

The complaint

Mr T is unhappy with how Allica Bank Limited dealt with his application for a remortgage.

He says that Allica bank's solicitors caused unnecessary delays which meant his mortgage offer expired and he has lost out financially. He is looking for the initial mortgage rate of 4.99% to be honoured as this has since increased, as well as £50,000 compensation.

What happened

Mr T, under his business name which I will call R, applied for a mortgage with Allica bank in July 2022. An offer was issued dated 4 August 2022 for a mortgage of £163,200 on a five year fixed rate, which was valid until 2 November 2022.

A valuation was carried out on 25 August 2022 and the valuation confirmed that the market value of the property would be £245,000 which was lower than anticipated.

The offer which was sent in August 2022 was based on a loan to value (LTV) of 60% but as the valuation came back lower than expected, the amount that R was able to borrow reduced to £138,000 – which was 60% LTV.

An updated mortgage offer was sent on 15 September 2022 for an amount of £140,760 which included the arrangement fee. This offer was also valid until 2 November 2022 and was signed and accepted by R on 26 September 2022.

R's broker contacted Allica bank on 30 September 2022 as R's solicitors hadn't heard anything from Allica bank's solicitors. Allica bank responded on 3 October 2022 letting them know they had sent a chaser to their solicitors.

Allica's solicitors got in touch with R's solicitors on 3 October 2022 letting them know what information would be required in order for the funds to be released.

One of the requirements was for full searches to be undertaken. R's solicitors contacted Allica's solicitors on 6 October 2022 saying that as the broker had arranged the mortgage previously and not that long ago, searches wouldn't be necessary and search insurance would be sufficient. Allica's solicitors responded on 19 October 2022 confirming that they still required full searches to be carried out.

Allica's solicitor sent R's solicitors a chaser email on 30 November 2022 as they hadn't heard anything from them. They received a response on 9 December 2022 but Allica said they were still waiting the undertaking of their fees. Allica's solicitors sent a further chaser for this on 12 December 2022 and received a response on the same day.

Allica's solicitors contacted R's solicitors again on 16 December 2022 requesting further information along with security documentation. These were sent to Allica's solicitors on 19 December 2022.

On 6 January 2023, Allica's solicitors contacted R's solicitors for some missing information and this was responded to on 23 January 2023. Allica's solicitors emailed R's solicitors on 26 January 2023 with further comments and asked when R were hoping to complete on the mortgage. R's solicitors responded on 1 February 2023 letting them know they were waiting for Map search results and were arranging for the original security documents to get sent.

R's solicitors contacted Allica's solicitors on 1 February 2023 and provided updated information and said they were still waiting for the Map search results and were arranging for the original security documents to be sent. R's solicitors then emailed Allica's solicitors on 3 February 2023 asking for an update. Allica's solicitors responded and confirmed they were still waiting for the documents they requested on 26 January 2023.

R's solicitors then responded on 10 February 2023 letting them know they would be sending the original security documents and that the completion date had been set for 17 February 2023 or earlier if possible. Allica's solicitors responded to say they would aim for completion on 16 February 2023.

On 22 February 2023, Allica's solicitors contacted R's solicitors attaching an email from 14 February 2023 confirming that a minimum rent of £10,200 was required on the property. They also confirmed that a full fire risk assessment was required on the property.

On 24 February 2023, R's broker confirmed the mortgage offer had expired and Allica could now offer a rate of 7.05%. Allica said they would need further documents from R as the credit report had expired.

On 27 February 2023, Allica's solicitor confirmed they had received the security documentation they were waiting for but still hadn't received the fire risk assessment. R's solicitor responded on 28 February 2023 asking for clarity on the points regarding the tenancy before they would provide a fire risk assessment.

Allica's solicitors said they were taking instructions from Allica regarding the points that R's solicitor had raised so Allica told their solicitor to hold off with any further communications.

A complaint was raised with Allica on 15 March 2023 where R raised the following points:

- A revised mortgage offer was produced on 15 September 2022 but was still only valid until 2 November 2022 so it only gave them 49 days to complete the mortgage.
- Allica's solicitors caused a number of delays by not responding to R's solicitors.
- Allica's solicitors requested further information after a completion date had already been agreed.
- Allica didn't let R know that the mortgage offer had expired on 2 November 2022 and continued to move forwards with the application.

R wanted Allica to honour the interest rate of 4.99% and wanted £50,000 compensation for loss of funds as a result of Allica's actions.

