

## **complaint**

Mr K and Ms A complained about the two mortgage recommendations which London and Country Mortgages Ltd gave them. They said that neither was suitable for them.

## **background**

Mr K and Ms A had a mortgage with a lender which I'll call A. They wanted to move to a different property, but didn't intend to sell their current property immediately. Their current lender, A, said it wouldn't lend on a new purchase unless Mr K and Ms A changed their existing mortgage to a buy to let basis.

So Mr K and Ms A went to London and Country for a mortgage recommendation. Among other things, they explained that they wanted a mortgage without an early repayment charge (ERC). Then they could pay a lump sum off their new mortgage, when they sold the first property.

London and Country recommended lender A. But Mr K and Ms A already knew that lender A wouldn't lend in their circumstances. So they didn't apply for that mortgage.

They complained to London and Country that they weren't eligible for a mortgage with lender A, and they were also unhappy that the adviser had only provided one recommendation rather than several from which they could choose.

London and Country then provided another recommendation, for a lender I'll call B. And it asked Mr K to provide the last two years' tax self assessments. Mr K was a contractor who used a limited company as the way he ran his business. This meant that he didn't draw all his income out of the company in one financial year. So the documents lender B wanted would only show income of around £50,000 to £60,000. Mr K knew that this wouldn't be enough for lender B to agree to the mortgage they wanted for £766,000. So they wouldn't qualify for a mortgage with lender B either.

Mr K and Ms A said they'd lost trust in London and Country and went elsewhere for their mortgage.

In its final response to Mr K and Ms A's complaint, London and Country agreed that its recommendation for a mortgage with lender A hadn't been suitable for Mr K and Ms A. It apologised, and said it hadn't carried out enough checking before making the recommendation. But it didn't agree that it should have provided multiple products for customers to choose from. It explained that it provided an "*advised service*" which meant it had to provide a recommendation for the product which it considered most suitable. London and Country offered Mr K and Ms A £50 compensation.

Mr K and Ms A weren't satisfied and complained to this service. They said London and Country had glossed over how serious its error was, and it should have checked before suggesting a product. If they'd gone with the recommendation, they'd have been refused and would have lost the property they wanted. They said London and Country was unfit to operate a mortgage advice service.

Mr K and Ms A also said that the new mortgage they'd chosen had an ERC. They said this meant that when the sale of their existing property went through, and they paid a lump sum off their new mortgage, they'd have to pay around £8,000 in early repayment charges. They

wanted London and Country to pay them £8,000, plus compensation and a public apology.

After Mr K and Ms A brought their complaint to this service, London and Country offered revised compensation of £100. Mr K and Ms A refused it.

The adjudicator didn't agree that Mr K and Ms A should have the amount of compensation they were seeking. He did agree that London and Country should have known that its recommendation of lender A was unsuitable because they weren't eligible for that product. He considered £100 compensation, the amount to which London and Country had increased its offer, was fair and reasonable. But the adjudicator said he couldn't comment on the recommendation of lender B, because the application had never been submitted. He noted that Mr K and Ms A had said it wasn't feasible because Mr K was a contractor using a limited company. But he said he couldn't comment on what might have happened.

The adjudicator also said that London and Country only provided an "*advised*" service, which was explained at the start of the process. It didn't offer multiple options. And he pointed out that the losses which Mr K and Ms A said they would make through paying an £8,000 ERC were the result of them having chosen that mortgage. London and Country hadn't had any input into that decision and weren't responsible.

Mr K and Ms A weren't satisfied. They said London and Country's recommendation of lender B hadn't been feasible from the start. They explained that, like most other contractors with a limited company, they didn't draw all the company income at once, so the self-assessment documents wouldn't show enough income to get a £766,000 mortgage approved. So London and Country shouldn't have recommended lender B without checking. They also sent links to two websites which referred to lender B's policy towards contractors who use a limited company.

