DRN-4193341

Financial Ombudsman Service

The complaint

Mr and Mrs J complain that they were reassured by their mortgage broker, London and Country Mortgages Ltd ("L&C") that the interest rate they wanted was secured. But they said it wasn't, the offer expired while they were providing evidence to support extra borrowing.

What happened

Mr and Mrs J wanted to take out some additional borrowing with their existing mortgage lender. They said they could show some upcoming expenditure on home improvements, including building work. They engaged L&C to secure this lending for them, and they told us they paid a fee of £999, which was to secure a fixed interest rate of 1.12% over four years for their borrowing. It took some time to gather all the information that their lender wanted to support their borrowing, but they said they'd checked if this rate was locked in. And they said they were clearly and unequivocally told that there would be no problem with the rate.

Mr and Mrs J pointed us to an email dated 24 January 2022 where L&C told them

> *"..the secured rate is 1.12% and there is no reason that we should lose this rate due to any delay in receiving the quote for works."*

Mr and Mrs J later found that their rate would no longer be honoured by the lender, because the initial mortgage illustration had been made over six months earlier. They would have needed to complete the application by late April, to obtain the offered rate.

They said that they had to take out a mortgage at a much higher fixed rate, at 2.90% for five years. Mr and Mrs J said this had clearly ended up costing them much more than expected, they were paying a little under £6,000 per year in additional interest. Also, they had intended to pay off their mortgage at the end of the fixed interest rate period, and that would now happen a year later than planned. So Mr and Mrs J wanted L&C to cover those additional costs, plus compensation for the time and stress this complaint had taken up.

L&C said that what happened wasn't its fault, because Mr and Mrs J's lender had never told it that the illustration it had sent them would only be honoured for six months. It stressed that the delay in completing the application wasn't it's fault, it was only because Mr and Mrs J needed to get more detailed quotes for the home improvements they were planning.

L&C said it now understood the application needed to be completed by 22 April, but it was still going ahead with the application after this time, and the lender hadn't made it aware that it would no longer honour the rate. In fact, the lender said it was underwriting the application in May, then in June told L&C that there had been an offer. But the lender then said that this was wrong, the application had timed out.

L&C said that lender wouldn't honour the previous rate now, and L&C couldn't make it do so. L&C said any decision by the lender to close the application was one it took alone.

Mr and Mrs J sent our service a screenshot, which shows that there is no offer expiry date for their desired mortgage on L&C's portal. They feel L&C is relying on this evidence to say that the lender didn't make it aware that the mortgage illustration would expire, but they thought that L&C must just have missed a key part of the process. They said if they'd known about the deadlines, they could easily have obtained all the information they needed within that deadline.

Our investigator didn't think this complaint should be upheld. He said that Mr and Mrs J were told when they first received an offer that it could be withdrawn at any time. He said he couldn't see anything that had told L&C that this mortgage product had a six month expiry date. And the lender was still processing Mr and Mrs J's application after this date had passed, so he didn't think the lender had made L&C aware that the product was withdrawn, until mid-June, when the lender issued an offer at a new, higher rate.

Our investigator said that when L&C told Mr J there was no reason he should lose the rate, it was only advising him that an exercise in tidying up his application post submission could be required, as opposed to restarting the process and selecting a new mortgage product. But a mortgage product is never secured until a lender issues a formal mortgage offer. So our investigator said he didn't think it was fair and reasonable for L&C to compensate Mr and Mrs J for the financial impact of having to secure a higher rate of interest, alongside a goodwill payment.

Mr J replied, on behalf of himself and Mrs J, to disagree. He said the payment of an upfront fee prevents the lender from withdrawing the rate from an application. Mr J said this fee was non-refundable. Mr J also said L&C was still telling its applicants now that secured rates wouldn't be withdrawn, and he wanted us to obtain a recent call he'd had with L&C where he said the call handler said the same thing.

Our investigator didn't change his mind. He said that Mr and Mrs J's rate wasn't reserved, they'd been told by L&C that the rate could be withdrawn at any time. And L&C just didn't know about the expiry date. He said that L&C wouldn't give our service the more recent call that had been made to it, because it couldn't be sure that the call did come from Mr or Mrs J (the caller hadn't identified themselves on the call) and it also said this call only took place after our investigator's view had been issued. Our investigator said he couldn't comment on this call, as he hadn't heard it.

Mr J replied again to disagree. He said that the issue wasn't that the *"product can be withdrawn at any time".* The product was not withdrawn. It had a deadline which they weren't told about, despite checking. Because no agreement was reached, this case was then 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 only proposed to uphold it in part. This is what I said then:

> I'd like to start by saying that I have not sought to obtain the recent call with L&C which Mr and Mrs J say supports their case. I understand Mr and Mrs J say L&C has given them poor advice, and is still giving out poor advice now. But it's my view that any general comments or advice given by L&C so long after the issues in this case wouldn't be directly relevant to this case, and unfortunately wouldn't be of any assistance in deciding the matters in question here. I think we need to focus on the advice that we know was given, which has been evidenced by both sides.

