

## **The complaint**

Mr S complains that London and Country Mortgages Ltd (“L&C”) failed to advise him in a timely manner that his application for a remortgage had been refused by a lender which meant that he was unable to remortgage with another lender before interest rates increased.

## **What happened**

Mr S approached L&C to complete a re-mortgage in March 2022. The broker recommended a mortgage with a lender I shall call Lender A as it offered a two-year fixed rate at 1.79%. The mortgage application was submitted to Lender A on 16 March 2022 and a valuation was booked for 17 March 2022. On 21 March 2022 Lender A told L&C that the valuation would be £0 and requested an EWS1 form.

On 6 April 2022 Lender A contacted L&C and confirmed the property wasn’t suitable as security and confirmed the application would be cancelled on 10 April 2022. L&C challenged the valuation with Lender A and tried to contact their business development manager on 11 April 2022 which was after 10 April and again on 25 April 2022. L&C felt that the valuation decision could be challenged and potentially overturned. L&C continued to chase up the appeal on 28 April 2022 and 5 May 2022.

On 9 May 2022, a response was received that confirmed the valuation of the property would remain £0. On 16 May 2022, a new application was completed with Mr S’s existing mortgage lender. Mr S made formal complaints to L&C and Lender A. L&C partially upheld Mr S’s complaint and offered him £200 compensation for the trouble and upset he has been put through. L&C agreed that it should have contacted Mr S earlier about the refusal.

### *Our investigator’s view*

Our investigator’s view was that L&C should have made Mr S aware of Lender A’s refusal of 6 April at an earlier time to give him the chance to decide if he wanted to contest the valuation or not and advise him that interest rates may go up if he didn’t get a new rate from an alternative lender. Our investigator felt that by not informing Mr S of the refusal on 6 April that it contributed to Mr S having to pay a higher rate of 2.40% whenever he re-mortgaged in the middle of May.

Our investigator felt that to put things right that L&C should contact Mr S’s existing mortgage lender and find out what the rates would have been with it on 6 April 2022 and then pay Mr S the difference between what he is paying and what he should have been paying from the date Mr S took out his re-mortgage until his present fixed rate deal expires. He also recommended that L&C pay Mr S £350 compensation in total. It had earlier paid him £200 for its delay in informing Mr S about Lender A’s refusal. L&C disagreed with our investigator’s view but also sent an email from Mr S’s present lender saying that it didn’t keep a record of historic interest rates and it was unable to provide the rate that was available on 6 April 2022.

### *My provisional findings*

I issued a Provisional Decision in this complaint which I set out below:

*“Mr S brought his complaint initially against Lender A which was considered by an Ombudsman. Relevant to this complaint is that the Ombudsman held that the email from Lender A to the broker on 6 April was very clear that the application had been declined and would be cancelled on 10 April and that the reason it was declined was that the proposed property was not a suitable security for Lender A.*

*Mr S says that he should have been advised that Lender A declined his application when it told L&C on 6 April 2022 and there shouldn't have been a delay until 25 April when he says that he was told that they would be successful in their challenge. Mr S says that he should have been advised to apply elsewhere pending the outcome of the appeal.*

*L&C says that the adviser was entirely correct to challenge Lender A's refusal of the mortgage. It says that Lender A's reasons it provided for refusing the mortgage were incorrect and challengeable and, that it should not have accepted the application in the first place. L&C say that had Lender A provided the correct reason that it declined the mortgage “Our adviser would not have attempted to appeal the valuation and the client would have been made aware that the application could not proceed at that time “.*

*L&C fairly accepts that “the adviser should have had the discussion with the customer and confirmed he was appealing this decision and why. This should have taken place sooner than it did as it should have taken place by 8 April at the latest.” The broker says that although Mr S was fully aware of the lender's decision by 25 April and could have applied to a different lender but chose to continue with the appeal and as Mr S had made that decision, L&C should not be held responsible for any increase in rates pending the outcome of that appeal.*

