

The complaint

This complaint is brought by a limited company (which I will refer to as BW), represented by one of its directors, Mr W. The other director of the company is Mr W's wife, Mrs W, who has consented to the complaint being brought.

The complaint is that OneSavings Bank Plc trading as Kent Reliance (referred to here as KR) caused delays during a buy-to-let (BTL) mortgage application. As a result, BW went to another lender but the new mortgage is more expensive than the one BW had wanted to take out with KR.

To settle the complaint, BW wants KR to compensate it for the additional interest BW will pay for the new mortgage.

What happened

I do not need to 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 the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to BW or Mr and Mrs W being identified.

Mr and Mrs W were the legal owners of a BTL property, the beneficial interest of which was owned by their company, BW. It was agreed that BW would purchase the legal title to the property with a mortgage from KR.

The application was submitted through a mortgage broker, PPM, and was received by KR on 13 May 2022. A mortgage offer was issued on 29 June 2022.

I won't set out all the details of what happened over the following months, but I note there were two extensions of the mortgage offer – the first until 25 October 2022 and the second until 23 December 2022. However, the mortgage didn't complete by that date. The mortgage offer expired and BW, through its broker, went to a new lender which issued a mortgage offer in March 2023.

On behalf of BW, Mr W raised a complaint with KR on 4 January 2023. The crux of the complaint was that BW says that the mortgage didn't complete due to delays and a failure by KR and/or its solicitors to deal with the matter in a timely fashion.

KR didn't uphold the complaint about the mortgage application, but offered BW £100 for inconvenience because its IT security system meant that Mr W's email of 4 January 2023 wasn't responded to.

BW didn't accept this and escalated the matter to the Financial Ombudsman Service. An Investigator looked at what had happened, and initially didn't uphold the complaint. However, after reviewing further documentation provided by Mr W, the Investigator thought the complaint should be upheld. He asked KR to pay 50% of the increased costs BW would incur on the new mortgage, as well as an additional £150 compensation.

BW accepted this but KR did not. KR provided further information about the timeline of events, showing that there were still outstanding enquiries as of 22 December 2022 that meant the matter couldn't have completed before the mortgage offer expired. The Investigator didn't address these, but instead told the parties the complaint would be reviewed by an Ombudsman.

On 2 September 2024 I issued a provisional decision in which I reached the following conclusions:

I've reviewed the various timelines of events provided by Mr W, the broker and KR. This was a complex transaction involving three sets of solicitors – one firm acting for KR on the mortgage, one for Mr and Mrs W as vendors of the property, and one for BW as purchaser. In addition to this, the broker was representing BW and was the point of contact between BW and KR, up until the broker was removed from KR's panel.

Having reviewed the various timelines, I'm satisfied that the reason the mortgage didn't complete by the time the second extension expired on 23 December 2022 was not due to any act or omission on the part of KR or its solicitors. The complexity of the transaction and the fact that the legal ownership of the property was with Mr and Mrs W but the beneficial ownership was with BW meant that additional enquiries needed to be made about this, as well as other legal issues.

I note that Mr and Mrs W didn't appoint their own solicitors until 12 October 2022, almost four months after the mortgage offer had been issued. In early November 2022 the broker complained about a lack of communication. However, this isn't borne out by KR's solicitors' records. I can see that there was a short period in the autumn of October 2022 when matters slowed down, due to religious holidays which resulted in Mr and Mrs W's solicitor being away until 2 November 2022.

The complex nature of the ownership of the property resulted in additional enquiries needing to be made. The company's accountants provided information about the ownership of the property, the tax implications of this about a trust that had been set up in relation to avoidance of Stamp Duty Land Tax. The accountants said on 22 October 2022 that Mr and Mrs W needed to receive value for the property of £450,000, but on 24 October had revised this to £550,000. The accountant said that the shortfall was the difference between the value of £550,000 and the mortgage offer, and could be accounted for by a transfer of shares in BW. KR, understandably, raised further questions about this.

It also appeared that there were delays with the local authority search, the result of which wasn't expected until November 2022. On 7 November 2022 KR's solicitors were chasing up outstanding water, drainage and environmental searches. BW's solicitors said it had *"been a while since I looked at the search issue but I note we only ordered coal mining and local..."*

I also note that there were issues relating to the source of the deposit. On 7 December 2022 the broker contacted a member of staff who had no involvement in the transaction, asking her to confirm the source of the deposit. Despite not being involved, she replied to say that the bank was asking the broker to confirm the source of the deposit and the bank wasn't able to advise them about what they should say. The broker needed to inform KR what BW was wanting to use as the source of the deposit, and KR would define its position based on that.