I also think that there has perhaps been some confusion over some details of this case, so I'll set out my understanding as I go.

Mr and Mrs J received a mortgage illustration dated 20 October 2021. That illustration was for just under £330,000 of borrowing, on an initial fixed rate of 1.12%. The rate was fixed for five years and one month from the date of the illustration, not four years as Mr J recalls.

Mr and Mrs J then decided to submit an application, hoping to secure an offer. Mr J said they'd paid a fee, and he understood that at this point, the rate was secured.

Whilst mortgage offers are generally binding on the lender, and can only be withdrawn in specific circumstances, mortgage illustrations are not. So it is up to the lender, how long they are willing to wait for an application to complete. And I haven't seen anything to suggest to me that the payment of a fee to the lender in this case, would prevent the lender from refusing to honour the rate set out in the mortgage illustration.

I should pause here to deal with the fee Mr and Mrs J paid for their first application. L&C says it expects this fee will have been returned to them by the lender – the fee wasn't paid to it. But Mr J says it wasn't returned. This may be because the second application Mr and Mrs J made, based on an illustration provided in late July, also involved a product fee of £999, and the lender may have applied the previous payment against this fee. So I don't currently think that L&C has to reimburse Mr and Mrs J for this payment. However, if Mr and Mrs J can evidence that the first fee was not returned and a second fee was paid, I will reconsider on this point.

Mr and Mrs J's application for additional borrowing took some time, because quotes for work were needed. The initial quotes fell far short of the borrowing Mr and Mrs J had requested, so the lender asked for further information, and it took a while to get this.

Mr and Mrs J had understood a mortgage offer was then made in mid-June 2022, but at a much higher rate. L&C says this was because the lender was only prepared to honour the rate in the illustration for six months after the illustration was done, and also that it had no way of knowing this. L&C's argument throughout has been that it can only tell Mr and Mrs J information that it has been given itself, and there was no indication from the lender that the illustration would be withdrawn, until the point when the lender realised it had already lapsed. So L&C says that what's gone wrong isn't its fault.

I think that, as a starting point, it is clear that the illustration Mr and Mrs J received in October 2021wasn't an offer by the lender to lend, and it wasn't an ongoing commitment to lend at the rate quoted there. The illustration is noted as "*valid **on the date produced**"* only [the bold text appears in the original] and the illustration specifically says it may change after this.

L&C has shown us a covering email which was sent to Mr J with this illustration. That email says *"We can only offer this mortgage deal to you while it's still available on the market (it may be withdrawn by the lender at any time)."* So I think at this point, Mr J had been given correct advice about whether this rate was secured for him.

However, in January 2022 Mr J asked if the rate could be lost, because of the time it was taking to get quotes to support the application. And the broker responded to Mr J's query about whether he had plenty of time to get the quotes he needed, by saying *"…the secured rate is 1.12% and there is no reason that we should lose this rate due to any delay in receiving the quote for works."*

When I asked L&C why it considered that this rate was secured, it just said normally a lender would give notice of an approaching deadline, and none was given in this case. So L&C said its staff would have no reason to believe the application would be closed. And L&C said it couldn't have foreseen that this particular application would take this long.

So, in short, L&C still says it had no reason to think the rate would be withdrawn. But it has given a quite clear reassurance that it won't be, and given that in the context of further information being needed to support a mortgage application which had already been in process for around three months.

I have seen nothing to suggest to me that the lender had made a commitment to keep the rate mentioned in this offer (of 1.12% fixed for the first five years) open until Mr and Mrs J had fully completed an application. I haven't been able to see why the broker who responded to Mr J's query would have considered that the rate the lender had offered was secured.

I think Mr J was given mistaken advice here, and that led him to think that there was no urgency to securing the additional building work quotes he needed, to support this mortgage application.

Mr J says that if he'd been properly advised, he could easily have speeded up the process of obtaining these quotes, and then he would have obtained the lending that he was shown in the October 2021 illustration. I do think Mr and Mrs J could have speeded up the process of obtaining additional building quotes, if they had been properly advised by L&C.

Unfortunately, I still don't think that would have meant that Mr and Mrs J could have accessed the lending that they were shown in the October illustration. I think things had already gone wrong here. I'll explain why I think that.