*The broker warns me about making a decision with the benefit of hindsight and I'm keenly aware of it. The difficulty here is that for some unexplained reason, no discussion took place between the broker and Mr S on the 6, 7 or 8 April before the application was closed. Clearly there should have been as the broker agrees. It seems to me that that discussion would have been about whether they should appeal but also the length of time of the appeal, what were the chances of success and if they were not successful would Mr S lose any opportunities in the meantime. I can't see that that this balanced conversation ever took place.*

*The upside of any appeal would be that Mr S would win and get his fixed rate of 1.74%. The downside would be that that he would lose and be faced with whatever interest rate was available at the time of that decision in a world of rising interest rates. I don't see that conversation of weighing up the pros and cons of an appeal occurring and that's unfortunate. I don't disagree that Mr S might well have opted to appeal but I would have thought he could be given some options such as to lodge an appeal but if it were not overturned within a reasonable period to look for an alternative. The time factor in processing the appeal seems to have been left out of account and no concern with what was happening generally with interest rates.*

*I believe that at some stage L&C should have advised Mr S that if he pursued this appeal that he may lose out not only on the interest rate that was available in March but also the one that was available in April and asked if he wanted to continue with the appeal based on that choice. But that choice was denied Mr S. For that he should receive compensation and I agree that the £350 suggested by our investigator seems appropriate.*

*The related question is whether Mr S suffered any financial loss through L&C's failures. There is an issue as to whether if Mr S was apprised of all the information he would have*

*proceeded with the appeal in any event and lost out as interest rates increased. L&C make the point that on the information they had on 6 April that this was going to be a successful appeal and Mr S agrees with them when he is eventually told of the grounds of refusal on 25 April. The fact that the appeal is unsuccessful doesn't of itself make it a bad appeal.*

*I also note that on 26 April Mr S asks whether they should look at a new provider and asks about the rates then available. L&C reply on the same date to say that it is hopeful that the decision can be overturned based on there being a sense check on the decision and tell Mr S that "Alternatively we would need to look at new rates, but fingers crossed it does not come to this as the best 2-year fixed rates are at 2.19% with a 999 fee". There is then some toing and froing with Nationwide until 10 May 2022 when it's confirmed that the appeal will be refused.*

*I note that besides the delay in informing Mr S of the refusal of the mortgage, there is a delay in progressing the appeal. These may be linked as when Mr S is told about the refusal on the 25 April, the appeal appears to have been actively pursued, no doubt because of Mr S's active interest in it now that he knew about it. In the period before that although the appeal has technically begun it's pursued with no obvious vigour. The business development manager at Lender A is on holidays and there appears to be no attempt to urgently contact someone else at Lender A who could deal with the matter.*

*From reading the email traffic, the engagement between the broker and Lender A takes place between 25 April and 10 May, a period of 16 days following Mr S being told about the refusal. Although L&C did contact Lender A on 11 April there was no immediate follow-up. The heightened activity on 25 April no doubt relates to telling Mr S on that date and his active interest in finding out the result of the appeal. It's reasonable to believe that if Mr S was told about the refusal say on 6, 7, or 8 April that L&C would have been under pressure from Mr S to get an answer from Lender A and following the timeline, I believe that it's reasonable to assume that it would have got a similar response in the same time period – about 16 days after the refusal was first communicated to L&C.*

*So, if that were the case, on or about 25 April, L&C and Mr S would have known of Lender A's final refusal. Even if there was some delay on Lender A's part, I would have thought it then reasonable to re-assess the situation at that time. If the application was refused Mr S would certainly go with the alternative lender. If no decision were reached but a proper re-assessment done, I consider there is a good likelihood that Mr S may well have gone with an alternative lender. So, I consider it more likely than not that if L&C had told Mr S of Lender A's refusal on 6, 7 or 8 April that by 25/25 April he would have chosen an alternative lender to Lender A.*

*I see that on 26 April, Mr S is told what the best two-year fixed rate available at that time is. L&C should have been in the position to assess whether it was better for him to go an alternative route and at that stage I believe that it was. My view is that Mr S would have been in a position to apply for an alternative fixed rate by 26 April and we know what that fixed rate was which is better than the rate he is now on. I assess Mr S's financial loss because of L&C's delay in informing him about Lender A's refusal is the difference between the amount he is paying his present lender for the period he is on its two-year fixed rate compared to the amount he would have paid had he been on the product recommended to him by L&C on 26 April."*

