

complaint

Mr and Mrs H complain that TSB Bank plc didn't arrange the survey report they'd asked for as part of their mortgage application – leading to them buying a property with several defects.

background

Mr and Mrs H applied for a mortgage with TSB, via a broker. As part of their application, they chose to request a homebuyer's report, and paid the appropriate fee to TSB.

They say they didn't receive the report before the purchase completed. But after they moved in, they found a number of problems – including damp, woodworm and problems with some of the electrics.

Mr and Mrs H complained to the third party surveying company TSB had asked to value the property, which I'll call C. C said it hadn't been able to carry out the report itself because of pressure of work, and had asked another company, J, to carry it out instead.

C said J had said it wasn't possible to do a homebuyer's report because of the property's age and type. C said it had sent TSB an email about this, and asked whether Mr and Mrs H wanted a full structural survey. C said it no longer had a copy of the email. TSB said it hadn't received any such email.

In the event, as it wasn't told to do a full structural survey J carried out a basic valuation, which was sent to TSB. The valuation said the property was in acceptable condition but noted that there was evidence of damp to ground floor walls and recommended the instruction of a damp contractor to investigate further.

Mr and Mrs H had, by then, moved quite a long way with their house purchase. Their broker rang TSB to chase up the homebuyer's report and TSB read the comments on the valuation to the broker over the phone. The broker rang back around two hours later to tell TSB that Mr and Mrs H had agreed a price reduction on the property because of the damp, and TSB issued a revised offer. The sale then completed.

A few months later, after they'd discovered other issues with the property, Mr and Mrs H complained to C. C said it hadn't carried out the valuation. It said it had told TSB a homebuyer's report couldn't be done and hadn't received further instructions. It said it had refunded the additional cost of the homebuyer's report to TSB to pass on to Mr and Mrs H.

Mr and Mrs H then complained to TSB. They said they'd had to spend a lot of money on putting right problems they'd found with the property. Because they'd never had a survey, they didn't know how much more needed to be done. Had they known about the property's issues, they'd never have bought it. They want TSB to refund their costs to date, commission a survey and pay for any further issues the survey shows. They'd never been told J had recommended a full structural survey. They'd paid TSB for a homebuyers report and considered it was responsible for them not having one – and the consequences that flowed from that.

my findings

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

There are several different types of inspection that can be carried out as part of a property purchase. The most common are a valuation, a homebuyers report and a structural survey. A valuation is just a check of the property's value, carried out for the benefit of the lender to check the property is adequate security. Homebuyers reports and surveys are more detailed inspections of the property for defects and structural problems, to advise the purchaser on the condition of the property. When carrying out a valuation, a valuer won't be actively looking for the sorts of issues covered by a homebuyers report or survey – but may note them if seen and advise further investigation.

In this case, Mr and Mrs H wanted a homebuyers report. That's what they asked for, and that's what was arranged.

TSB instructed C to carry out a homebuyers report alongside the valuation it needed for its own purposes, and C in turn instructed J to act on its behalf.

C says J said it couldn't do a homebuyers report, and C says it asked TSB what to do instead but received no response.

However, C says it no longer has a copy of this email. If that's the case, I'm not sure how it can be certain that it was ever sent. I've carefully reviewed TSB's notes, and there's no evidence it ever received this email if it was sent. And in turn, TSB didn't ask Mr and Mrs H how they wanted to proceed.

On balance, I think it's likely that TSB didn't receive an email from C. It therefore didn't know about the problem with the homebuyers report – and couldn't tell Mr and Mrs H or their broker about it.

TSB did receive a valuation, which noted the damp problems. As exchange of contracts was coming up, and as they hadn't received the homebuyers report they were expecting, Mr and Mrs H's broker called TSB and had the contents of the valuation read out to him. He passed this on to Mr and Mrs H, who re-negotiated the purchase price based on what they were told.

This tells me that Mr and Mrs H were aware of the nature and purpose of a homebuyers report. They wanted it specifically to advise them on the condition of the property. And they knew that they hadn't received it before they exchanged contracts.

The nature of the brief comments read out from the valuation report to the broker would, or should, have told the broker – and so Mr and Mrs H – that what TSB had received was a valuation report, not a homebuyers report. And I would have expected Mr and Mrs H not to have exchanged contracts until they'd seen the report they intended to rely on. I'd also have expected Mr and Mrs H's solicitor to have advised them not to proceed until they'd seen the report they had paid for.

I don't think it would be fair to hold TSB responsible for Mr and Mrs H buying a property with defects without seeing a homebuyers report first. TSB commissioned the report from C, but did so on Mr and Mrs H's behalf. The valuation was for TSB's benefit, but the homebuyers report was for Mr and Mrs H's benefit. In that respect, C and J were acting for Mr and Mrs H,

not TSB. And Mr and Mrs H decided to go ahead with their purchase before seeing the report they'd asked for.

However, Mr and Mrs H paid for a homebuyers report, and never received one. C says it refunded the difference between the cost of that and the cost of a valuation to TSB for it to pass back to Mr and Mrs H. As it was via TSB that they paid for it in the first place, that's the right process. However, TSB now can't say whether or not it passed that refund on to Mr and Mrs H at the time; they say it didn't, and TSB accepts it should do so now. I think that's fair.

my final decision

For the reasons I've given, my final decision is that TSB Bank plc should refund to the difference in cost between a homebuyers report and a valuation to Mr and Mrs H, adding simple annual interest of 8% running from the date they paid it to the date of refund. I make no other direction or award. TSB may deduct income tax from the interest element of my award, but should give Mr and Mrs H the necessary certificate, if they ask for it, so they can reclaim the tax from HMRC if they're entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 18 July 2019.

Simon Pugh
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