Mr and Mrs J had existing borrowing, which was on a fixed rate until late 2022. What Mr J wanted to do was to take out further borrowing with this lender, on top of the existing lending. He told L&C that he would then use the funds either to pay for planned building works to his home, or to pay off the existing mortgage at the end of the fixed interest rate term, late in 2022. Mr J clearly anticipated that mortgage rates were going to rise, and they would face much higher rates at the end of 2022, than they could obtain in late 2021. Mr J told L&C he hadn't yet decided how the funds would be used, but appeared to have a clear figure in mind, which was very similar to the amount of their pre-existing borrowing.

However, the mortgage illustration that Mr and Mrs J received in October 2021 doesn't appear to have been completed on the basis that it was additional lending for home improvements, or that it was made on top of an existing mortgage. It says –

> *This product is only available for like for like refinancing. Further borrowing, including debt consolidation cannot be carried out on this product.*

Although the purpose of this additional borrowing may not have been finally decided by Mr J, it's clear it wasn't like for like refinancing. So I think Mr and Mrs J were unlikely ever to have received a confirmed offer for this lending, at the rate they were shown in October 2021. It looks as if the lending set out in that mortgage illustration was not suitable for Mr and Mrs J, for the purposes they have told us about.

Mr and Mrs J received a mortgage offer in June 2022. Our service doesn't have this offer, but Mr J's emails to L&C say this was for additional borrowing. It's not clear to what extent the new rate in this offer was affected by changes in the interest rates between October 2021 and June 2022, and to what extent it was affected by the lender now being clear that this was a further advance, not like for like refinancing of an existing mortgage debt. I would expect both of these factors to have increased the rate offered at this point.

We know Mr and Mrs J didn't accept that June 2022 offer. Instead, they appear to have remortgaged once their existing fixed interest rate deal expired, and kept their borrowing at around £330,000.

I have to think about what's likely to have happened if Mr and Mrs J had been properly advised in October 2021. I think if they'd been properly advised, they'd have been given a different mortgage quote. And, on the evidence I have seen to date, I can't say that it's most likely that, if Mr and Mrs J had been properly advised in October 2021, and had received a mortgage illustration which was for additional borrowing at that time (doubling the amount of their mortgage) that it's most likely they would have gone ahead. It's not clear to me that, if they weren't able to access rates as advantageous as that set out in the mortgage illustration they received, they would still have chosen to take out additional borrowing in late 2021 which would commit them to double their mortgage for around a year, rather than access a fixed interest rate in 2022, as they later did.

For these reasons, I simply cannot say that it's more likely than not that if Mr and Mrs J had been properly advised in October 2021, that they would have gone ahead with their planned borrowing, and that this would have been approved at a rate which would have been attractive to them.

I also can't be clear on whether Mr and Mrs J would actually have used the mortgage funds for the purpose that they applied for. Mr J was very clear with L&C that he was applying for a mortgage based on quotes for building work, but that he might not use these funds for that work, he might use them to clear his existing borrowing instead. And although the quotes he received for the planned work were initially around a third of what he wanted to borrow, Mr J continued to say that he would need to borrow around £330,000, a figure which does appear to have been derived by reference to the pre-existing borrowing, rather than by reference to the costs of works.

I know that Mr J said he and Mrs J had other savings they could use for the work, but it does still appear that Mr and Mrs J were considering that they could use this application to effectively remortgage at a lower rate, before their existing fixed rate lending period expired, without incurring the additional costs of paying any ERC on their existing borrowing. And I don't think it would be fair and reasonable to ask L&C to cover any additional monthly mortgage costs that Mr and Mrs J face now, because they weren't successful in that plan.

I do think L&C has provided poor service to Mr and Mrs J, and given them incorrect advice. And I think that meant they wasted a considerable amount of time putting together all the information required for a mortgage application which was never likely to be what they wanted. For that reason, I would ask L&C to pay Mr and Mrs J £250 now. I know Mr and Mrs J will be disappointed, but I don't think L&C has to do more than that.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

L&C sent a lengthy reply, which contested some of the findings I had made. I'll look at each of the issues in turn.

L&C disagreed with my conclusion that Mr and Mrs J could have speeded up the process of getting quotes, because it said it had been chasing this information regularly, without any urgency from Mr and Mrs J. But I still think that Mr and Mrs J did ask if a significant delay would be likely to be a problem. They emailed at the start of January, and said they were unlikely to have quotes for a month. And around the end of January, when L&C replied to this email, Mr and Mrs J were given an unhelpful reassurance that their rate was locked in. I still think this is likely to have contributed significantly to the lack of urgency they felt, in getting together these quotes.

However, I also think it's important to note that, whilst Mr and Mrs J said that they could get further quotes, they also said they would not be able to show that the amount they wanted to borrow was all going to be used for home improvements. At a point when they had quotes amounting to a little over £100,000, Mr J said *"I will not be able to demonstrate quotes making up the balance between quote and £320k."* And even the revised quotes Mr J did eventually outline, left a shortfall of at least £50,000.

