

complaint

Mr and Mrs A complain that their mortgage broker London and Country Mortgages Ltd failed to pass on information to the prospective lender which caused delays in exchanging contracts, and cost them additional solicitors' fees.

To resolve their complaint they want L&C to pay the additional fees and compensate them for the delays and the stress caused.

background

Mr and Mrs A took a mortgage with lender S pursuant to a recommendation dated 9 April 2018 from their broker L&C and a mortgage offer from S dated 20 April 2018.

The L&C recommendation included:

"You have chosen to use your own solicitor to carry out the conveyancing work necessary on your mortgage. Please be aware that lenders maintain panels of solicitors that they are willing to deal with and I strongly urge that you confirm with your chosen solicitor that they can act for the lender I have recommended".

Following completion of the mortgage Mr and Mrs A complained to L&C about incorrect information and delays, which they said had cost them additional solicitors' fees plus at least three weeks of delay in exchanging contracts.

L&C responded that it had submitted an application to S on 9 April 2018, with Mr and Mrs A's chosen solicitors showing as G solicitors. Mr and Mrs A then said they were instructing W solicitors, not G. However L&C said that for reasons unknown to L&C this change hadn't gone onto S's system. S had issued a mortgage offer on 23 April but on 9 May Mr and Mrs A said W hadn't received this.

L&C had spoken to S who confirmed the offer had been issued to G. S wouldn't be able to amend the solicitors to W, as they weren't on S's approved legal panel and couldn't be added to it. L&C had told Mr and Mrs A there were two options:

- *"if you want to continue with this lender, you are going to have to use a firm on their panel and switch. If you do switch, you can send everything across to the new solicitors. I imagine you may have paid for searches, and you can send these across to the new solicitors. They generally need an environmental search, drainage and water and local authority search so if some are done they can use these;*
- *alternatively if you really don't want to swap, I can recommend another lender whom W can act for."*

L&C said Mr and Mrs A had responded suggesting the option of "dual representation" between W solicitors and another legal firm, as after speaking to S direct, they had confirmed this was an alternative way in which the application could proceed. L&C had provided Mr and Mrs A with a list of solicitors who were on S's panel for them to choose from, and they had confirmed on 17 May that they would be proceeding with W and G. S had issued a revised offer on 31 May.

L&C said that the issue had arisen owing to W not being on S's approved legal panel and that they were unable to add them on. When Mr and Mrs A completed the application form on 9 April, they confirmed the solicitors as G and this was subsequently passed on to S. L&C went on to say:

"When you made [L&C] aware of the correct acting solicitors on 10 April, [it] did note this change, but for reasons unknown this did not pull through onto S's system and so they were unaware of the change. As such when the mortgage offer was issued on 23 April, this was on the basis that W were the acting legal firm."

This doesn't actually make sense and I think L&C must have meant G.

L&C acknowledged that it should have followed this change up with S to make sure that its system detailed the correct acting firm, however this wouldn't have affected the ultimate outcome. No matter at what point the solicitors' details were asked to be amended, W weren't on S's legal panel and couldn't be added. So Mr and Mrs A wouldn't have been able to use them to act solely on the purchase transaction, although the delays associated with arranging the dual representation would most likely have arisen prior to the offer being issued, rather than afterwards.

L&C said:

"I am sorry that the issues with the solicitors has been a cause of frustration for you and you have incurred additional legal costs because of this, however I cannot agree that this is the fault of L&C. When you completed the application form, you confirmed the solicitors as G and so the application was submitted on this basis. Additionally, our recommendation letter of 9 April was clear that where you are instructing your own choice of solicitors, it is your responsibility to make sure that they can act for the lender recommended."

.... The application was submitted based on the initial information provided by you, including a solicitors firm that was on S's approved panel, and when our staff became aware of the fact that the offer had not been sent to the correct solicitors, they sought to rectify this straight away."

Nevertheless, in hindsight L&C should have followed up with S following the amendment to the solicitors' details, and so in recognition of that we would like to offer you £50 as a gesture of goodwill by way of apology."

Mr and Mrs A weren't happy with this and brought their complaint to our service. They felt that L&C had caused additional expense and delays through both a lack of initial information provided about S's restrictions over which solicitors they could use and its error in failing to ensure that the solicitor details had gone through to S.

Our adjudicator said L&C hadn't been able to provide any evidence that it had updated S's portal on 10 April 2018 following Mr and Mrs A's call to say they were instructing W not G. The adjudicator had viewed the portal and couldn't see any evidence to suggest S had received an instruction for the change of solicitors. He therefore thought it likely the portal wasn't updated. L&C had provided notes to confirm it had received Mr and Mrs A's instruction, but this wasn't an indication that it had updated S's portal at the time.

