

The complaint

Mr and Mrs J complain that Loughborough Building Society (LBS) failed to instruct the surveyors to provide a Home Buyer Report (HBR) as requested, which meant that defects weren't identified prior to them taking out their mortgage.

What happened

Mr and Mrs J say that they asked LBS for a HBR when they applied for their mortgage in April 2022. However, LBS only instructed a basic mortgage Valuation Report to be done before the mortgage completed on 31 August 2022. Mr and Mrs J say that they thought the HBR had been done and provided to LBS as it was happy to lend on the property. However, following completion they became aware of issues with the property and requested a copy of the HBR from LBS on 13 September 2022, at which point it became apparent that this had not been done.

LBS accepted that it had made an error in instructing the wrong type of valuation report and has since instructed and paid for a HBR, which was completed in November 2022 and identified numerous defects. It has also refunded the £300 Mr and Mrs J paid for the HBR in May 2022. LBS has said that, in recognition of the inconvenience suffered by Mr and Mrs J, it is willing to contribute to the urgent works marked in red on the HBR (relating to defects concerning electricity, gas, and issues with the walls and flooring relating to damp).

LBS says that Mr and Mrs J's request for it to pay for all the remedial works identified in the HBR is disproportionate to the error and does not reflect the fact that Mr and Mrs J decided to continue with the purchase of the property without the benefit of the HBR they had paid for and without alerting it to the absence of the report. It therefore believes that Mr and Mrs J share responsibility for the cost of any urgent repairs identified in the HBR as they had the opportunity to point out that it had not been received but did not alert either LBS or their solicitors before they decided to proceed with the purchase. It therefore assumed that they were content to proceed on the basis of the information contained in the Valuation Report. LBS considers that items marked as not serious or not requiring urgent attention should be dealt with by Mr and Mrs J as part of ongoing maintenance of the property.

Mr and Mrs J would like LBS to pay for both the red and amber remedial works identified. They say that, had the HBR been provided earlier, these defects would have been picked up and they wouldn't have purchased the property due to the amount of work required. They have since carried out further work on the property to address some of the defects. Mr and Mrs J say that the cost of the works to put the property right is expected to run into thousands in order and that the mistake by LBS has turned out to be very costly. They have also said that this issue has caused them a great deal of stress and significant amount of time chasing responses and contacting tradesmen to carry out work.

Our investigator looked into the complaint and concluded that the resolution offered by LBS was fair and reasonable and therefore didn't ask it to do anything further. The investigator said that, whilst LBS did make a mistake in not instructing the HBR, he also thought that Mr and Mrs J could have chased the report before the sale was completed. He therefore thought the resolution proposed by LBS was reasonable and pragmatic.

Mr and Mrs J disagree with this and the case has therefore come to me to make a decision. They say that the gas issue has been resolved but the electric and damp issues are still

ongoing. They also say that another risk to the property was the condition of the roof and believe that this should be considered as it is a contributing factor to the damp issues.

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 looked at the evidence I agree with the investigator's view for broadly the same reasons and I've explained these reasons further below.

Mr and Mrs J say that they are first time buyers and believed that – having paid for the HBR – this must have been received by LBS in order for it to approve the mortgage. They say LBS hadn't made them aware that they had any responsibility to ensure that it was completed and that a copy would be sent to them before finalising the purchase. Mr and Mrs J say that they chose a HBR over a standard valuation as it was more enhanced and would highlight potential costly repairs, in which case they would either have agreed for the issues to be resolved prior to completion, asked the seller to reduce the price if the works weren't too disruptive or withdrawn their offer, which they say would have been the case if they had known about the issues prior to completion.

I've reviewed the transcript of the mortgage interview between LBS's advisor and Mrs J, which took place on 27 April 2022. The advisor set out that LBS offered a free valuation where it would instruct somebody to have a look at the property and would usually detect obvious problems but that wasn't guaranteed. She said this was basically looking at the fact that the property was worth what Mr and Mrs J were paying for it. The advisor also advised that, alternatively, Mr and Mrs J could have a more in-depth valuation called a HBR, which meant someone would go into the property and look at it in a lot more detail and provide a report with a traffic light system. If there were serious problems these would be red, amber would be advisory, and green was okay. The advisor said that there was a fee of £300 for the HBR.

