

The complaint

This complaint is brought by Mr C in his capacity as sole director of a limited company I will refer to as A. Mr C says that he was led to believe by Fleet Mortgages Ltd that the company's application for a mortgage would be agreed. However, the application was declined as the property the company was buying didn't meet Fleet's lending criteria.

To settle the complaint, Mr C would like Fleet to pay the following redress to A:

- £133,125, being the amount of the mortgage he applied for; and
- £10,507 per year for 25 years (a total of £262,675) being the annual profit of rental income over the lifetime of the mortgage.

In addition, Mr C wants a public apology from Fleet, and for it to pay a fine of £25 million to a homeless charity *"to send a clear message to lenders that the British public aren't to be summarily treated like cash cows to be fleeced at every turn"*.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to A or Mr C being identified.

In addition, Fleet has acknowledged it made an error, and so all I need to determine is whether the compensation offered is sufficient to put things right, or if there is anything more that Fleet needs to do.

So for these reasons, I will only give a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr C, through another of his companies, wanted to purchase a leasehold multi-unit block of flats (LMUB) and his broker put in an application to Fleet for a mortgage. The initial application was declined prior to survey due to the company structure, so Mr C set up A and the application was put forward in the name of A on about 23 June 2023.

Prior to the application being submitted in the name of A, on 15 May 2022 the broker was twice told by Fleet that it would lend on a LMUB with a peppercorn rent. This, however, was incorrect, as Fleet didn't lend on this type of property. When Fleet's surveyor noted the property was a LMUB, Fleet declined the application as it was outside lending criteria. A's broker was informed of this on 14 July 2023.

Mr C complained. Fleet upheld the complaint, and offered to refund the £199 application fee, the £600 valuation fee and also offered A £150 as a gesture of goodwill. Mr C didn't accept

this and on behalf of A he brought the complaint to our service, asking for Fleet to pay compensation totalling £25,395,800.

An Investigator looked at what had happened. Having done so, he wasn't persuaded Fleet should pay any additional compensation. The Investigator noted Fleet had accepted it had made a mistake and given Mr C's broker incorrect information. However, the Investigator was satisfied that Fleet was entitled to set its own lending criteria and so wasn't under any obligation to offer A the mortgage.

The Investigator also explained that A as a limited company is a separate legal entity, and the complaint was in the name of the company, as the applicant for the mortgage. Therefore Mr C couldn't be compensated in his own right.

Given this, the Investigator thought the compensation £150 offered by Fleet was fair and reasonable in all the circumstances.

Mr C didn't accept the Investigator's findings. He made some further points, which I summarise as follows.

Mr C said he found it extremely difficult to see how the Investigator came to the conclusion that Fleet had *"done absolutely nothing wrong"*. Mr C said that he could only conclude that this was because the Financial Ombudsman Service is funded, at least in part, by these financial institutions and therefore he couldn't see how our service *"would be in any way shape or form impartial in any decisions"*. As a result, Mr C said *"I now find myself with a grievance towards the Financial Ombudsman Service more so than Fleet Mortgages"*.

Mr C said that, giving the timing of the rejection of the application, he doubts it had anything to do with the building and more to do with the rate at which Fleet would have to offer the mortgage. Mr C also thought the £150 offered by Fleet was insufficient for the distress and inconvenience he had suffered.

Because the matter is unresolved, it falls to me to issue a final decision.

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'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes and systems, or how they operate generally; that's the role of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers.

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, but in doing so, we have to work within the rules of the Financial Ombudsman Service and the remit those rules give us.

We have no power to sanction, punish or fine businesses – that's the role of the FCA. Nor do we have the authority to determine whether or not a business has breached legislation, broken the law, or is in breach of contract, and we don't award damages – all of those matters fall within the remit of the courts.

I can understand why Mr C feels aggrieved. However, he is incorrect in saying that the Investigator found that Fleet had done nothing wrong. The Investigator said: *"I'm pleased to see that Fleet Mortgages have acknowledged they gave the wrong information..."*

Because Fleet has accepted it made a mistake, all I have to decide is what it should do to correct this. Fleet has offered to reimburse the £199 application fee and the £600 valuation fee, and pay £150 as a gesture of goodwill, a total of £949. Mr C, however, wants Fleet to pay compensation and a "fine" totalling £25,395,800, so there is clearly some discrepancy between the parties.

Generally, where a mistake has been made, we try to put the consumer back in the position they would have been in if the mistake hadn't been made. In this case, if Fleet hadn't incorrectly told Mr C's broker before the application was submitted that it didn't lend on a LMUB, A wouldn't have proceeded with the application. Therefore A would not have incurred the application or valuation fees.

However, I can see no basis on which it would be fair or reasonable for me to order Fleet to provide A with the mortgage it wanted. Fleet is entitled to set its own lending criteria. Decisions that Fleet makes in respect of what those criteria are, such as the type of property it will lend on, its attitude to risk, whether it should lend and if so, on what terms are clearly discretionary matters for Fleet's own commercial judgement that I would not interfere with.

I also will not be ordering Fleet to compensate A for what Mr C says is loss of rental profit over 25 years. That's because A would never have been entitled to the mortgage, because the property didn't meet Fleet's lending criteria. Although Mr C refers on the complaint form to A having accepted Fleet's mortgage offer, I'm satisfied no mortgage offer was issued, only a decision in principle, which is not a binding offer and is subject to the application meeting underwriting and lending criteria.

The errors Fleet made were telling Mr C's broker incorrectly, twice, that it would lend on a LMUB, when this wasn't the case. I'm satisfied that the offer to reimburse the £199 product fee and £600 valuation fee is fair and reasonable, as these are fees A would not have incurred had the mistake not been made.

As I said at the outset, I have no power to punish or fine a business. I acknowledge Mr C's strength of feeling, and his desire for Fleet to be punished by paying a fine of £25,000,000. However, this isn't something that falls within the remit of the Financial Ombudsman Service.

In relation to the goodwill offer of £150, I've noted what Mr C has said about why he considers this inadequate compensation for the inconvenience and upset he has suffered. But the eligible complainant here is A, a limited company, not Mr C personally. Limited companies like A are corporate bodies and so are not capable of suffering distress. I can therefore only consider the impact on A, not the distress or upset of its director. Nor can I consider any impact on the previous (different) company in the name of which the application was originally made, as that is a separate legal entity in its own right.

I'm satisfied there was inconvenience caused to A due to the error made by Fleet. I note the application in the name of A was submitted to Fleet on 23 June 2023. The error was identified within a short period of time, by 14 July 2023, once the surveyor had inspected the property. I'm satisfied the compensation of £150 offered for the inconvenience caused to A is fair and reasonable, and is proportionate to the error and timescale involved.

I appreciate this isn't the outcome Mr C wanted. However, Mr C on behalf of A is under no obligation to accept my decision. If Mr C rejects my decision on behalf of A (which also means rejecting the offer of compensation made by Fleet), then A will be free to pursue the complaint against Fleet through the courts, should it wish to do so.

My final decision

My decision is that, if it has not already done so, Fleet Mortgages Ltd must pay A total compensation of £799 for fees and £150 for inconvenience.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 9 April 2024.

Jan O'Leary
Ombudsman