*I invited Mr S and L&C to respond to my Provisional Decision which they both did, and their response is set out below.*

## 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.

Both parties responded both to the substance of the decision and the calculation of how much would be due to Mr S. In respect of the substance, Mr S's makes a point that on 10 April that L&C should have made multiple applications pending the appeal outcome. I note that that it isn't normal business practice among brokers to make multiple applications and good industry practice is one of the factors we must consider in our decisions. I imagine there would also be cost and credit implication in making multiple loan applications. I also note that when Mr S is first told of the refusal in late April he shows no appetite for other applications and I've no reason to believe that the situation would have been different in early April.

L&C made a number of points about the involvement of Lender A but say that it does understand the reasons behind the provisional decision and have no further information to add. So, in respect of the substance of my decision, after reviewing the file and considering the further submissions of Mr S and L&C. I consider that my Provisional Decision represents a fair outcome to this complaint.

The other issue of disagreement is the calculation of Mr S's financial loss. My aim in providing redress for financial loss is to put Mr S back in the position he would have been in had he took up the fixed rate mortgage product that would have been available to him on 26 April.

My assumption as set out in my Provisional Decision is that could have been achieved by a simple calculation of the difference between the amount that Mr S would have paid under the lower interest rate and the amount he is now paying. L&C sets this out as follows:

"In respect of the rate calculation, based on the loan amount of £467,457 on a property valued at £730,233 over 35 years on a repayment basis the difference between the two products discussed within the provisional decision are:

2.40%: £1,646.19 x 24 months = ££39,508.56 + £999 product fee = £41,007.56

2.19%: £1,594.48 x 24 months = £38,267.52 + £1,499 product fee = £39,266.52

£41,007.56 - £39,266.52 = £1,741.04 difference in rates."

There is a miscalculation here as the lower product fee goes with the lower interest rate product and the higher with the higher interest rate product, but the totals are correct.

Mr S disagrees with this and says that compensation should be calculated based on the difference in the total interest paid. Mr S's point is that a straight comparison between two monthly payments over a period of two years does not accurately reflect the interest rate effect and he has shown me evidence that the interest payment difference is £1,946.25. L&C disagreed with the basis of that calculation saying that its comparison was based on following its regulators guidance under MCOB 4.7A.23AR in how to compare the cost of alternative mortgage products.

I've given this some consideration. I've looked at both sets of calculations. I note that according to Mr S's spreadsheet if Mr S paid the higher payments each month that at the end of the two-year period he would have made higher monthly payments (and be worse off because of that) but also his mortgage balance at the end of that period would be higher by

about £705. So simply refunding the difference in the payments made does not put Mr S back in the position he would have been in had he taken out the lower rate fixed rate product.

I've considered the regulations that L&C refer me to and which they have followed in calculating the loss. I don't consider that using these for the purposes of calculating Mr S's loss will fairly recompense him for the loss he has suffered. I believe that the purpose of those regulations is for a prospective comparison between two products to encourage consistency, fairness, and simplicity but are not useful for present purposes in assessing loss, so I consider Mr S's suggestion to be a fairer way of doing that. So, my view is that L&C should compensate Mr S for the extra interest he will pay for the two years of the mortgage rate product together with the difference in the fees attached to the mortgage products.

### **Putting things right**

L&C should work out the amount of interest that Mr S will pay on his current two year mortgage product with his current lender, deduct from it the amount of interest that he would have paid had he taken out the mortgage product referred to in L&C's email of 26 April 2022 and pay Mr S the difference together with the balance of any related product fees. L&C should also pay Mr S £350 for his distress and inconvenience.

### **My final decision**

My decision is that I uphold this complaint and require London and Country Mortgages Ltd to pay the redress referred to above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 March 2024.

Gerard McManus  
**Ombudsman**