Having reviewed S's portal notes, the adjudicator could see S still required W's address from L&C before the offer could be issued. L&C provided this to S on 29 May 2018. The

adjudicator thought L&C could have forwarded this information to S sooner, given that S had requested it on 21, 22 and 26 May 2018.

The recommendation issued to Mr and Mrs A on 9 April 2018 did explain they should confirm with their chosen solicitors that they could act for the lender recommended. Therefore the adjudicator accepted Mr and Mrs A had a responsibility to check this.

To resolve the complaint fairly the adjudicator thought L&C should offer an additional £50, to bring the total compensation to £100, and refund half the fees paid to G.

L&C didn't agree and asked for the case to be referred to an ombudsman. It said the fact that the note hadn't uploaded correctly would by its very nature mean S wouldn't receive it. However it didn't mean that it wasn't sent. Equally, the fact that it didn't upload correctly would also mean that L&C couldn't evidence it.

I took a different view of the complaint to the adjudicator. So I decided to issue a provisional decision, setting out my view of the case and inviting further comments. Both parties have now responded and so I issue my final decision.

my provisional decision

In my provisional decision, I said:

"It isn't necessary for a purchaser and a mortgagee to be represented by the same solicitors, and the easiest course might have been for W to act for Mr and Mrs A and for solicitors on S's panel (such as G) to act for S on the mortgage. Instead, Mr and Mrs A opted for "dual representation", which means both G and W acting for Mr and Mrs A.

And G's letter to Mr and Mrs A of 18 May 2018, despite its reference to acting for the lender, states that G would be acting for Mr and Mrs A. It refers to a leaflet setting out the agreement between Mr and Mrs A and G relating to the work G would do for Mr and Mrs A, and refers to *"the work which we will be carrying out for you"*.

G's letter doesn't say it would be acting for S and there's no evidence that S actually appointed G to act for it. Mr and Mrs A say in their email to our service dated 18 December 2018 that they appointed G to act for S. But that wasn't possible. Only S could appoint solicitors to act for it. From G's letter of 18 May it's apparent that G thought it was acting for Mr and Mrs A.

That said, I think it's likely that S was content with the position on the basis that one of its panel solicitors was acting for Mr and Mrs A, which was the usual position, and the transaction then went ahead.

If W's details had been updated to S's portal, whether or not they "pulled through", I would expect there to have been some evidence of that in the systems of L&C or S. But nothing has been produced, although it was known from the adjudicator's findings that this was a vital point.

So I think L&C's failure to update the portal was the cause of the delay which followed the mortgage application. If that had been done promptly, the fact that W wasn't on S's panel would have been raised sooner than it was.

But that wasn't the cause of needing two firms of solicitors. What caused the need for G to become involved was Mr and Mrs A's failure to check with W that they were on the panel, as L&C had strongly advised them to do in its recommendation. That would have come to light sooner if the portal had been updated, but that failure wasn't itself the cause.

It isn't part of the duties of a mortgage broker to deal with the appointment of solicitors to act for the borrower and the lender. If Mr and Mrs A had done what L&C recommended, they wouldn't have instructed W, G would have remained on S's portal as their solicitors, and the transaction would have proceeded without difficulty.

For these reasons I don't propose to order L&C to pay any part of the fees of G.

The adjudicator also proposed an increase from £50 to £100 in the compensation for not following up with S following the amendment to the solicitors' details. L&C accepted in its response to the adjudicator that it could understand this, and I agree it's fair and reasonable."

the responses to my provisional decision

Both parties responded to my provisional decision.

L&C said it had nothing further to add.

Mr and Mrs A didn't accept the provisional decision. They felt L&C had received a substantial fee for sloppy work which caused them stress and costs which could have been avoided. They would like to revert to the adjudicator's recommendation.

my findings

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

In relation to "sloppy work", I said in my provisional decision that I thought L&C's failure to update the portal was the cause of the delay which followed the mortgage application. But I also said that this wasn't the cause of needing two firms of solicitors. What caused the need for G to become involved, and the additional costs of that, was Mr and Mrs A's failure to check with W that they were on the panel.

Mr and Mrs A's response doesn't deal with this point, and I'm therefore not persuaded to depart from my provisional decision.

my final decision

My decision is that I uphold this complaint in part and order London and Country Mortgages Ltd to pay to Mr and Mrs A £100 compensation for the delay, trouble and upset caused to them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 10 September 2020.

Edward Callaghan
ombudsman