

## **The complaint**

This complaint is about the service provided to Mr and Mrs G by mortgage brokers London and Country Mortgages Ltd (L&C) during a mortgage application to a lender I'll call N. The application was turned down by N after it was established that the source of most of Mr and Mrs G's deposit was family gifts rather than personal savings. This left Mr and Mrs G with abortive legal costs of over £500, which they believe L&C should refund to them for having recommended a mortgage for which they were never eligible.

## **What happened**

By way of a provisional decision dated 5 January 2022, I set out my provisional conclusions on how this complaint should be determined. The following is an extract from the provisional decision.

*"The broad circumstances of this complaint are known to Mr and Mrs H and L&C. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here.*

*Our decisions are published, and it's important that I don't include any information that might result in Mr and Mrs G being identified. Instead I'll give a brief summary in my own words (and rounding any figures) and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.*

*In September 2020, Mr and Mrs G completed an online mortgage enquiry form, in which they described their deposit as coming from personal savings. Based on this, and other information gleaned from Mr and Mrs G, L&C recommended a mortgage with N and the application was made on 2 October 2020.*

*In mid-October, information came to light causing L&C to check if the money for the deposit had recently been gifted to Mr and Mrs G. They confirmed that this was the case, and when this information was relayed to N, it turned down the application, as its policy was not to accept applications where more than 25% of the deposit is a gift.*

*L&C set about sourcing a mortgage with a different lender, but the seller of the property wasn't prepared to wait for this, and withdrew from the sale to Mr and Mrs G in favour of another buyer. This left Mr and Mrs G with abortive legal costs of over £500, and they complained to L&C that this was result of them having been recommended a mortgage for which they weren't eligible.*

*L&C rejected the complaint and Mr and Mrs G referred it to us. Our investigator considered L&C to be at fault and recommended the complaint be upheld and redress awarded to Mr and Mrs G. L&C has asked for the complaint to be reviewed by an ombudsman.*

## **What I've provisionally decided – and why**

*Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".*

*We have no regulatory function; that's the role of the Financial Conduct Authority; nor are we a consumer protection body. We're an alternative dispute resolution body; an informal alternative to the courts for financial businesses and their customer to resolve their differences.*

*We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.*

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

*Having done so, I've come to a different conclusion from the investigator. I set out my provisional findings below so that both parties can comment before I finalise my decision.*

*As I understand it, Mr and Mrs G have attributed the rejection of their application to structural failings on L&C's part. That's because the case manager who identified the issue with the deposit wasn't qualified to the same degree as the mortgage advisor who had made the recommendation in the first place, and seemingly wasn't in contact with the advisor to discuss the implications of the new information.*

*Mr and Mrs G say the advisor admitted as much in a phone conversation with them. It's not been possible to obtain a recording of that conversation, so I've no way of checking what the advisor said or the context in which he said it. However, I'm satisfied I don't need to hear that conversation to decide this case fairly.*

*That's because I don't agree that structural failings on L&C's part caused Mr and Mrs G's application to N to be rejected, and their purchase aborted. Very simply, this happened because the information they gave to L&C, which it relied on to recommend N as a lender and initiate the application to it, was inaccurate.*

*Mr and Mrs G say: "When filling out the mortgage application forms, we had said the funds were coming from "savings" because the funds were in our personal savings account." The form Mr and Mrs G filled out listed several potential sources of deposit, one of which was "gift". So I'm satisfied Mr and Mrs G would have known that any part of the deposit they'd received from family gifts should be disclosed as such. Also, the section of the form they ticked as the source of their deposit didn't simply say "savings"; it said "personal savings". But Mr and Mrs G hadn't saved this money personally. So I'm also satisfied Mr and Mrs G should have been aware what they were declaring wasn't correct.*

*Mr and Mrs G say L&C didn't tell them about the importance of the source of the deposit, or disclose N's lending policy rule to them. It didn't need to do either of those things; all L&C needed to do was trust that Mr and Mrs G had given it accurate information on which to formulate its recommendation.*

*Our investigator said that L&C's case manager should have realised the new information would impact on the suitability of the advisor's recommendation. Again, I have to disagree. The new information clearly impacted on the prospect of the application to N being accepted,*

*but the advisor's original recommendation was sound, based on what he had been told before he made it.*

*In summary, L&C did all that I would reasonably expect a broker to do in a situation such as this, including being prepared to source the mortgage from a different lender once N said no. It might still have been possible for Mr and Mrs G to complete their intended purchase, but their vendor wasn't willing to wait. That's not down to any act or omission on L&C's part."*

I gave the parties two weeks to reply to the provisional decision; we've not heard from L&C, meanwhile Mr G has emailed to say he and Mrs G disagree with my provisional conclusions. They maintain L&C should have acted as soon as it knew the information on which its recommendation had been based could no longer be relied on.

### **What I've decided – and why**

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

I've considered afresh everything that both parties have said and provided. Having done so, I won't be departing from my provisional conclusions.

I've noted what Mr G has said, but I don't consider it likely that anything would have happened differently if L&C had called a halt to the application to N as soon as it found out Mr and Mrs G hadn't answered its question truthfully. It would still have had to start a new mortgage application to a different lender from scratch, and I've no reason to think Mr and Mrs G's vendor would have acted any differently on hearing that.

### **My final decision**

I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 15 February 2022.

Jeff Parrington

**Ombudsman**