

complaint

Mr W and Miss G complain that London and Country Mortgages Ltd ("L & C") acted unfairly and unreasonably by passing their details to a solicitor that they didn't want to instruct, failing to explain the need for a panel solicitor, and generally giving poor customer service. They want compensation.

background

Mr W and Miss G were first time buyers and wanted a mortgage to buy a property. They used L & C as their mortgage broker and said they didn't want to use the solicitor recommended by the broker as their own solicitor was cheaper. But Mr W and Miss G said the broker instructed the solicitor it recommended to act on their behalf and didn't tell them that the lender needed a solicitor to be on its panel. Mr W and Miss G were concerned the broker had breached data protection legislation by giving their details to the solicitor it recommended, and increased their legal costs by £500 plus VAT as they would have to pay two sets of solicitors to buy the property as their own solicitor isn't on the lender's panel but has done the necessary work. Miss W and Miss G also felt L & C gave poor customer service and caused delay.

Mr W and Miss G complained to L & C. It said Mr W and Miss G did tell it that they didn't want to use the solicitors they recommended, but it then found out the solicitor they wanted to use weren't on the lender's panel. L & C said it then emailed Mr W and Miss G to tell them they needed either a different lender, different solicitor or use two sets of solicitors. It also stated that it believed Mr W and Miss G wanted to use the solicitor recommended as they wanted to proceed with the mortgage recommended and it confirmed the solicitors' details in an email (to which Mr W and Miss G didn't object). It later accepted that it had made an assumption Mr W and Miss G wanted to use its recommended solicitor as they hadn't said otherwise or provided details of their own solicitor.

Mr W and Miss G complained to us, and said that they'd lost the property they wanted so were buying a different property. They blamed L & C for the loss of the property. The investigator's view was that L & C didn't ask Mr W when he called to say he wanted to go ahead with the mortgage application whether its recommended solicitor would be instructed or if Mr W and Miss G wanted to use their own solicitor. She said L & C should've asked specifically, and not made an assumption. But the investigator said that Mr W and Miss G should've objected earlier as the recommended solicitors were noted on the application and the solicitors had contacted them weeks earlier. She thought that Mr W and Miss G had assumed L & C would know who their solicitor would be, which wasn't reasonable.

The investigator noted that the situation had changed and a new property was being purchased using a panel solicitor; she also didn't think L & C's actions had caused the loss of the original property. The investigator commented that breaches of data protection legislation were best left to the Information Commissioners' Office ("ICO"). But she felt that L & C's customer service hadn't been good enough – while she thought there was no evidence the complaint had been ignored or that the information about legal fees was poor, the investigator said the failures identified caused trouble and upset to Mr W and Miss G and L & C should pay £150 compensation.

L & C agreed with the investigator's view, but Mr W and Miss G didn't. They felt more compensation should be paid as they never agreed to use the solicitors recommended by L & C, and denied receiving any letters or texts from those solicitors in April 2018. Mr W and Miss G felt strongly that L & C's actions caused them to lose the original 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. I note Mr W and Miss G believe barriers were put in place to stop them from complaining, but complaints handling isn't an activity regulated by this service and they were able to complain. I'm going to concentrate on the core of the complaint, which is about whether L & C acted fairly and reasonably in effectively instructed its recommended solicitors to act on Mr W and Miss G's behalf.

It's worth pointing out that all the parties accept Mr W and Miss G didn't authorise L & C to instruct its recommended solicitors. L & C accepts that it made an assumption. I don't think it was fair or reasonable for it to have made such an assumption – Mr W was clear that he was considering using his own solicitor, and L & C didn't ask him to confirm the position (despite the fact that at that stage time was not of the essence).

But L & C did promptly tell Mr W and Miss G about its selection of solicitor through the computer system which was accessed by Mr W and Miss G, and in the application documents. I think it's more likely than not that the letter and texts from the recommended solicitor to Mr W and Miss G didn't reach them as Mr W complained as soon as he received a call from them. And I agree that while Mr W and Miss G were first time buyers, and unfamiliar with the mortgage application system, their assumption that L & C didn't need to be told which firm of solicitors was acting was unreasonable, but so was L & C's failure to check. I also noted that in the original recommendation letter, L & C set out in writing a warning that the solicitors used needed to be on the lender's panel, so I can't say L & C didn't warn Mr W and Miss G about the need to check this point.

Allegations of breaches of data protection legislation are best left to the ICO, but I agree L & C's failure to confirm which firm of solicitors were acting caused trouble and upset to Mr W and Miss G. Money never truly compensates for distress and convenience, but I think much of Mr W and Miss G's distress is about the loss of the property. I can't say L & C is responsible for this – the issue about the solicitors in itself is unlikely to have caused the seller to place the property back on the market and there's no other evidence of delay. I think £150 compensation is fair and reasonable in all the circumstances.

my final decision

My final decision is that I uphold the complaint and London and Country Mortgages Ltd should pay Mr W and Miss G £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Miss G to accept or reject my decision before 18 November 2018.

Claire Sharp
ombudsman