Allica didn't uphold this complaint and were satisfied they didn't cause any delays. They said the delays were due to the fact that fees were not paid to their solicitors, and they reached out on 3 October 2022 to ask for these which they didn't receive until 12 December 2022 – which was after the mortgage offer had expired.

The complaint was brought to the Financial Ombudsman Service where it was looked at by one of our investigators who didn't uphold the complaint. She was satisfied that the mortgage didn't complete because the required documentation hadn't been sent by R. She didn't believe that she could hold Allica responsible for any of the delays and didn't think it would be fair to therefore ask Allica to refund any fees or pay compensation.

R didn't agree and asked for the complaint to be reviewed by an ombudsman, so it's been passed to me to decide.

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.

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 not considered it but because I don't think I need to comment on it in order to reach the right outcome. Having considered everything provided by both parties, I agree with the outcome that has been reached by the investigator. I'll explain why.

Delays

R have said they believe there are a number of delays caused by Allica's solicitors and have also raised concerns with the amount of time they had to complete on the loan due to the expiry date of the mortgage offer – and the issues surrounding this.

The original mortgage offer was produced on 4 August 2022 which had an expiry date of 2 November 2022. A revised offer was sent on 15 September 2022 due to a change in the valuation. This offer also had the same expiry date.

This offer was signed by R on 26 September 2022. R's solicitor contacted Allica on 20 September 2022 letting them know that they hadn't heard from their solicitors. I can see that Allica chased their solicitors on 3 October 2022. This is what we would have expected to happen.

Having looked at the timeline of events and the correspondence between both parties, there were some delays in Allica's solicitors responding but I can't agree that all of the delays were a result of their actions – which follows that I don't think they are responsible for what happened overall.

After Allica's solicitors responded to R's solicitors on 19 October 2022, they didn't hear back from R's solicitor until 9 December 2022 and this was after Allica's solicitors had chased them again on 30 November 2022. The mortgage offer had already expired by this point.

There appears to have been an issue with the security documentation that Allica's solicitors were waiting for. R believes that Allica's solicitor had located the documents a few weeks after they had been sent. But R's solicitor said in an email dated 10 February 2023 that they were arranging for these documents to be sent and these were received by Allica's solicitors on 27 February 2023. So I can't agree with what R is saying here.

One of the documents that Allica's solicitors was asking for was a fire risk assessment of the property. I don't think that Allica's solicitors realised that this hadn't been sent when they agreed to try and arrange a completion date for the 16 February 2023. So at this point they could have made it clear that they were still in fact waiting for this. However, R and its solicitors would have been aware that this documentation was still outstanding.

The mortgage offer which was issued on 15 September 2022 had a list of special conditions that was included in it and one of those said '*the bank solicitor's sight and satisfaction with Fire Risk Assessment*'.

And from what I have seen, it looks as though by March 2023 the required documentation still hadn't been received by Allica's solicitor. So based on what I have seen, I don't believe that Allica caused any undue delays so I won't be asking them to do anything further with regards to this point.

Expiry date of the mortgage offer

The revised mortgage offer was sent to R and this was dated 15 September 2022. I have already said that this was signed on 26 September 2022.

R is unhappy that this revised offer still had an expiry date of 2 November 2022 which was the same date as the original offer which was sent in August 2022. It said that this only gave them 49 days to complete and it wasn't enough time. R said it wasn't made aware that this offer had in fact expired until 24 February 2023.

The loan that Mr T applied for under his business R, is a commercial loan which isn't regulated. This means it's not a regulated loan so there are no rules as such around how long the mortgage offer should be valid for. I know that Mr T has researched and said that mortgage offers are usually valid for six months – but as this is an unregulated loan – it doesn't have to have a longer expiry period. And this is the same for some regulated loans as well.

I've thought more around the actions of Allica having continued with the process of the loan after the offer had expired to understand whether they acted fairly or not.

The investigator contacted them for further information to find out if they would have extended the mortgage offer seeing as they were still going through the process well after the expiry of the offer on 2 November 2022.

Allica said because they were still working on the loan process after the expiry date, they would have been willing to extend the offer by one month, which is what they would usually do – as long as there were no issues raised during the process of trying to complete the loan. So because of this, they said they would have extended the offer to 2 December 2022 at the very least if they were asked to do so.

I've now gone on to consider that had Allica of been asked to extend the mortgage offer, whether R would have been able to complete the loan in time. Based on the evidence I have been provided with, I don't think it would have been.

