

complaint

Mr A complains that London and Country Mortgages Ltd (“L&C”) mishandled his mortgage application.

As a result, Mr A incurred wasted costs.

background

L&C acts as a mortgage broker. Mr A approached L&C for help finding a suitable mortgage when he wanted to buy his council flat under the ‘Right To Buy’ (RTB) scheme.

Based on information Mr A supplied to L&C, it submitted a mortgage application to a lender.

The following day Mr A sent the RTB paperwork to L&C.

The lender produced a mortgage offer a few weeks later. So Mr A went ahead with his planned purchase. But the lender later withdrew its mortgage offer when it found out information that was contained in the RTB paperwork. Mr A was unable to proceed with his plans to buy his flat. He was left out of pocket as he still had to pay the solicitor’s costs incurred for work done to date.

Mr A held L&C responsible for the fact that the issues affecting the lender’s decision didn’t come to light earlier – before he’d incurred solicitor’s costs. L&C didn’t uphold Mr A’s complaint. In summary, it said:

- the RTB document was received the day after the mortgage application had already been submitted and was provided by Mr A for the sole purpose of providing proof of deposit
- at no time prior to its receipt was L&C aware of any restriction placed on the sale
- its staff have no expertise in what’s clearly a legal matter and wouldn’t have been aware of the importance of information contained in the document as Mr A hadn’t made L&C aware of any restriction when discussing his planned purchase
- the RTB document wasn’t required by the lender so L&C had no reason to send it on and doesn’t agree that it should’ve done so
- a RTB lending decision is entirely up to the lender and its legal team. So where it has a limitation on lending it’s the lender’s responsibility to ask for relevant information up front – and it’s not for L&C to decide what’s needed on the lender’s behalf.

Our adjudicator didn’t agree. She felt that information contained in the RTB document was material to the mortgage application. It set out expensive structural repairs the council planned to carry out and indicated that Mr A would be liable to make a substantial contribution as a leaseholder. Our adjudicator’s view was that extensive building works were likely to affect the lender’s security (making flats more difficult to sell for instance). So L&C should’ve disclosed this to the lender. And the level of Mr A’s financial contribution towards the cost of repairs and improvement works would’ve also been a relevant factor to flag up as it relates to whether Mr A would’ve still been able to afford his mortgage repayments.

Our adjudicator's opinion was that L&C had a duty to disclose anything that might be material to the lender's decision to the lender. And there'd been ample time for L&C to do this before the lender issued its offer. The lender endorsed this view. And the adjudicator felt that if L&C had passed on information in the RTB document to the lender when it got it, it's unlikely the lender would've issued a mortgage offer and Mr A wouldn't have incurred £1500 legal costs.

To put matters right, our adjudicator thought L&C should pay Mr A £1500.

L&C disagrees. It firmly believes that:

- the RTB document was requested and collected by its admin staff who wouldn't be aware of the importance of the information in the document
- as the lender was aware this was a RTB mortgage it should've requested the document itself.

Mr A agrees with our adjudicator - and he also wants L&C to reimburse him a £350 fee he paid.

Our adjudicator asked L&C to let us have any further comments it wants me to take into account when considering this case – particularly concerning the £350 fee Mr A mentioned when responding to our adjudicator's view. L&C has confirmed it has nothing further to add.

So the complaint has been referred to me to decide how it should be settled.

my findings

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

On balance, I agree with our adjudicator that L&C didn't do everything we'd expect it reasonably to have done here.

I take L&C's point that legal issues and lending restrictions are matters for the lender and its legal team to investigate and decide. But I don't find that information set out in the RTB document was complicated to understand or something that L&C couldn't reasonably have foreseen was likely to affect a lending decision. I can't fairly say L&C couldn't have acted on the information. It's not in dispute that it received the RTB document the day after it put in Mr A's mortgage application – the mortgage offer wasn't made until some weeks later.

The role of the Financial Ombudsman Service is to put customers back into the position they would've been had things been done correctly in the first place. So I agree with the adjudicator that, in this situation, L&C should reimburse the £1500 wasted costs Mr A paid to his solicitor.

I've thought carefully about the £350 survey fee Mr A paid. It's clear he didn't get any benefit from this. And I think it's likely that if L&C had acted more promptly on receipt of the RTB paperwork, it could've spotted the potential issues raised and told the lender not to take any further steps until these had been properly considered. The application had just been sent the day before so I don't think it likely the lender would've acted on it and irrevocably instructed a valuer at that stage. L&C hasn't provided any further information to persuade me

that it wouldn't be fair and reasonable for it to cover the cost of this wasted expense. Overall, I find it's fair and reasonable that it should.

my final decision

I uphold this complaint and order London and Country Mortgages Ltd to pay Mr A £1850 in total.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 May 2016.

Susan Webb
ombudsman