

The complaint

Mrs and Mr J complain that London and Country Mortgages Ltd (L&C), failed to provide suitable advice when recommending a mortgage for their new home.

What happened

I set out a brief summary of this complaint to both sides in February 2024 when I issued a provisional decision on this complaint. I explained I was planning on reaching a different outcome to our investigator and that I felt the complaint should be upheld in part. In summary I said the following:

- Initially Mrs and Mr J had said they were looking to complete the purchase of their new property (property B) simultaneously with the sale of the existing property (property A). An application was made for a new mortgage provided by Lender A for a two-year fixed rate purchase mortgage at a rate of 2.14% for £1,250,000.
- However, soon after this they had explained to L&C their plan was to purchase property B before the sale of property A could be completed. They would purchase property B with bridging finance and help from friends and family and I was satisfied L&C was made aware of this.
- L&C failed to recognise the recommendation it had made previously was no longer suitable as the conditions of the offer for a new purchase mortgage could not be met. As Mrs and Mr J would have already owned property B an application should have been made for a re-mortgage.
- The earliest Mrs and Mr J could have applied for a re-mortgage on property B was June 2022 after they completed on the purchase.
- However, I wasn't persuaded that it was more likely than not, based on the information we had, that Mrs and Mr J would have been able to secure the borrowing they wanted. So I couldn't say for certain whether they had lost out on a better interest rate by not making an application for a re-mortgage sooner.
- There was clearly distress and inconvenience caused when L&C failed to highlight to Mrs and Mr J that the mortgage it had provided was not suitable and there was a loss of expectation when they realised this was the case.
- To reflect the distress and inconvenience I felt L&C should pay £500 to Mrs and Mr J, but I didn't think it would be fair to ask L&C to cover the difference in interest Mrs and Mr J said they are paying because of the delay in the re-mortgage application being made.

L&C said it understood the reasons for the recommendation and had nothing further to add.

Mrs and Mr J did not. They explained why they felt it could be evidenced that they had a number of viable options available to them which should have been considered by L&C.

They said these were:

1. To have correctly made an application to re-mortgage property B or do a day one re-mortgage application once they owned it.
2. To have applied to purchase property B while still owning property A with a purchase mortgage for property B.

They said both demonstrated it was more likely than not, that they would have been able to secure the borrowing they needed sooner. This would have been at a lower interest rate had L&C provided the suitable advice and made an application for either of these at the earliest opportunity and they had lost out as a result of the error.

In response to the information provided by Mrs and Mr J, I asked Lender A – the original lender L&C made an application to for Mrs and Mr J and Lender B – the lender Mrs and Mr J ultimately ended up taking a mortgage with for property B in November 2022, for some further information.

Both were asked whether, based on their understanding of Mrs and Mr J's circumstances at the time in June 2022, would they have been able to provide them the borrowing they needed on a re-mortgage basis. Both Lender A and Lender B said it was highly likely this was something they could have provided. They shared with us the interest rates available at the time for the products they had.

This information was shared with L&C and we asked for its comments on this as it contradicted what it had previously told us about the likelihood of a day one re-mortgage being able to be made.

L&C said they were not made aware of the completion of the property B purchase until this was disclosed on 15 August. So no application for a day one re-mortgage could be made before this at the earliest. And when they were informed, they didn't think an application with Lender A would have been accepted.

At this point L&C said it asked Lender A if it could provide a mortgage for Mrs and Mr J with property A being let out. This significantly reduced the borrowing available with Lender A, reducing this to around £670,000 from the £1,250,000 needed. Based on this, it feels there was no option for Mrs and Mr J to mortgage against property B until property A had been sold.

L&C said it had also approached Lender B and asked it questions about its day one mortgage criteria. It said buy-to-let applications are not available in this situation and so L&C believed Mrs and Mr J would not have been able to obtain the borrowing they needed with this lender either, ahead of the sale of property B.

Overall, it maintained that Mrs and Mr J would not have been likely to obtain the borrowing they wanted and the information we had been provided by Lender A and B was not correct.