The mortgage offer dated 15 September 2022 had the following conditions which were needed:

9. Conditions Precedent to Drawdown

See clause 3 (conditions Precedent to Drawdown) of the Terms and Conditions for the conditions that must be met in order for the Borrower to Drawdown.

Additionally, and prior to Drawdown, the following must have been provided or undertaken to the Bank's entire satisfaction unless stated otherwise:

- 1. The Loan amount (excluding fees if being added) is to be no more than 60% of Vacant Possession Value.*
- 2. Valid Energy Performance Certificate with a minimum rating of E to be provided prior to drawdown (or evidence of exemption).*
- 3. Bank sight and satisfaction with bank panel valuation confirming minimum market rent at £19,000.*
- 4. The Borrower undertakes to provide the Bank with satisfactory reports and cost estimates relating to repairs and maintenance requirements as recommended by the Bank's Valuation report prior to drawdown, and to complete all recommendations within 3 months from drawdown. Work/repairs of a more fundamental nature which need to be completed prior to drawdown will be advised separately.*
- 5. Borrowers Solicitor to provide a signed postponement of Directors loans.*
- 6. Bank's solicitors sight and satisfaction with Fire Risk Assessment.*
- 7. Bank sight and satisfaction of signed A.S.T before completion for the residential element of the property to a third party for a minimum rent of £10,200 per annum.*
- 8. Bank Solicitors sight and satisfaction with lease between [name of commercial*

shop] and the borrower for a minimum annual rental of £12,000 and minimum term of 5 years.

9. Bank sight and satisfaction up to date 3 months bank statements with no excesses and 2 years tax returns for Mr T.

10. Bank solicitor to confirm sight and satisfaction that this the facility will be used to repay Mr T's personal debt.

I've looked at the email that Allica's solicitors sent to R's solicitor on 3 October 2022. They said:

Please note that the Lender requires our signed Certificate of Title and 48 hours ahead of any planned completion date.

We can only submit our COT once you have replied to all pre completion requirements and provided us with the original signed Security Documentation'.

I think the conditions outlined in the mortgage offer and the email sent by Allica's solicitors made it clear that they would not be able to complete on the loan until the original security documents had been sent. And this wasn't sent to them until after 10 February 2023. And as I stated earlier, one of the conditions was that a Fire Risk assessment was to be provided but this hadn't been either.

There doesn't appear to be any contact between March and May 2023 where it seems Allica were looking to try and re-issue a new mortgage offer and it seems as though they were in talks with their own credit team to see if a rate of 6.45% would be available. But the credit team – from the notes provided – said it wouldn't be. So a rate of 7.2% was applied and in June 2023, a three month extension was approved on this offer.

The next communication I can see appears to be in November 2023 and this was between R's broker and Allica where the broker confirmed that R would like to proceed and that it would be willing to pay for the Fire Risk assessment to get the certificate needed and R wanted to know if a re-inspection of the property was needed. Based on this, and considering this point was clear in the conditions of the offer from September 2022, it looks as though the required documentation still hadn't been sent.

The mortgage offer dated September 2022 had an expiry date of 2 November 2022. And while I appreciate the frustration that R said it didn't find out about this expiry until February 2023, Allica have said they would have extended this offer by a further month to secure the original interest rate of 4.99%. But from having looked at everything, the loan that R wanted to obtain would not have completed by 2 December 2022.

Allica said they would have issued a new mortgage offer in June 2023 on the new interest rate of 7.2% and would have extended this for three months – so until September 2023 which should have given R enough time to complete on the loan. But this doesn't appear to have become a formal mortgage offer as it seems Allica didn't know at this time that R wanted to proceed.

I understand that R wanted the rate of 4.99% but interest rates cannot be held indefinitely and Allica would have given it a new mortgage offer to enable it to complete on the loan.

Based on everything I have seen, I can't hold Allica responsible for R not being able to complete on the loan. And I don't believe the delays that R is adamant occurred, resulted in this happening. The documentation that Allica's solicitor had asked for, still hadn't been provided well after the expiry of the mortgage offer so I am satisfied that this wasn't down to Allica.

R said that Allica have since declined the loan and that it didn't want to get the loan from Allica. This isn't something we have looked into so this is a new issue that R will need to raise with Allica if it's something it remains unhappy about.

I appreciate that R will be disappointed with my decision, but I am satisfied that Allica acted fairly in these circumstances and were not responsible for the delay overall.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 1 October 2024.

Maria Drury
Ombudsman