

Mr and Mrs W complained that London and Country Mortgages Ltd ('L&C') didn't tell them that they wouldn't be able to borrow more on their new mortgage for seven years. They say this meant they had to rely on credit cards and expensive loans to do work on their property.

They'd like an acknowledgement of the mistake, an apology, and compensation.

background

In August 2014, Mr and Mrs W contacted L&C about finding them a possible mortgage with a lender. Mr and Mrs W found a property and had an offer accepted. L&C's adviser completed a fact finding process in early September. Mr and Mrs W wanted to borrow 95% of the value of the property they wanted to buy.

L&C provided a Key Facts Illustration about its recommended mortgage. This was for a repayment mortgage over 27 years, with an initial fixed rate product to December 2016. Section 12 of this document said:

"Additional secured borrowing

You will not be able to apply for additional secured borrowing until the expiry of 7 years from the date of completion of the Help to Buy mortgage guarantee scheme loan."

There were some emails between L&C's adviser and Mrs W, because the lender initially said the mortgage wasn't affordable for the amount Mr and Mrs W wanted to borrow. In these, L&C and Mrs W discussed income, and also some outstanding loans and credit cards, and whether Mr and Mrs W could pay off some of these.

On 22 September the lender issued a mortgage offer. Section 12 of the mortgage offer said:

"Additional secured borrowing

You can apply for extra borrowing at any time... This will increase the amount of borrowing secured on your home."

Mr and Mrs W completed on their purchase in November.

On 28 January 2015, the lender wrote to Mr and Mrs W. The letter said that unfortunately the mortgage offer hadn't included all the information about the product selected. It said:

"The offer document should have stated at section 12 that under the Help to Buy scheme you will not be able to apply for additional secured borrowing until the expiry of 7 years from the date of completion of the original Help to Buy mortgage guarantee scheme loan...If you have any concerns please to not hesitate to contact us at the number above."

In August 2018, Mr and Mrs W complained to L&C. They said that when they'd bought the property, it had been barely habitable and had needed complete renovation. They'd decided to do as much work themselves as they could, and apply for further borrowing later. Mrs W said she'd rung the lender when they'd received the January 2015 letter about no further borrowing for seven years. She said the lender had denied having sent that letter, and had said that in any case it was L&C's responsibility. Mrs W said she'd then sent a complaint to L&C but didn't get a reply. She explained that she'd been under a lot of stress from the state the house was in, and had felt unable to pursue the complaint any further.

Mr and Mrs W said that they'd relied on credit cards and expensive loans to get the work on the house done. This had been a strain on them, and they hadn't had the money for the

enjoyable things of life. They said this had affected them psychologically as well as financially.

Mr and Mrs W asked L&C to acknowledge its error, apologise, and pay them compensation for the financial loss caused by the expensive loans they'd taken out, and the psychological impact.

L&C didn't uphold Mr and Mrs W's complaint. It pointed out that the Key Facts Illustration had correctly said that no more borrowing would be available for seven years from completion. The mortgage offer which the lender had issued had wrongly said that Mr and Mrs W could apply for extra borrowing. But L&C pointed out that Mr and Mrs W had never told the L&C adviser that they'd want to apply for more borrowing in future. And it explained that the error on the lender's mortgage offer wasn't L&C's fault, because it was the lender who had sent the offer.

L&C also said that it had never received any previous complaint about this, as Mrs W had claimed. L&C said that if it had, it would have dealt with the complaint in line with its required complaints procedure.

Mr and Mrs W weren't satisfied and complained to this service.

The adjudicator didn't uphold Mr and Mrs W's complaint. She looked at the fact finding document and saw that there hadn't been any discussion about extra borrowing in future. And Mrs W had also told the adjudicator that she didn't think she'd explicitly brought this up with the broker. Mrs W had told the adjudicator that she'd assumed they'd be able to borrow more as she thought this was usually the case with mortgages. The adjudicator considered that L&C hadn't mis-sold their mortgage on the grounds they'd want to borrow more in future - because the broker hadn't known that's what they wanted.