I issued a second provisional decision on this complaint in June 2024 and said the following:

Having reconsidered the file and new information provided by both parties and the third-party lenders, I am planning on asking L&C to go further with its redress.

I'll explain why I am persuaded L&C was or should have been aware of the completion date of property B's purchase prior to August 2022. Why it is fair and reasonable to have expected L&C to recognise the recommendation it made previously was not suitable and to

have considered other options with Mrs and Mr J at this point. And that Mrs and Mr J would likely have secured a better interest rate for the borrowing they needed if L&C made a suitable application sooner.

As I said in my previous decision, I think L&C were given explicit notice of Mrs and Mr J's intended actions with the new and existing property in April 2022. I appreciate L&C don't think it was confirmed that property B had been purchased until 15 August 2023 but I don't agree.

On 10 May 2022, Mr J had a call with L&C where it explains the offer provided by Lender A for the purchase of property B has been produced and is available to download from the portal. But Mrs and Mr J will receive a copy of this through the post on completion. Mr J explains that wouldn't be possible as completion was planned for 8 June 2023 and would take place ahead of this being needed.

Instead of prompting the adviser to question why the mortgage wasn't going to be drawn down on completion and wasn't needed, the conversation explored a change in the source of the deposit funds only.

L&C has an obligation on it to take reasonable steps to ensure any illustration it provides is accurate and that it has considered the information provided by the customer. Here L&C failed to take into account the new information provided by Mrs and Mr J and review the application and consider if it was suitable or if other options needed to be explored.

Mrs and Mr J have said they had two options – one with a focus on a re-mortgage application and one with a focus on a purchase mortgage application amended to allow for them retaining property A on a short term buy-to-let. I don't agree both of these were viable options.

The option to retain property A on a buy-to-let basis was explored with Lender A in August 2022 by L&C. This had a significant impact on the amount Mrs and Mr J could have borrowed from Lender A and doesn't support it was an option that could have been explored. So I've discounted this as an option when thinking about what L&C could or ought to have done.

However, both Lender A and B have said to this Service that Mrs and Mr J would have likely been accepted for a re-mortgage application had one been made once they owned property B. So from June 2022 this was an option.

This is based on an application being made to re-mortgage property B to repay the balance of the bridging loan already on the property. It was not with a view to increase their borrowing to cover the previous mortgage on property A and the expectation is this would be repaid on the sale of this property before the funds could be drawn for property B. A special condition on the mortgage would be placed to this effect. So the concerns L&C has raised and the restrictions it feels applied by Lender B being able to provide this lending are not correct to the situation Mrs and Mr J were in.

Overall, I am satisfied that L&C failed to take account of the information provided by Mrs and Mr J. When it failed to do this, it failed to look at other options that were suitable to their needs when the offer produced was no longer suitable. This has resulted in Mrs and Mr J paying more interest than they would otherwise have done had an application been made sooner and I'm persuaded it is more likely than not, that Mrs and Mr J would have been able to secure the borrowing they needed at this point and they've lost out as a result.

The earliest L&C could have made an application for a re-mortgage on property B was from

June 2022 onwards and I've considered the rates available at this point. As the mortgage was later secured with Lender B, I've used its rates for comparison as the later successful application adds weight to the fact that it would have provided the borrowing sooner if approached.

A two-year fixed rate product with a product fee and the LTV Mrs and Mr J had with property B means they could have applied for a rate of 2.7%. This is 1.4% lower than the interest rate they were later able to achieve.

Mrs and Mr J's current mortgage is a five-year product. They say this was taken as it was cheaper than two-year options at the time. However, as they were initially looking for a two-year fixed rate product, I think this is the right product and length of time to consider any financial loss over. They would have benefited from this rate for this length of time and what they could achieve after this expires is an unknown.

To put things right, I plan on asking L&C to calculate the difference in interest Mrs and Mr J will have paid for their mortgage for two years when comparing the rate of 2.7% against a rate of 4.1% on a mortgage of £1,200,995. This should be refunded from November 2022 for two years.

This is based on £400,995 being on a repayment basis and £800,000 on interest only. I appreciate Mrs and Mr J originally applied to borrow slightly more than this from Lender A but they are now only paying additional interest on this amount.