### **my provisional findings**

I issued a provisional decision on this complaint. Before doing so, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

#### *Recommendation of lender A*

I agreed with Mr K and Ms A that London and Country should not have recommended lender A. Lender A wouldn't lend on any new mortgage while the customers had an existing mortgage, unless they changed the existing mortgage to a buy to let basis. That didn't fit with what Mr K and Ms A wanted to do. London and Country should have checked this before recommending it. It shouldn't have been down to Mr K and Ms A to point out that it wasn't suitable and why. I agreed with Mr K and Ms A that there would have been embarrassment, inconvenience, and time delay if they hadn't pointed out that this wouldn't do. So I found that London and Country made an error.

#### *Recommendation of lender B*

It's been widely publicised that lender B doesn't favour contractors who operate as limited companies. I could see that Mr K, as someone in that position, might well have been aware of this. I thought London and Country should have been aware too. I was satisfied that Mr K told London and Country how he handled being self-employed. So I found that London and Country didn't take enough care with its second recommendation either.

I recognised that Mr K and Ms A didn't actually submit an application to lender B, so it wasn't possible to say with certainty that they'd have been refused. But that was also true of the recommendation of lender A, where Mr K and Ms A didn't submit an application because they knew there would be a problem. I found that it was clear that both recommendations weren't suitable. I considered that London and Country should compensate Mr and Mrs A for the mistake it made with the recommendation of lender B.

### *Recommending only one mortgage, rather than a choice*

The basis of an “*advised*” service is that a broker should consider which product is most suitable for customers. They don't have to provide a number of options, as Mr K and Ms A believe they should.

I accepted that London and Country explained this at the outset. This was then backed up by the first substantive paragraph of London and Country's 12 April letter. That says “*The enclosed ‘about our services’ leaflet explains that we are providing you with advice and recommendation about the mortgage product that is most suitable for your specific circumstances.*”

So I found that the service which London and Country were providing didn't require it to set out a number of options for Mr K and Ms A to consider. What it was providing was a single recommendation. As I've set out above, its single recommendations for lender A, and later for lender B, were both flawed – but it was correct to provide only one recommended product each time.

### *Claim for compensation for the £8,000 ERC*

Mr K and Ms A chose to take out a mortgage which included an ERC. London and Country didn't recommend that mortgage. So it was clear that London and Country couldn't be liable for Mr K and Ms A's choice. So I didn't uphold this part of Mr K and Ms A's complaint.

Having considered all four parts of Mr K and Ms A's complaint, I found that London and Country should compensate them for two elements: the recommendation of lender A, and the recommendation of lender B. Neither recommendation was suitable. London and Country made a revised offer of £100 for the unsuitable recommendation of lender A, which I thought was a fair and reasonable figure for that. I said I intended to add a further award for the unsuitable recommendation of lender B.

But I also found that making a second unsuitable recommendation would have caused extra frustration and upset. One mistake might be a slip, but it was entirely understandable that after the second mistake, Mr K and Ms A decided that they really couldn't trust London and Country to provide a suitable recommendation, and would have to go elsewhere. This wasn't the same thing as saying London and Country was responsible for the recommendation of a product with an ERC, which Mr K and Ms A's replacement choice of broker recommended. But there would have been extra frustration, time pressure and hassle, in having to source a replacement broker. So I considered that a fair and reasonable total figure for compensation for distress and inconvenience would be £250.

### **responses to my provisional decision**

London and Country said it accepted the provisional decision and the increase to £250 compensation.

Mr K and Ms A said they were pleased that I'd recognised the gravity of London and Country's errors. They said they'd have liked to have seen a stronger penalty for breaking the trust relationship between client and adviser. Mr K and Ms A believed that London and Country's existence was pointless if they had to find out for themselves what they would or wouldn't qualify for. They said that although I hadn't awarded the full compensation they sought, they were willing to accept the increased compensation to draw a line under the issue.

### **my findings**

I've reconsidered all the available evidence and arguments, including the responses to the provisional decision, to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from my original conclusions.

### **my final decision**

My final decision is that I uphold this complaint.

I order London and Country Mortgages Ltd to pay Mr K and Ms A £250 compensation for distress and inconvenience, for the reasons set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Ms A to accept or reject my decision before 9 February 2019.

Belinda Knight  
**ombudsman**