Financial Ombudsman Service

complaint

Mr O and Ms W complain that London and Country Mortgages Ltd (L&C) didn't advise them that that they only had thirty days to port their tracker mortgage. They thought they had six months and, by the time L&C told them they didn't, it was too late.

background

Mr O and Ms W were moving house. They had a tracker mortgage of £95,000, with an interest rate fixed at 0.17% above base rate, which they wanted to port to their new property. When they had ported the same mortgage on a previous occasion, the lender had allowed them six months to buy somewhere else. But since then the lender had reduced the time limit to thirty days.

As they needed to borrow an additional £150,000, they approached L&C who offered an advised service. There were several discussions between Ms W and an advisor about porting the existing mortgage. During these discussions Ms W consistently referred to the six month time limit which she believed applied. L&C didn't advise Ms W that, in fact, they only had thirty days to port the mortgage. Mr O and Ms W went ahead with the sale of their house in the belief that they had six months to complete on a new property and so missed the deadline. L&C asked the lender if it would agree to extend the time limit but it refused to do so. When Mr O and Ms W complained, L&C said it had relied on Ms W's statement that they had six months to complete on their new property.

The adjudicator thought the complaint shouldn't be upheld because L&C was entitled to rely on what Mr O and Ms W told it.

my provisional decision

I issued a provisional decision. I didn't agree that L&C was entitled to rely on Mr O and Ms W's understanding of the situation. I didn't think there was enough evidence to show that Mr O and Ms W had suffered any financial loss but I thought L&C should pay them £350 for the distress and inconvenience they suffered when they realised they wouldn't be able to port their mortgage.

L&C had nothing to add.

Mr O and Ms W asked me to reconsider the issue of financial loss. They said that, if they had been able to port the mortgage, they would have had the benefit of a tracker rate of 0.17% above base rate on the £95,000 for the full 25 year term of the mortgage as opposed to the 1.49% above base rate that attached to their new mortgage. They calculated that over the 25 year term of the mortgage (assuming a difference of 1.32% in the interest rate) they would have saved £16,614.

I have given careful consideration to this argument but remain of the view that there isn't enough evidence to show that Mr O and Ms W suffered a financial loss as a result of moving their mortgage to another lender.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

L&C was entitled to rely upon the information Mr O and Ms W provided about their personal and financial circumstances. I don't accept that this extended to information about the mortgage itself. It's not unusual for a consumer to have misunderstood what he or she has been told or to make an assumption which proves to be unfounded. In this case, having listened to the calls, I am satisfied that nothing Ms W said when she spoke to L&C's advisor, absolved L&C from the responsibility of checking the lender's requirements for porting the mortgage.

Ms W says that, if they had been aware that they only had thirty days to complete the purchase of their new property, they would have managed matters so as to meet this deadline by delaying completion on their sale. She says their strong preference was to stay with their existing lender, but it doesn't necessarily mean she and Mr O have suffered financial loss as a result of having to go to a different lender.

I don't consider it's fair to limit the comparison between the two mortgages to the £95,000 which Mr O and Ms W wanted to port. They were looking for finance to purchase their new property which was partly made up of the existing £95,000 mortgage and partly new borrowing of £150,000. So I think it's necessary to look at the overall package available from each lender.

If Mr and Ms W had gone ahead with porting the mortgage, they would have been paying 0.17% above base rate on £95,000 for 25 years, with an additional mortgage of £150,000 on a ten year fixed rate of 3.89%. Instead they have borrowed the whole £245,000 (in fact the total borrowing was £287,900) on a tracker of 1.49% above base rate for the full term of 25 years.

At the moment they are paying 1.99% on the full amount borrowed (interest of £4,875.50 a year on £245,000) rather than the 0.17% on £95,000 and 3.89% on £150,000 (interest of 5,898.50 on £245,000). So currently Mr O and Ms W are paying around £1,000 a year less in interest. I also note that the arrangement fee with the original lender was £1,499 as opposed to £999 for the mortgage they now have.

I appreciate that the uncertainty over future interest rates makes it difficult to predict the extent to which the current saving they are making on the interest they are paying will continue over the twenty five year term of the mortgage. A further element of uncertainty arises from the possibility they may re-mortgage at least once during the remaining term.

I cannot be satisfied, on the balance of probabilities, that Mr O and Ms W will be any worse off with their current lender than if they had stayed with the original mortgage provider. The interest rate on the £95,000 was clearly competitive, but this accounts for less than 50% of the current borrowing. The uncertainty about future interest rates combined with the immediate savings Mr O and Ms W have achieved, mean that there is no reliable evidence of financial loss.

I do accept that Mr O and Ms W suffered considerable distress and inconvenience as a result of losing the opportunity to port their mortgage. Ms W says they had hoped to stay with the same lender. Even after they were told they couldn't port, they applied for an alternative product with the same lender, only abandoning it after further significant delay occurred. They now have a mortgage which carries a lower interest rate overall, but this doesn't detract from the period of uncertainty and stress that followed their discovery that they had missed the chance to port their existing mortgage. Taking all this into account I consider L&C should pay Mr O and Ms W £350 for distress and inconvenience.

my final decision

I uphold the complaint. I require London and Country Mortgages Ltd to pay Mr O and Ms W £350 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr O and Ms W to accept or reject my decision before 29 July 2015.

Melanie McDonald
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