Mrs and Mr J have been paying their mortgage since November 2022 and L&C will need to include 8% simple interest on any refund amount that reflects payments already made by Mrs and Mr J.

If it feels the need to deduct income tax from this at the standard rate, it will need to upon request, provide Mrs and Mr J with a statement of any tax deducted.

For the reasons I set out previously, I will also be asking it to pay Mrs and Mr J £500 for the distress and inconvenience caused with this matter.

Mrs and Mr J responded to say they accepted the proposed recommendation and had nothing further to add.

L&C responded to say it did not agree with the proposed outcome. It said the person Mrs and Mr J spoke to when it was confirmed the purchase of property B was to be completed in June 2022 was an administrative member of staff and not the mortgage broker. So the broker could not have been aware that the advice previously provided was not suitable.

And they said, despite what Lender A and Lender B had told this Service directly in response to confirming whether a re-mortgage application could have been made for property B sooner, it disagreed that Mrs and Mr J would meet the lending criteria for either lender.

As a result the complaint has been passed back to me for review and 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.

Having reconsidered this complaint, I see no reason to depart from the provisional decision I set out above.

L&C has said in the call on 10 May 2022 that the person Mr J spoke with was not their mortgage broker and could not have known the advice provided was not suitable. The call handler starts by explaining they've checked over the information on the offer and everything looks correct and is good to go. This is not providing advice but intermates to Mrs and Mr J that they understand the product and whether what was offered meets their needs.

It was made clear in this call that the mortgage was not going to be needed until after the property was purchased and if the call handler was not able to provide advice, I would have expected them to highlight to the broker that Mrs and Mr J had concerns about the mortgage and when it was needed.

I said in my previous decision in February 2024, I was satisfied that from 1 April 2022 onwards, L&C was provided notice that Mrs and Mr J's circumstances had changed and it is reasonable to believe with L&C being provided with this notice, that it would take account of this with the first notice of the change being provided before a mortgage offer was produced.

L&C has an obligation to take reasonable steps to obtain information to ensure any recommendation made is suitable. It was given information at different points which contradicted the original position of Mrs and Mr J and I don't think it understood the information provided at these different points. Ultimately, this meant the mortgage application was not amended at any point despite Mrs and Mr J sharing information which highlighted there was a need for this to happen.

I think it is fair to say that L&C should have been reasonably aware of the information provided by Mrs and Mr J and taken this into account. When it failed to do this, it failed to provide the opportunity for suitable advice to be provided.

L&C has said it doesn't agree the lending was ever available and provided lending criteria from both Lender A and B. However, this is its interpretation of the options available to Mrs and Mr J only. As I said in the provisional decision, Lender A and B was asked to confirm if it would have likely provided a mortgage offer to Mrs and Mr J had an application been made in June 2022. Both said yes and on this basis, and that Mrs and Mr J later completed a mortgage with Lender B, I am satisfied this is more likely than not, what would have happened.

Putting things right

Overall, I see no reason to depart from the decision I set out above and L&C needs to take the following steps to put things right.

To put things right, L&C should:

- Calculate the difference in interest Mrs and Mr J will have paid for their mortgage for two years when comparing the rate of 2.7% against a rate of 4.1% on a mortgage of £1,200,995. This should be refunded from November 2022 for two years.
- This is based on £400,995 being on a repayment basis and £800,000 on interest only. (I appreciate Mrs and Mr J originally applied to borrow slightly more than this from Lender A but they are now only paying additional interest on this amount.)
- Mrs and Mr J have been paying their mortgage since November 2022 and L&C will need to include 8% simple interest on any refund amount that reflects payments already made by Mrs and Mr J.
- If it feels the need to deduct income tax from this at the standard rate, it will need to upon request, provide Mrs and Mr J with a statement of any tax deducted.
- Pay Mrs and Mr J £500 for the distress and inconvenience added as a result of this matter.

My final decision

For the reasons I've explained above, I uphold Mrs and Mr J's complaint.

Thomas Brissenden
Ombudsman