Putting things right**

So, I do find that the reason Mr Q's mortgage application with C was cancelled was because DL failed to provide the information requested of it. It was made clear to DL in C's emails that the application would be cancelled if the information wasn't provided within seven days. It wasn't. It was also made clear that the application could be reinstated for a period of up to 28 days if the information was provided in that time period. It wasn't.

It follows that Mr Q has suffered a direct financial loss, as a result of the fixed two-year rate of 1.09% being no longer available to him. DL has argued that it was never guaranteed that the 1.09% rate would have been offered to Mr Q, and I accept that as a proposition. However, on the balance of probabilities I think it is more likely than not that Mr Q would have obtained this product because he managed to obtain a similar product himself, and I doubt whether DL would have suggested it as an option and made the application unless there was a reasonable prospect of him obtaining it.

Whilst he did obtain a two-year fixed rate deal at 1.84% it is likely he could have obtained one for 1.64% if he had instructed DL to follow that up. I don't think it would be fair to say that Mr Q has therefore incurred a loss based on the 1.84% rate he actually got, because that is over a longer five-year period and would naturally be a higher rate, and the 1.64% rate DL could have obtained for him was likely to have been available. The loss Mr Q has suffered therefore can be calculated by the applying the difference between the two rates of 1.09% and 1.64%, to the mortgage over the two-year period. Mr Q has also received no benefit from the payment of £100 for the application fee which should also be refunded. I understand DL dispute that this should be refunded but I disagree. Mr Q paid for a service to be provided by DL and it failed completely. He received no benefit from the work DL undertook at all and so it is unfair to expect him to pay for that service.

I've also given some thought as to what a fair and reasonable level of compensation for the distress and inconvenience might be caused to Mr Q. When this service considers what an appropriate level of compensation might be, we consider a variety of factors, including the trouble, upset, distress and inconvenience that may have been caused. We categorise awards and examples of these can be found on our website.

I think DL should compensate Mr Q for the distress, upset and worry caused. DL has challenged this believing that Mr Q has not experienced the same. I do not think that can be

right. Mr Q paid for a professional service which he was entitled to expect would proceed reasonably easily, and without any aggravation on his part. The service he received did not. It failed in its entirety, and he was left for a lengthy period of time unaware as to what the then current position was. He suffered inconvenience and distress for the period when his calls were not being answered, and there had been no contact from DL prior to that since 12 November 2021. Mr Q ultimately made his own arrangements which he need not have done had he continued his instruction with DL. It is understandable that he had lost confidence by that time and taken it upon himself to resolve his mortgage issues. That would have taken up his time, caused him frustration and upset, and I think it is only fair that DL to pay Mr Q £300 to recognise this.

### **My final decision**

My final decision is that David S Lowe Financial Management shall;

- (a) calculate, and pay to Mr Q the additional cost to him as a result of being unable to secure the mortgage at the two-year fixed rate of 1.09% based on the difference between that and the rate of 1.64% that was available to him
- (b) refund to Mr Q the application fee of £100
- (c) pay Mr Q £300 for the distress and inconvenience caused to him

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 23 April 2023.

Jonathan Willis  
**Ombudsman**