Mrs J said that she wanted to go for the HBR and the advisor told her that would be £300 and that Mr and Mrs J would get a full report; she said that LBS doesn't get to see it and that is just went directly to Mr and Mrs J. The advisor said that she would send out an application pack with a pre-printed application form and that Mr and Mrs J needed to make sure everything was correct before they signed and returned it.

I've also looked at the mortgage application form which has a section titled "*Your Valuation / Survey Requirements*", following which the various options were set out, namely Valuation Report for mortgage purposes, RICS Condition Report, RICS Home Buyer Survey and Valuation Report and Detailed Building Survey.

The explanation next to Valuation Report option was "*The Society is required by law to obtain an independent mortgage valuation report. This is a limited report and is not a survey of the property. This report will provide basic details of the property for the Society which are sufficient to enable us to decide whether to make a loan on the particular property. You would not be able to rely on this report as it is addressed to us for Mortgage purposes. For your own interest we strongly recommend that you have a detailed survey carried out by a suitably qualified independent Surveyor.*"

Next to the option for the Home Buyer Survey and Valuation Report it sets out "*This report is specifically designed for people who are seeking a professional opinion at an economic price. It is completed on a standard format by a chartered surveyor and is aimed at helping the client make a reasoned and informed decision on whether to purchase the property, gives an opinion on what is a reasonable price to pay, takes account of repairs or replacements the property needs and outlines what further advice may be needed before proceeding. The report will be subject to terms of engagement which must be agreed directly*

with the surveyor who will act independently on your behalf. The Society may be able to arrange this type of report for you in conjunction with the mortgage valuation report."

In light of the above, I'm satisfied that Mr and Mrs J were made aware of the difference between the standard valuation and the HBR both during the mortgage interview and on the application form. I'm also satisfied that they were informed that the HBR would be provided directly to them if they chose this option and not to LBS.

A tick was marked next to the Valuation Report option on the application form, which LBS has accepted was an administrative error on the part of its advisor during the application process, Mrs J having requested a HBR during the mortgage interview. Whilst the incorrect box had been pre-populated by LBS, the application form was reviewed by Mr and Mrs J and signed as being true and complete on 5 May 2022. Given that this was an important document, I would have expected Mr and Mrs J to have gone through it carefully to ensure that it was correct. It is therefore unfortunate that the error wasn't picked up at this stage so that it could have been rectified prior to the application proceeding.

The Valuation Report was prepared and provided to Mr and Mrs J and their solicitors on 19 May 2022, together with the mortgage offer for £190,000. The Valuation Report indicated a value of £190,000 for the property in its present condition and set out that *"Our Market Valuation reflects current condition and takes into consideration normal matters relating to age, construction with the expected consequences of occupation and minor fatigue. Isolated signs of dampness were noted but a specialist report is not required as a mortgage condition."*

At the bottom of the Valuation Report it states:

"Important Notice to Applicant(s)

- 1. This Report and Valuation has been obtained by the Society from a qualified Valuer or firm of Valuers. IT IS A VALUATION FOR MORTGAGE PURPOSES, NOT A BUILDING SURVEY AND SHOULD NOT BE REGARDED AS SUCH.*
- 2. Intending purchasers should note the Society does not warrant that the purchase price is reasonable. They should carefully consider whether a more detailed inspection and report should be obtained on their own behalf...*
- 6. You must not assume that if defects are not mentioned in the report all parts of the structure are free from defect. Where your attention is drawn to some defects it does not mean that other defects do not exist."*

I've considered what Mr and Mrs J have said about being first-time buyers and believing that LBS must have had the HBR as it was happy to lend on the property. I can understand that Mr and Mrs J are upset about the position they are now in and I appreciate that they weren't familiar with the process. However, for the reasons set out above, I believe that LBS provided them with the correct information about the HBR and that it would be provided directly to them. The fact that LBS had said it was willing to lend was based on the Valuation Report which Mr and Mrs J had been provided with and which made clear that it was not a building survey.

