

The complaint

Mrs G and Mr M complain about the service London and Country Mortgages Ltd provided in relation to their re-mortgage application.

What happened

In June 2022 Mrs G and Mr M were looking to re-mortgage their residential property when their existing five-year fixed interest rate deal was coming to an end. They approached London and Country Mortgages Ltd (L&C) who recommended a new product with a different lender and submitted an application on Mrs G and Mr M's behalf.

Mrs G had been absent from work earlier in the year due to sickness related to her disability. To evidence her salary, Mrs G and Mr M provided additional payslips and offered to send her new employment contract to deal with any queries about her pay.

Mrs G and Mr M were asked several times to provide evidence of her employment. Despite explaining that the employer didn't routinely sign contracts of employment, the lender initially refused to accept it or supporting documentation from Mrs G's employer that explained things.

Mrs G and Mr M were unhappy with the level of information Mrs G was asked to provide to support the application and the time things took. They felt Mrs G had been discriminated against on grounds of her disability since the information she was required to provide was much more than Mr M was asked for. That caused Mrs G stress which affected her health condition and ability to work. And they were both concerned the lender's failure to accept information they'd provided would cause them to lose their mortgage offer and have a financial impact.

Mrs G and Mr M complained to L&C about what had happened. They said, in summary, that L&C hadn't addressed their concerns about delay, the failure to accept documentation they'd submitted or the risk of discrimination against Mrs G by the lender or themselves.

L&C responded to their complaint in November 2022. They didn't uphold it. They said requests for additional information had come from the lender who was checking, amongst other things, the affordability of the mortgage; L&C weren't responsible for that; and there hadn't been any delays by them.

Mrs G and Mr M were unhappy with the outcome and L&C's failure to address their concerns about discrimination. They brought their complaint to the Financial Ombudsman Service.

Our investigator didn't think L&C had acted unfairly or in a discriminatory way. He thought L&C had carried out the work expected of a broker in sourcing a mortgage that was suitable for Mrs G and Mr M, submitting the application on their behalf and responding to requests from the lender for information.

Mrs G and Mr M didn't accept our investigator's view. They said they'd made L&C aware that the requests were discriminatory based on disability under the Equality Act 2010; the fact

L&C were acting as broker didn't remove their legal responsibilities under the 2010 Act; L&C had ignored that point in responding to their complaint; and our investigator hadn't addressed the issue or considered if L&C had acted legally.

Our investigator explained the Financial Ombudsman Service can't decide if a firm has acted unlawfully since that's a matter for the courts. But we take the law into account in deciding what's fair and reasonable. He still thought L&C had acted fairly in passing on the lender's requests for information to progress the application. And he said we couldn't consider Mrs G and Mr M's complaint that L&C hadn't addressed their concern about discrimination in response to their complaint since we don't have the power to look into complaints handling.

Since Mrs G and Mr M remained unhappy, their complaint's been passed to me to decide.

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 acknowledge Mrs G and Mr M's strength of feeling about their complaint and their concerns that Mrs G has been subject to discriminatory treatment on account of her disability. I can understand it was stressful for Mrs G and Mr M when it looked as if their application might be delayed and lead to financial loss. I'm pleased to note the re-mortgage went through in the end.

I note Mr M's point that our investigator didn't reach a view as to whether L&C had breached the Equality Act 2010 in failing to raise concerns with the lender that it was discriminating against Mrs G or to look at their own actions in that regard. As our investigator explained, we don't have the power to decide if there's been a breach of statute. That's a matter for the courts. If Mrs G and Mr M want a decision on whether the 2010 Act has been breached, they'd need to go to court. The role of the Financial Ombudsman Service is to decide complaints based on what's fair and reasonable in all the circumstances. We do take legislation into account in deciding that and I've had regard to relevant legislation here.

As I understand it Mrs G and Mr M's underlying concern is that Mrs G, as a disabled person, was treated less favourably than others who aren't disabled would have been treated in a similar situation. They've noted the requirement that service providers must remove barriers because of disability so any customer can access and use services in the same way as someone who is not disabled.

They base their concerns on the fact Mr M, an able-bodied person, wasn't required to provide as much information about his income as Mrs G. They say too that Mrs G's employer had provided explanations on behalf of other employees about, broadly, how they issue contracts of employment and why they aren't signed, which had been accepted by lenders before. As I understand it, they say since the lender here refused to accept the employer's explanation, it shows they were discriminating against Mrs G as a disabled person – and L&C should have acted on that.

