

## The complaint

Mr and Mrs A's complaint is about a lifetime equity release mortgage taken out with Legal & General Home Finance Limited (L&G).

Mr A (who has dealt with the complaint throughout with the consent of Mrs A) says that L&G's solicitors failed to inform his solicitors of the deadline to send funds to complete the transaction. As a result, the mortgage offer lapsed, and later completed at a higher interest rate.

To settle the complaint, Mr and Mrs A want L&G to honour the original mortgage offer.

## What happened

I won't set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat all the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs A being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr and Mrs A had a mortgage on their home of approximately £980,000. They wanted to pay this off and, through their own independent financial adviser, applied for a lifetime equity release mortgage from L&G.

An initial mortgage offer was issued on 15 February 2023 for a loan of approximately £790,000 at a fixed rate of 6.60%. A second mortgage offer was issued on 31 March 2023 for a loan of just under £820,000 at a fixed interest rate of 6.51%. The mortgage offer stated that it was valid until 29 June 2023.

In order to complete the transaction, Mr and Mrs A needed to provide approximately £170,000 from their own resources to make up the shortfall between the amount L&G was lending and the amount required to redeem the existing mortgage. They decided to sell another property that Mr A owned, and use some of the proceeds of sale to make up the shortfall.

L&G instructed solicitors – a firm I will call KX – to act for it on the mortgage. Mr and Mrs A were required to have their own independent legal advice, and instructed a firm I will call THP to act for them. THP was also acting on the sale of the other property.

L&G's records show that on 3 April 2023 KX wrote to THP enclosing the mortgage offer, security documents and standard forms. The letter stated:

*"Please allow a minimum of 5 working days before any proposed completion date to allow us sufficient time for checking and requesting funds. Further enquiries may be*

*required and so we recommend you factor this in. A new Offer requiring new forms may be needed if the current one expires.*

*We cannot guarantee any specific dates for completion, even where you notify us of a preferred date, so please ensure your Client is made aware of this and does not commit to any specific dates until we have confirmed we are in a position to proceed." (emphasis as in original)*

On 6 April 2023 THP confirmed to KX that Mr and Mrs A wanted to proceed but were "waiting for the sale of another property to go through first". KX heard nothing further from THP and so chased the matter up on 31 May 2023. On 2 June 2023 THP confirmed the sale of the other property needed to be progressed first before the equity release mortgage could go ahead.

On 14 June 2023 KX wrote to THP asking for outstanding documents and stating "Please note your clients' mortgage offer will expire on 29.06.2023."

THP replied the same day but didn't send in the required documents. KX chased these on 15 June 2023, again reminding THP that the mortgage offer would expire on 29 June 2023.

After receiving the documents the same day, KX wrote to THP stating "Please confirm you are happy to complete before 29/06/2023 as case is ready for completion."

THP confirmed they were ready to complete and on 19 June 2023 said they wanted to complete on 29 June 2023, the day the offer expired. On 27 June 2023 KX wrote to THP with a completion statement and a covering letter which stated:

*"It appears there is a shortfall and we will require cleared funds from a solicitors client account in order to proceed. Please adjust the figure of the shortfall shown in the attached completion statement to allow for an additional 2 clear working days from receipt for a completion date to be set. **You must telephone us to confirm when you have sent the payment so we know when to expect receipt of it.**" (my emphasis)*

KX heard nothing further from THP. KX emailed THP at 1:37pm on 29 June 2023 asking for an update and stating that if funds were not received by 3pm, completion would be cancelled for that day. There was no response to this email.

The shortfall funds were received at 3.14pm, after the cut-off point. Completion therefore didn't take place on 29 June 2023 and the mortgage offer lapsed.

L&G explained to Mr and Mrs A's broker that a product was available at a lower interest rate but for a lower amount, or for the same amount as Mr and Mrs A had wanted to borrow, but at a higher rate of interest. A new mortgage offer was issued on 3 July 2023, for a loan of just over £818,000 at a fixed rate of 7.28%, and the mortgage later completed on that offer.

Mr and Mrs A complained, both to L&G and KX, saying that their solicitors had not been made aware of any 3pm cut-off point, and that the funds had been sent by 3.14pm.

KX's response was as follows:

- THP had been made aware that it was required to telephone KX to confirm when the shortfall payment had been sent, but it did not do so.
- KX made THP aware in an email sent at 1:37pm that KX required the funds by 3pm.
- KX acknowledged that the deadline should have been explained at the beginning of the

transaction, and apologized for this.