The broker then emailed the same staff member saying the deposit would be gifted equity and that KR's underwriters should confirm this to its solicitors. She replied to say, in effect, that it didn't work like that, and that it was the solicitors' role to check the source of the deposit as part of the legal work.

The mortgage/underwriting staff only became aware that the broker had been emailing this other member of staff on 23 December 2022.

On 21 December 2022 the broker said that the property would be sold by Mr and Mrs W to BW at "*full market value, and scrapping the accountant's letter*". As the mortgage offer was due to expire on 23 December 2022, the broker pushed for an urgent response so the transaction could complete.

On 22 December 2022 KR's solicitors confirmed to the broker that the matter couldn't complete that day for two reasons. The first was that no Certificate of Title had been submitted by BW's solicitors. The second was that BW's solicitors had previously been told that the last day for completions before Christmas was 21 December 2022.

Due to the Christmas and New Year breaks, KR considered a further extension but as the valuation and the offer had expired, KR declined to extend the time for completion any further. I'm satisfied this was a decision KR was reasonably entitled to make. KR asked its solicitors to inform BW directly, as the broker had been removed from KR's panel.

I note from KR's solicitors' timeline that there were still outstanding enquiries and undertakings by the time the offer expired on 23 December 2022. I'm therefore not persuaded that the delay in completion of the matter is as a result of any act or omission on the part of KR.

This means that I'm also not persuaded there is any basis on which it would be fair or reasonable for KR to compensate BW for any increased interest Mr W says the company is now having to pay on a new mortgage.

KR has acknowledged that Mr W's email of 4 January 2023 wasn't responded to and has offered compensation of £100 for any inconvenience. Because the complaint is brought by a company, which cannot suffer distress, I think £100 for the inconvenience caused to its director for this is fair and reasonable in all the circumstances and I therefore don't require KR to do anything more.

KR accepted my provisional decision. Mr W, on behalf of BW, did not. He's made some further points, and I summarise the most relevant below.

- The £100 he was offered was not due to any IT failure.
- Mr W was told by KR that KR's solicitors could have applied for the funds on 23 December 2022 and completed after the holidays.
- His own solicitors had told him that, because searches expire, they are only done when KR's solicitors "*give the go ahead*".
- KR's solicitors only advised on 3 October 2022 that a third solicitor would be needed to represent Mr and Mrs W.
- Mr W disagrees that there was no delay on the part of KR's solicitors.
- With regard to the letter from BW's accountants dated 22 October 2022 stating that Mr and Mrs W would need to receive value for the property of £450,000 Mr W says "*I have no idea where this information comes from and I believe it to be untrue*".

- Mr W was unaware his solicitors hadn't carried out the outstanding searches, but didn't believe it would have delayed matters by more than a few days.
- He was advised by his solicitors that the Certificate of Title is only requested when KR's solicitors have confirmed they are ready for it.
- Funds could have been requested before 21 December 2022 with completion taking place after the holidays.
- There were no outstanding enquiries, only outstanding searches, which KR's solicitors confirmed on 14 December 2022.
- The version of events in appears to have been supplied by KR or its solicitors. Mr W has to believe there are problems with its record-keeping as he cannot believe they would deliberately mislead our service.

Mr W has also repeated all the points he's previously made, which I will not set out here as they have already been considered.

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.

The evidence in the case is detailed, running to over 1,300 pages of documents. It's apparent that some parts of the evidence are less relevant to the underlying case than others. I will therefore only be commenting on the issues that I consider relevant to the complaint.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

First, I note Mr W disputes the veracity of what KR says happened, as well as claiming he knows nothing of a letter from his accountant dated 22 October 2022 – a letter Mr W himself provided to us, and which the mortgage broker had also supplied to KR. If Mr W is disputing the validity of documentation provided to KR, he will need to take this up with the accountants or broker.

I will also explain that, whilst I've read all the email chains between the various parties, the emails between KR's solicitors and the bank are legally privileged and confidential, as they relate to legal advice given to KR which I am not at liberty to disclose.

Having reviewed the timeline of events, I am not minded to change the outcome of my provisional decision. These are my reasons.

Whilst I agree there was a delay in October 2022, I note BW's broker also apologised for delay on his part, due to holidays, saying "*it was difficult to manage all of it in time*". The broker also told KR on 20 October 2022 that his client (that is, Mr W) was "*unavailable for a couple of weeks*" (so until 3 November 2022).