I also have to bear in mind that Mr and Mrs J had specifically requested a HBR rather than just having a standard Valuation Report in order to highlight any issues with the property. Had Mr and Mrs J only wanted to base their decision to purchase the property on whether LBS was happy to lend, it seems likely that they would only have requested the Valuation Report. I think at this stage it would have been clear that the Valuation Report provided was not the HBR that Mr and Mrs J had requested and paid for. However, neither Mr and Mrs J, nor their solicitor, notified LBS that the HBR hadn't been received, which would have enabled it to rectify the error before exchange of contracts and completion. Nor did they raise any further queries or request any further information about the condition of the property in light of the information provided in the Valuation Report.

LBS wouldn't have received a copy of the HBR even if it had been completed – and it had advised Mr and Mrs J of this – so I can't hold it responsible for its lack of awareness that the HBR hadn't been completed at this stage. And I think it was reasonable for it to assume that Mr and Mrs J had received it and were content to proceed.

In light of the above, it is my view that – whilst LBS was responsible for making an error on the application form as to which type of valuation had been requested – Mr and Mrs J signed the form to say this was correct and didn't subsequently alert LBS to the fact that they hadn't received the HBR. Therefore, I don't think it is reasonable for LBS to bear the cost of all of the remedial work identified in the HBR. I also note that the HBR indicates that the property was built in 1907, so I think it is inevitable that there would be some issues present and maintenance expected in a property of that age.

I've considered the HBR. In the Report summary, the overall opinion of the property was that it was *"considered to be a reasonable purchase at the agreed price of £190,000 provided that you are prepared to accept the cost and inconvenience of dealing with the various repair/improvement works reported. These deficiencies are quite common in properties of this age and type and as long as the necessary works are carried out to a satisfactory standard and the property is kept in good repair, we can see no reason why there should be any special difficulties on resale in normal market conditions."*

There were four elements identified in the HBR as requiring urgent attention (marked as 3 in red). The Report sets out that *"These elements have defects that are serious and/or need to be repaired, replaced or investigated urgently. Failure to do so could risk serious safety issues or severe long-term damage to your property."* The four areas noted, and the relevant descriptions were as follows:

"E3 Walls and partitions..."

High damp meter readings were recorded in several areas of the ground floor walls as reported previously. The damp is likely to be caused by a combination of rising damp and condensation...

You should ask a damp specialist to inspect and report on the remedial work needed before exchange of contracts as the repairs/replacements are urgent and may be costly...

E4 Floors...

The suspended timber floors in the front reception area are severely springing localised areas. This may suggest the timbers have been affected by moisture. You should ask the damp and timber specialist, mentioned in E3 partitions, to inspect and report on the structure prior to exchange of contracts, as the repairs could be costly and disruptive...

F1 Electricity...

The electrical installation is dated and in disrepair. The consumer unit contains no modern cut-off devices.

This is a risk to the building and to persons, and we refer you to our comments in Section I.

You should ask an approved electrical engineer registered with either the [NICEIC] or with the [ECA] to inspect and test the electrical installation and report to you before exchange of contracts as there is no current test certificate for the system and no modern safety cut-off devices are present...

F2 Gas/oil...

We do not know of any current test certificate for the gas installation.

The installation appears in fair order with no significant defects evident. However, as much is hidden from view and as such systems require specialist knowledge, we are unable to advise on its serviceability or safety.

Such defects are a risk to the building and to persons, and we refer you to our comments in Section I.

You should ask an appropriate person to inspect the installation before exchange of contracts as there is no current test certificate for the system."

The HBR concluded that the market value of the property was £190,000 and set out that this valuation was based on the satisfactory outcome of the investigations recommended in the Report.

LBS has said that it would contribute to the cost of the elements highlighted in the HBR as requiring urgent attention (as detailed in sections E3, E4, F1 and F2 above) which covers the electric, gas and damp.

In respect of the electrics, Mr and Mrs J provided an invoice dated 29 December 2022 in the sum of £231.42 for the installation of an isolation switch, and an invoice dated 5 January 2023 in the sum of £360 to supply and fit a split load consumer unit and carry out an EICR report. LBS has paid Mr and Mrs J £591.42 in respect of these two invoices.

