

The complaint

Mr D and Miss J complain that Mortgage Shop London Ltd was the reason that their property purchase was delayed causing them to miss the Stamp Duty Land Tax (“SDLT”) holiday which ended on 30 June 2021. As a result, they say they had to pay tax of £7,500 which could have been avoided.

What happened

Mr D and Miss J were buying a property and used the Mortgage Shop London (MSL) as a broker to apply for a mortgage. The initial contact was in September 2020. They paid MSL a commitment fee but said it then took eight months to buy the property by which time a SDLT holiday finished, and they had to pay £7,500 SDLT. MSL got a mortgage in principle from a lender, I shall call Lender A, and then submitted an application to it but the application was declined as the guarantors were resident outside the United Kingdom. Mr D and Miss J say that following this refusal MSL was responsible for seven weeks of delay in sourcing an alternative lender and they missed the SDLT holiday by four weeks.

MSL says that it wasn’t responsible for delays, did not commit itself to meeting a target of completion before the ending of the SDLT holiday and that this was a difficult application given, it says, the *“unique and non-standard income circumstances.”*

Our investigator didn’t recommend that this complaint should be upheld as she felt that MSL had done nothing wrong and MSL didn’t cause significant delays. Mr D and Miss J disagreed and asked for a review.

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.

Mr D and Miss J engaged MSL to source a suitable mortgage for them. That is in fact what it did, and Mr D and Miss J bought the house they wanted with that mortgage. This complaint is about the time MSL took to source that mortgage after Lender A declined their mortgage application on 30th March 2021. In particular that the mortgage wasn’t sourced in time for them to complete the purchase before 30 June 2021 which had an effect on the amount of SDLT they would have to pay. I believe that it is of some significance that the broker’s role was to source a mortgage, but I can’t see anything in the documentation to say that he agreed to source a mortgage in time for completion by 30 June 2021. This is significant because Mr D and Miss J want the broker to pay compensation as if he agreed to do so. But we would expect the broker to process the mortgage application with reasonable expedition and I can look at compensating Mr D and Miss J if the broker is responsible for unreasonable delay.

Mr D and Miss J had brought a complaint against Lender A and an Ombudsman upheld that complaint in part but didn't hold Lender A responsible for their failure to obtain a mortgage and complete on their purchase before the 30 June 2021.

Mr D and Miss J say that they discussed MSL searching for an alternative lender on their behalf shortly after 30 March 2021 including via emails as early as 8th April and that MSL securing a backup lender was a priority but despite this MSL failed to act until 26th May 2021. So, they say it was over eight weeks after Lender A's decision and seven weeks after they started talking to MSL about alternative lenders when MSL finally made a new application to another lender. These delays occurred they say despite the fact that MSL already had all relevant information and documentation from their original application which it could have used to make a new application but failed to do so for a significant period of time.

MSL's response is that this was a non-standard application, it hoped to get Lender A to yield on its refusal as it was a difficult mortgage market at this time. In the meantime, it canvassed other lenders, continued to press Lender A, and got the application into a state that would facilitate its acceptability for the next application.

I would have thought that in the normal case, after the refusal that the broker would simply turn to another provider in April 2021 and make application there. But MSL says that this wasn't a normal application. The applicants didn't have the income to support the application and were relying on supplementary applicants or guarantors. But there were problems with the guarantors. They weren't UK resident which was the reason for the refusal by Lender A. There also was a problem with their ages and being able to find a lender who would agree to lend for an acceptable length of time for the borrowers but within its age parameters for the guarantors. There seems also to have been a problem with the income to debt ratio of one of the guarantors related to having a personal loan for a company car.

I have access to a large amount of correspondence on this file. This is an active file, and the broker is clearly looking for solutions to obtain a mortgage for Mr D and Miss J. In retrospect it may be that he was more hopeful than he should have been that if he spoke to Lender A directly that this could have led to a change in their decision. But there's also clearly a desire by Mr D and Miss J that the broker speak to Lender A. In their email of 8 April 2021, they say: *"We are concerned that a change of lender would result in worse terms on the mortgage and would also cause another delay resulting in the current property falling through. Can you tell us if there is anything else that can be done with regards to speaking to Lender A."*

I can't read that as anything other than Mr D and Miss J instructing the broker to continue his efforts to make contact with Lender A and continue to press their case so that the purchase doesn't fall through, and the broker followed those instructions. The broker was also getting mixed messages from Lender A which gave him some hope that they were relenting and open to a review of the application. In fact, that was not the case, but I can see why with Mr D's and Miss J's concerns that the purchase might fall through that he did so.

On the same date - 8 April - the broker said he was continuing to try to speak to Lender A but was contacting other lenders as a back-up. On the 16 April there's a conference call which evidences that the broker is looking for alternatives but are having difficulties getting lenders who will offer the 85% LTV required.

The broker says that it was a complex process to obtain an acceptable alternative. I note that he mentions contacting 13 possible alternative providers and when a lender is found - I will call Lender B - that required time to ascertain whether the specifics of this application would be acceptable to Lender B. All of this took time and in the end an alternative provider

was found, an offer issued, and the purchase completed but too late for Mr D and Miss J to benefit from the SDLT holiday.

Mr D and Miss J's claim is for reimbursement of the SDLT that they paid from the broker because of his delay in processing the application. This is an active file where the broker appears to be involved actively throughout. It's not a file that lay unattended where inertia or delay was obvious. It certainly took longer to process the mortgage than I would expect on an ordinary application. But this wasn't an ordinary application as it was already refused by a large mortgage lender and for the reasons set out above. Although I understand Mr D and Miss J's disappointment at not benefiting from the SDLT holiday, I can't fairly say that this was the fault of the broker rather than the complexity of the application and so, I can't fairly uphold this complaint.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Miss J to accept or reject my decision before 13 July 2023.

Gerard McManus
Ombudsman