Mr W says that he asked for completion to be arranged for 21 November 2022. However, the transaction wasn't ready to complete at that point. I don't know what Mr W was being told about this by the solicitors acting for him and Mrs W, and those acting for BW, but it's clear from KR's records that there were still outstanding matters to be resolved.

Although Mr W believes the issue that arose relating to the deposit and the transfer of shares in the property had been resolved much earlier in the transaction, I'm satisfied that it had not been resolved. The broker's emails to KR sent in early December 2022 to a business development manager (BDM) show that the broker was trying to get someone else at KR unconnected with underwriting this mortgage application to say what deposit would be acceptable, so the broker would then know what to say to the underwriters about this.

As I also explained above, underwriters didn't become aware of these attempts by the broker to manipulate KR into saying what deposit should be paid until 23 December 2022. I am not suggesting Mr W or BW was aware of the broker's actions, but it's clear that the issue hadn't been resolved. I'm satisfied KR was entitled to have full transparency from the broker about how the sale and purchase of this property was to be funded, and its concerns about this were legitimate – particularly as the broker was asking KR to tell him what to say to satisfy KR's lending criteria.

I also note that the broker didn't ask the underwriting team to extend the mortgage offer; rather, he raised this with the BDM on 18 December 2022, who replied to say she was on holiday. She passed on the request on to a colleague (again, another BDM and someone unconnected with the mortgage underwriting). I don't know why the broker tried to circumvent the normal communication channels with KR by going directly to staff members unconnected with this mortgage. They had no involvement in progressing the mortgage application.

It wasn't until 21 December 2022 that the broker told the BDM that the property would be transferred at full market value, scrapping what the accountant had said. The broker asked if the transaction could be completed. The BDM suggested the broker speak to KR's solicitors.

The response from KR's solicitors to the broker was:

"I have already gone back to [KR] with the information that they require and in any event this matter will not be completing today as the Certificate of Title has not been submitted. Our last day for completions was yesterday, Wednesday 21 December. I had informed [BW's solicitors] of this."

The BDM asked the broker for a further certificate confirming no change in circumstances, which was sent to him by the broker on 23 December 2022. However, the BDM couldn't upload this to the portal as the broker had by then been removed from KR's panel of approved mortgage brokers.

I'm satisfied BW's solicitors would have been aware that KR required five working days to process the Certificate of Title and release funds, which meant that everything needed to be ready to complete by 14 December 2022 (five working days from the cut-off date for completions of 21 December 2022).

Whilst it is correct that KR's solicitors could have requested the funds before the completion cut-off date, they could only have done so if the transaction was ready to complete. That is because the solicitors are under a professional duty to their client, KR, to ensure that all the legal work in relation to investigation of the property title and in relation to the conveyancing

has been completed. In this regard, I note BW's solicitors were told on 14 December 2022 that there were still outstanding searches.

There is no evidence to show BW's solicitors ever carried out those searches and submitted the results to KR's solicitors. An OS1 search is valid for six weeks, and a K16 is valid for three weeks. If BW's solicitors were expecting to complete by the completions cut-off date of 21 December 2022, those searches should already have been carried out in good time for completion. BW's solicitors didn't need KR's solicitors to tell them when to do this.

KR did consider extending the offer in January 2023, but declined to do so. I'm satisfied this was a decision KR was entitled to take, as part of its general commercial operations.

Having given careful re-consideration to all the circumstances of this case, I am not persuaded that the transaction wasn't completed as a result of any act, error or omission on the part of KR or its solicitors.

In its final response letter, KR confirmed that there had been IT issues with Mr W's email sent on 4 January 2023. Mr W disputes this, and says he was told something different by KR. However, I am satisfied that the final response letter explains the reason why KR offered BW £100 compensation.

I know this isn't the outcome Mr W was hoping for. I can see from what he's told us that he sees error or wrongdoing in almost everything KR and/or its solicitors have done. That's a natural, subjective reaction, and entirely understandable when you're as close to the situation as Mr W has been. But I have a different remit; I have to be objective and impartial, and decide the case on the basis of all the evidence, rather than be swayed by emotion. So whilst I acknowledge Mr W's strength of feeling, for the reasons given above, I'm unable to uphold the complaint.

I'm satisfied the £100 KR offered BW for inconvenience in relation to dealing with the email sent on 4 January 2023 is fair and reasonable. I'm not asking KR to do anything further.

My final decision

My final decision is that the £100 compensation offered by OneSavings Bank Plc trading as Kent Reliance to BW is fair and reasonable. I make no other order or award.

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 W on behalf of BW to accept or reject my decision before 16 October 2024.

Jan O'Leary
Ombudsman