In respect of the gas, Mr and Mrs J provided an estimate for £95 to test the gas supply and obtain a gas safety certificate. LBS has paid Mr and Mrs J £95 in respect of this estimate.

In respect of the damp, Mr and Mrs J provided a quotation dated 22 March 2023 in the sum of £1,300 for damp proofing the exterior wall. LBS has paid Mr and Mrs J a further £1,300 as a gesture of goodwill to help cover this cost.

In addition to these costs, LBS has also paid £300 for the HBS (after refunding the £300 Mr and Mrs J had paid for this). In total it has therefore provided £2,286.42 to Mr and Mrs J to compensate them for the error it made.

Mr and Mrs J have said that a leak occurred in early December 2022 which resulted in an insurance claim and that further investigation has shown a second leak in a neighbouring property which is also affecting Mr and Mrs J's property.

I've seen the leak detection report dated 18 December 2022 (and accompanying invoice of £1,085 for this dated 19 December 2022). This sets out that the purpose of the investigation was to find the source of the damp patch showing in the front room and that a broken fitting on a pipe was found. There was a further report dated 25 January 2023 (with accompanying invoice of £1,115 for this dated 23 February 2023). This indicated that the investigation was to test communal houses as the damp from the leak was not resolved. The testing showed that the leak may be next door to property as their house shows higher moisture reading.

LBS has said that it will not cover the cost of the water leak in December 2022, as this was not mentioned in the HBR. It said that it was appropriate for Mr and Mrs J to pursue this issue through their insurers.

Given that the water leak occurred in December 2022 (after the sale had completed and after the HBR had been provided), I'm satisfied that this is not something which would have been present even if the HBR had been provided before completion. It is also a cost which has been claimed for under Mr and Mrs J's insurance. Therefore, I don't consider it reasonable for LBS to bear the costs of any issues arising as a result of the leak(s).

Mr and Mrs J have also mentioned the problems with the roof and asked that this is considered. I can see that they have provided an invoice for £1,875 dated 20 March 2023 for work on the roof and chimney. I also note from the HBR that, although the chimney stacks and roof don't appear on page 7 of the Report as issues requiring urgent attention, the relevant sections (D1 and E1) do indicate that there is something in the red category and the chimney stack (D1) is noted in the Risks section of the Report (page 35) as a risk to the building.

Had I considered that LBS were entirely responsible for the fact that the HBR was not provided prior to completion, then I'd have gone on to consider whether it should also be

responsible for the cost of remediating the chimney and roof in light of the content of the HBR. However, for the reasons set out above, I don't think it is reasonable for LBS to bear the cost of all the remedial work set out in the HBR. And I am satisfied that the amount it has contributed to the cost of the repairs is fair and reasonable in the circumstances of this case.

In summary, LBS did make an error on the application form and didn't instruct the HBR as requested by Mr and Mrs J. However, Mr and Mrs J signed the application form and didn't correct the error. Then neither they nor their solicitors made any further enquiries when they hadn't received the HBR they had paid for and proceeded with the purchase on the basis of the Valuation Report they had been provided with, which also mentioned some damp. I can't say that LBS ought to have been aware that the HBR hadn't been proved at this stage, as it wouldn't have received a copy and was therefore reliant on being told about the error by Mr and Mrs J. For the reasons set out above, I am satisfied that LBS made them aware of the difference between the two reports and that LBS wouldn't receive a copy of the HBR.

So, whilst I am sympathetic to the situation Mr and Mrs J find themselves in, I think there was ample opportunity for them to have remedied LBS's initial error, which would have meant that a HBR could have been carried out before the mortgage completed. I therefore won't be asking LBS to do anything further in respect of this complaint.

I know my decision will come as a disappointment to Mr and Mrs J, but I can't say that LBS has acted unreasonably or unfairly in the circumstances of this case and I don't uphold this complaint.

My final decision

For the reasons I've explained above, I don't uphold this complaint and don't require Loughborough Building Society to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 9 February 2024.

Rachel Ellis
Ombudsman