The adjudicator also noted that the mortgage offer had been produced by the lender, not by L&C, so L&C wasn't at fault for the mistake.

Mr and Mrs W weren't satisfied. They said they felt L&C should have asked if they'd want to apply for more money in future. L&C had sold them a product which wasn't suitable for their needs, and the broker should have considered their future plans which included full renovation and extra borrowing. They said they'd never received the document which said they wouldn't be able to borrow for seven years.

Mr and Mrs W said it had been difficult for L&C to find them a mortgage because of their credit rating, and because they wanted to borrow 95% of the property's value. They felt the adviser had deliberately not told them about the restriction just to ensure he made a sale. They'd ended up in financial difficulties, and if they'd known, they wouldn't have gone ahead with buying the property.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Complaint that the mortgage was mis-sold because Mr and Mrs W wanted to borrow more

I've looked first at the documents which record what was discussed between Mr and Mrs W and L&C at the time of their mortgage application in 2014. These are the fact find document, and the Key Facts illustration, and emails from the time.

These documents don't record anything being said about the condition of the property being so bad that Mr and Mrs W would have to borrow more money in future. The fact find document shows a detailed record of Mr and Mrs W's income and outgoings, so it was a detailed discussion. It also records that Mr and Mrs W wanted "*stability of payments*" and if Mr and Mrs W had been intending to borrow more quite soon, they couldn't have achieved this because their payments would have gone up.

Mrs W told our adjudicator that she hadn't explicitly told L&C that they'd want to borrow more quite quickly. So I consider that there was no discussion about possibly borrowing more quite soon. As L&C's adviser didn't know this, I don't find that he was under any obligation to recommend a mortgage which offered this facility.

I don't agree with Mr and Mrs W that L&C's adviser should have asked whether they might want to borrow more quite soon. Very many things can happen during the lifetime of a mortgage, and it wouldn't be reasonable to expect an adviser to ask specifically whether every possible change might happen.

So I find the mortgage wasn't mis-sold.

The Key Facts illustration does, as I've set out above, make it clear that there couldn't be any more borrowing for seven years after the mortgage completed. I recognise that Mr and Mrs W say they didn't receive this. But I think it's highly likely that the L&C adviser would have told them that they'd be getting correspondence about his recommendation. So if they didn't get this, I think it's reasonable to expect them to have chased L&C for it.

The incorrect mortgage offer

It's clear that the September 2014 mortgage offer was incorrect when it said Mr and Mrs W would be able to apply for extra borrowing at any time. But this was the lender's mistake and responsibility, not L&C's. This complaint is against L&C not the lender.

But I'd point out that future lending is never guaranteed. I can see that when Mr and Mrs W took out their mortgage, they had some difficulties in borrowing the amount they needed, because of the high percentage of the property value, their income and a number of existing credit card and loans. Even if the terms of the mortgage had permitted them to apply for more money straightaway, there was no guarantee they'd have met lending requirements.

Complaint that L&C didn't answer Mr and Mrs W's complaint in early 2015

Mr and Mrs W have also said they're unhappy that L&C didn't reply when they complained in early 2015. This was after they'd had the correction letter from the lender saying they couldn't apply for more money within seven years. Mr and Mrs W say they complained, but L&C say it never received a complaint until August 2018.

When evidence conflicts, as here, I make my decision on what I think is more likely to have happened. Here, I've looked at L&C's contact records, which don't show anything for that period. So I think it's likely that L&C didn't receive any complaint after the lender sent Mr and Mrs W its correction letter in January 2015. I recognise that Mrs W has said she didn't follow

up the complaint because they were under a lot of stress from the state their house was in. I'm sure this was a difficult time for them, and I'm sorry to hear that. But I'm not persuaded that it would have been more difficult to chase up any complaint, than to make the multiple applications for new credit which they did. So I think it would be reasonable to expect Mr and Mrs W to have followed up any complaint to which L&C hadn't responded.

my final decision

My final decision is that I do not uphold Mr and Mrs W's complaint against London and Country Mortgages Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 24 May 2019.

Belinda Knight
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