

complaint

Mr and Mrs W complain about the way The Mortgage Shop (Barnsley) Ltd ("TMS") dealt with their application for a mortgage. Mr and Mrs W want compensation for the cost of purchasing the freehold interest by credit card.

background

TMS assisted Mr and Mrs W as broker in applying for a mortgage in 2018. The mortgage was approved but then the lender's solicitor noted that the lease had only 54 years to run which was less than the lender's minimum of 70 years. So Mr and Mrs W decided that in order to move forward that they would buy the freehold. The lender's solicitor required the purchase of the freehold before it would allow the mortgage to proceed. Mr and Mrs W paid for this by credit card. But because of the time it took to register the freehold purchase the mortgage offer expired and the lender told the broker that the matter would need to proceed as a new case. But the new application was refused by the lender.

Mr and Mrs W were in a debt management plan ("DMP") and told their broker that was the case. The broker submitted an application telling the lender that the applicants hadn't made an arrangement with their creditors although under another section of the application headed "*commitments*" it did say that they were in a DMP. Mr and Mrs W say that TMS should have told the lender about the DMP. Our investigator felt that TMS had made an error in not telling the lender about the DMP but felt that Mr and Mrs W would always have had to buy the freehold to get a mortgage. His view was that TMS should pay £150 to Mr and Mrs W for their disappointment at not getting a mortgage once they had bought out the freehold. Mr and Mrs W disagreed saying in summary that TMS were very unprofessional and misinformed them for about a year. TMS also disagreed as it didn't believe it passed wrong information to the lender about the DMP.

my findings

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

Mr and Mrs W make a complaint against TMS as they eventually didn't get a mortgage. They made two applications. TMS's job was essentially to source for them a suitable mortgage offer. Mr and Mrs W got a mortgage offer from a lender but a problem arose because the remaining term of the lease was less than their proposed lender and indeed most lenders would accept. The lender's solicitors raised the issue of the length of the lease. To solve that problem Mr and Mrs W bought the freehold but their solicitors couldn't complete the registration of the freehold before the offer lapsed.

I can't see that TMS were at fault for the failure of this application. TMS wouldn't have known the length of the lease - as Mr and Mrs W didn't - and the problem this would have caused. Quite a time elapsed between when this issue was discovered and eventually solved by Mr and Mrs W buying out the freehold. But TMS wasn't responsible for either advising on the purchase or suggesting the payment by credit card or the delay in registration. So, I consider that TMS performed its primary job of sourcing Mr and Mrs W a suitable mortgage and I don't uphold that part of the complaint.

The second application failed for a number of reasons including the increased debt that Mr and Mrs W now were in because of buying the freehold by credit card. But it seems it wouldn't have succeeded in any case because it became apparent that Mr and Mrs W were in a DMP. It seems that this wasn't picked up in the first application because under the question "*have the applicants ever been declared bankrupt or made arrangements with creditors*" TMS answers no which was incorrect and unfortunate as TMS clearly refers to it later but under the commitments section looking at what monthly payments Mr and Mrs W were making. I believe that this was an innocent error. I know TMS feels strongly about this but it is an error as the DMP should have been referred to in the relevant section of the form that asked the question about arrangements. This error seems to have led the lender to issue an offer it wouldn't otherwise have issued. But the DMP was picked up by the lender on the second application.

I consider that TMS's unintentional error and the success of the first application would have led Mr and Mrs W to reasonably believe that the second application would be successful. For that reason I believe that it's fair to uphold that part of the complaint and award Mr and Mrs W £150 for their upset at this loss of expectation.

my final decision

My decision is that I uphold this complaint in part and award Mr and Mrs W £150.

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 April 2020.

Gerard McManus
ombudsman