- If THP had telephoned the case handler at KX to confirm the shortfall funds had been sent – as directed in the completion letter of 27 June 2023 – or responded to the email sent at 1:37pm, the payment could have been located and completion taken place.
- Because KX hadn't been told by THP that the shortfall funds had been sent, the case handler believed that they'd not been received and that completion wasn't going to take place that day.

L&G's final response letter reiterated what KX had said, and that completion hadn't taken place because THP had both failed to inform KX that the shortfall funds had been sent, or respond to the email sent at 1:37pm advising of the cut-off point.

Dissatisfied with these responses, Mr and Mrs A raised their complaint with our service. An Investigator looked at what had happened, but didn't think L&G was at fault. Mr A disagreed and asked for an Ombudsman to review the complaint.

He's made some further points, which I summarise as follows:

- There was no doubt that 29 June 2023 was the agreed completion date and that the reason to complete on the last date of the mortgage offer was to meet the needs of the chain of buyers and sellers in relation to the related property transaction (from which the shortfall funds were coming).
- KX failed to give adequate notice to THP that there was a deadline of 3pm, until the email was sent at 1:37pm. However, the email wasn't opened, as it was sent to someone who wasn't in the office.
- If THP had been made aware of the deadline, more focus would have been made to ensure timely completion.
- KX had a 'soft' deadline of 3pm and a 'hard' deadline of 3.30pm and the funds were with them before 3.30pm.
- KX could have checked to see whether or not the funds had arrived. It is the "*primary role*" of KX's Accounts Department to do this.

The Investigator looked at these further points, but explained that it didn't change her opinion that L&G was not at fault.

### **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.

KX, as L&G's solicitors, were L&G's agent in this transaction. Therefore L&G is responsible for the actions of its agent.

I'm satisfied THP was made aware at an early stage that KX would require several days' notice of when THP wanted to complete the transaction. This was information provided in the initial instructions to THP on 3 April 2023. In addition, the completion statement made it clear that KX required shortfall funds two days in advance, and that THP must telephone KX when the funds had been sent.

KX confirmed to THP that the mortgage was ready to complete on 15 June 2023. It was entirely THP's decision to schedule completion of the sale of the related property (which was to provide the shortfall funds) for 29 June 2023 – the same day the mortgage offer expired. That wasn't something KX had any influence or control over.

Therefore I'm satisfied THP was already in breach of KX's instructions that the shortfall funds must be paid to KX two days before completion. I don't know why THP decided to fix completion of the sale of the related property for 29 June 2023 when they knew they were required to remit the shortfall funds two days before completion. That's something Mr and Mrs A will need to raise with THP.

Mr A says that the email sent at 1:37pm advising of the 3pm deadline was sent to someone who wasn't in the office. KX couldn't have known that, and in any event, it's the responsibility of THP to arrange for cover when staff are away from the office.

It's entirely reasonable for there to be a completion cut-off point. That's because the receipt of funds isn't the end of the matter. There are administrative tasks that have to be carried out in order to complete the transaction, as well as checks to ensure the correct amount has been received in order that the mortgage to Mr and Mrs A's original lender could be redeemed.

I acknowledge that the funds were received at 3:14pm, but KX didn't know that because THP didn't telephone KX, despite having been instructed to do so. Therefore, whilst there was a 'soft' deadline of 3pm and a 'hard' deadline of 3:30pm, KX wasn't told that the funds had been sent.

It's possible that if THP had telephoned KX when the shortfall funds were sent, completion would have taken place on 29 June 2023. KX has explained that case handlers do not have access to the firm's payment systems. So whilst Mr A considers that KX's case handler or its accounts department should have, unprompted, searched through all the transactions carried out that afternoon to see if the funds had been received, this isn't something KX is obliged to do. Rather, the obligation – indeed the clear direction given by KX to THP – was that THP was required to telephone KX to let KX know the funds had been sent. THP failed to do this.

The chain of events persuades me that it was this failure on the part of THP that led to the transaction not completing on 29 June 2023, rather than any error, act or omission on the part of KX or L&G.

I appreciate this isn't the outcome Mr and Mrs A were hoping for. However, I'm unable to find that L&G or its agents, KX, are at fault.

### **My final decision**

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 30 October 2024.

Jan O'Leary  
**Ombudsman**