

complaint

Mr and Mrs S complain that Legal & General Partnership Services Limited through its appointed representative Just Mortgages Direct Limited ("L & G").

background

Mr and Mrs S wanted to buy a property and used a mortgage broker, Just Mortgages, to help get a mortgage. A lender made a mortgage offer after the broker made an application, and they exchanged contracts to buy the property. But on the day completion was due, the lender refused to release the money. It said the broker hadn't completed the application correctly.

Mr and Mrs S said they couldn't find anyone to help from Just Mortgages; the adviser wouldn't do anything despite the lender saying he had to unlock the application. Mr and Mrs S also said the next day Just Mortgages did unlock the application and they were able to complete the purchase.

Mr and Mrs S complained to Just Mortgages, saying it should've done more to help and they'd suffered financial loss as well as stress. As Just Mortgages were the appointed representative of L & G, it had to deal with the complaint. Mr and Mrs S pointed out they'd also complained to the lender, who said the problem had been caused by Just Mortgages, so it re-typed the application to get around the problem. Mr and Mrs S said that the seller of the property was threatening to sue them for their losses caused by the delay in completion.

L & G said Mr and Mrs S changed their mind during the application process about the type of mortgage they wanted, and the lender asked Just Mortgages to submit a new application. The lender's system didn't let the application proceed, and the broker did try to sort out the problem. L & G said the problem was sorted out by the lender re-typing the application itself, so it wasn't Just Mortgages' fault. But it offered £250 compensation as a gesture of goodwill.

Mr and Mrs S complained to us, saying no-one had told them a new application was needed (in fact, he said he was told the opposite) and no-one at Just Mortgages was available to help on the day itself. The adjudicator's view was that the broker hadn't warned Mr and Mrs S of the risks of trying to change the mortgage after exchanging contracts and was jointly responsible with the lender for the delays and losses suffered by Mr and Mrs S by trying to change the mortgage without showing it had warned Mr and Mrs S of the risks. He thought the £250 compensation and payment of 50% of the reasonable claim by the sellers against Mr and Mrs S and their extra moving costs was fair and reasonable.

L & G disagreed. It said the mortgage completed late due to the IT problems of the lender's systems. It thought the lender should've let the broker know if there was a problem earlier.

my findings

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

The delay in completion was caused by several different factors. The mortgage didn't complete on the day chosen for completion because the application was marked as incomplete on the lender's system. The reason this happened I think was because the broker tried to change the mortgage offered by the lender to a different product. There's no evidence that the broker warned Mr and Mrs S at the time that trying to change the mortgage after exchange was risky, until his line manager told him. Mr and Mrs S decided not to risk the mortgage they had when the broker said any change might cause problems, but by then the broker had already started the process.

I can see from the records that the broker knew as late as a couple of days before the agreed completion date the application wasn't finalised. I can't see any evidence that the broker warned Mr and Mrs S or their solicitor that there might be a problem. I think it's fair and reasonable for brokers to be expected to keep an eye on their client's applications, particularly when they're being paid a fee to ensure a smooth transaction. The broker should've ensured the application was marked as complete and the money ready to be sent by the lender.

I also don't think it's fair and reasonable for only one person in the broker's organisation to have the ability to deal with mortgage applications. I think it's more likely than not that the broker didn't return to the office when it became clear Mr and Mrs S were facing the possibility of not being able to complete on time because the application was marked as unfinished. I also think there should've been another person in the broker's organisation with access to the necessary codes to use the system. I can see others working in Just Mortgages did try to help, but without access to the system they were struggling.

But I agree there were also computer problems which were caused by the lender's systems. But those computer problems only delayed a solution the next day – they weren't the reason why Mr and Mrs S couldn't complete on the completion day. The application was left at the review stage and needed to be completed. It was only when the broker tried to release it the next day, the IT problems delayed resolution. It was the completion a day late which caused all the stress and financial losses.

I think it's fair and reasonable for me to hold both the lender and the broker jointly responsible for what happened. As Mr and Mrs S have paid the sellers £4000 in order to settle their claim for the losses caused by the delay, and in making that settlement have avoided legal fees and interest, I think it's fair and reasonable for L & G to pay £2000 for this loss. I also think it's fair and reasonable for L & G to pay half of the extra moving costs paid by Mr and Mrs S due to the delay, which is £150.

And it's clear Mr and Mrs S suffered trouble and upset due to the delay in completion. I think £250 compensation is enough to reflect the trouble and upset caused by not being able to move into their new property with their children as planned, or having to deal with the sellers' claims against them as the lender has also paid compensation for their distress.

my final decision

My final decision is that I uphold the complaint and Legal & General Partnership Services Limited should pay Mr and Mrs S £2350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 8 April 2016.

Claire Sharp
ombudsman