Mrs G and Mr M say they warned L&C that the lender's requests were becoming discriminatory and unreasonable. They say the fact L&C were brokers didn't remove their legal responsibilities under the 2010 Act; L&C modified the lender's requests, put their own interpretation on what the lender was requesting and asked for additional information; and refused them direct access to the lender.

It's appropriate first to consider L&C's role. As a broker their responsibilities were to advise Mrs G and Mr M on a mortgage that was suitable for them based on their needs and

circumstances and to submit that application on their behalf. From what I've seen they met those responsibilities. They carried out a suitability assessment and applied for a mortgage with a five-year fixed interest rate product with a new lender as agreed with Mrs G and Mr M. Their job, as the application progressed, was to ensure that the lender had the information it needed to consider the application and come to a decision on whether to lend or not. From what I've seen L&C did that.

It's fair to say the lender made several requests for information and didn't always accept the documentation Mrs G and Mr M provided. But I'm not persuaded L&C acted unreasonably or treated Mrs G and Mr M unfairly in relation to the lender's requests. It was fair for L&C to pass on the lender's requests for further information. The information the lender was asking for went to the affordability of the mortgage. It was reasonable for L&C to think the information was required by the lender so it could satisfy itself the application met its lending criteria, and - in line with Financial Conduct Authority rules - that the mortgage would be affordable.

Mrs G and Mr M have acknowledged Mrs G's earlier payslips didn't tell the whole story about her income since she'd been off sick earlier in the year. They volunteered additional payslips to show her income was consistent over later months and offered the employment contract too to show her increased salary following a job move. I can appreciate it was frustrating that the employment information Mrs G was providing wasn't being accepted by the lender.

The issue of Mrs G's employment contract being unsigned seems to have been one that affected all employees within Mrs G's organisation due to the way in which contracts were issued. The employer provided other evidence of her contractual terms. And I understand it told Mrs G and Mr M that lenders had previously accepted similar evidence from other employees within Mrs G's organisation.

I understand Mrs G and Mr M concerns that the lender's requests were discriminatory given what the employer was telling them. But I don't think there's any evidence L&C treated Mrs G unfairly here. From the information L&C have provided about the various calls they had with Mr M, whilst they knew Mrs G had been off sick earlier in the year, they weren't aware of Mr M's disability until Mr M mentioned it at the end of September 2022. The lender's concerns about the employment contract not being signed were discussed earlier than that.

Even if it were reasonable to expect L&C to have connected the lender's refusal to accept the employment evidence with Mrs G's disability sooner, I'm not persuaded L&C should have challenged the lender for acting in a discriminatory way. Their role was to make sure the lender had the information it required to come to its lending decision. L&C let Mr M know that the lender's lending criteria required Mrs G's employment contract to have a wet signature. I'm not persuaded L&C were in a position to influence the lender's lending criteria. And even if they'd raised Mrs G and Mr M's concerns about discrimination with the lender, there's no evidence to suggest the lender would have acted differently.

Mrs G and Mr M say L&C prevented them from discussing things with the lender direct and that the lender refused to speak to Mrs G's employer. Although it would be usual for the broker to liaise with the lender, there's no bar on the applicant speaking to the lender direct. So, I'm uncertain as to why L&C would have stopped Mr M from doing so. There's evidence L&C spoke to the lender about the employment contract issue on Mrs G and Mr M's behalf. And they let Mr M know in early September the lender wouldn't liaise directly with employers so it wouldn't be possible for Mrs G's employer to speak to the lender. I wouldn't expect L&C to have been in a position to require the lender to speak to the employer direct.

L&C suggested the employer provide a written explanation as to why Mrs G's contract

wasn't signed. I think that was to help get the application through. I'm not persuaded it was unreasonable for L&C to suggest additional information Mrs G and Mr M could provide. I think those suggestions were more likely made in the interests of getting the application through. On balance, I think L&C acted reasonably in trying to find a way forward.

I appreciate Mrs G and Mr M found the situation upsetting and stressful. But, considering everything, I don't think L&C treated them unfairly or caused any unreasonable delays.

The Financial Ombudsman Service can only consider individual complaints. I can't consider L&C's internal processes in relation to equality legislation. And our investigator was right to say we don't generally have the power to look into concerns about the way in which a complaint is handled. So, I don't consider those issues here. But I note L&C passed Mrs G and Mr M's complaint on to the lender straight away and responded to the complaint against them within the required timescales.

Bearing everything in mind, whilst I understand Mrs G and Mr M will be disappointed, I don't uphold their complaint.

My final decision

For the reasons I've explained, I don't uphold Mrs G and Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr M to accept or reject my decision before 27 December 2023.

Julia Wilkinson
Ombudsman