L&C also contested whether any offer was ever sent to Mr and Mrs J in June 2022. It said they only received an offer in July 2022, and this was like for like refinancing, not a further advance. I note that on 16 June, Mr J emailed L&C, to say that an offer had been made on 13 June, but at a much higher rate. So whether or not an offer was indeed made then, Mr J appears to have understood, from L&C, that there was an offer at this point. And I can see that the advisor's internal notes say that an offer was made, but wasn't valid because the application was more than six months old.

L&C said, although the mortgage illustration which Mr and Mrs J were given said it was only for like for like refinancing, that was just because the broker who created this illustration did so through the wrong system. L&C said Mr and Mrs J could have received a five year fixed rate of 1.12% for their further borrowing. L&C has now sent us evidence which, although it contains rates which were valid a little later than Mr and Mrs J received their mortgage illustration, does suggest they would have been able to get further borrowing, at 1.12%.

But L&C also commented on what I'd said about the purpose of the lending. It said this further borrowing application was made specifying the funds would be used for home improvements. L&C said funds could only be used for that purpose. It stressed that the lender would only allow the money to be used for that purpose, and would require detailed information on how the funds would be used.

L&C said if not all of the money was used for home improvements, then the lender might allow Mr and Mrs J to pay back the rest of the borrowing into this mortgage (although it might also charge an ERC if they did so). But L&C said the lender wouldn't have allowed the funds to be used for a different purpose, like repaying a different mortgage, unless that was specifically agreed.

In the light of the new evidence L&C has provided, I accept that Mr and Mrs J may have been able to get additional borrowing on their mortgage, at a 1.12% fixed rate, around the time they made this application. But unfortunately, I don't think that changes the outcome here. I still think it's unlikely that Mr and Mrs J could have secured the lending shown on the

October mortgage illustration, in the circumstances they were in. That's because of what L&C has now said about the strict tests the lender would apply for this borrowing – so Mr and Mrs J would need to demonstrate that all of the money would be used for home improvements.

That doesn't appear to be the advice that Mr and Mrs J were given initially by L&C. I've seen an exchange of emails in late January, where L&C suggests that if the quotes are well below the requested borrowing, then their application can be amended. L&C says Mr and Mrs J could later change the existing application to request whatever amount is eventually shown on the quotes, for home improvements, and then the remaining sum for "*personal use*".

But in late April 2022, Mr and Mrs J were told by L&C that their lender wouldn't allow Mr and Mrs J to change the loan purpose after all. And it wouldn't allow them to borrow more than the estimates. So if they wanted to borrow more than the estimates, they would need to make a fresh application. This is the first time I've been able to see an indication to Mr and Mrs J that their application was unlikely to succeed on the basis on which it was being made.

What L&C has said now, makes me think that Mr and Mrs J's application was always very unlikely to succeed. So I still think that there were problems with the advice Mr and Mrs J were given, and they were in fact always unlikely to have secured the rate they were shown in October 2021.

For that reason, I still have to think about what would have happened if Mr and Mrs J had been given correct advice. So I now need to consider what might have happened if they'd been advised clearly – in the way that L&C has now set out for our service - that their lender was extremely unlikely to approve additional borrowing, where Mr and Mrs J weren't able to show that all of the borrowing was for home improvements. And in that case, I think they would not have engaged in the process of making this application.

That means I've still reached the same overall conclusion on this complaint, although for different reasons.

Mr J only replied some time after the deadline had passed. He said he didn't want to make any final points. Although he said some of the details set out in my provisional decision weren't right, he felt he'd wasted enough time on this complaint.

Mr J said we weren't holding L&C accountable. He said he still couldn't understand why everyone thinks it is acceptable for L&C to blame the lender for the issues when he was not dealing with the lender. I think there has been some confusion here too, as my provisional decision was not that the lender in this case is to blame for what happened, or that L&C could shift the blame in the way Mr J suggests. I felt the advice given by L&C was at fault. And, although I have now considered the further evidence, and reached that conclusion on a slightly different basis, that overall conclusion remains the same.

Mr J said he looked forward to receiving £250 for at least the acknowledgement that he was poorly advised, although he indicated this didn't come close to covering what this advice had cost him. I should note here that I haven't suggested L&C needs to cover the losses Mr J says he is experiencing now, as a result of not obtaining the 1.12% rate he expected. That's at least partly because I simply don't think he and Mrs J could ever have accessed the rate he was shown in October 2021.

For the reasons set out above, I haven't changed my mind about the appropriate award in this case. I'll now make the decision I originally proposed.

My final decision

My final decision is that London and Country Mortgages Ltd must pay Mr and Mrs J £250.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr J and Mrs J to accept or reject my decision before 19 July 2023.

Esther Absalom-Gough
Ombudsman