

The complaint

A, a limited company which qualifies as a micro-enterprise under our rules, complains about its application for a buy to let mortgage with Aldermore Bank Plc.

What happened

A is a limited company which lets out property to tenants. Via a broker, it applied to Aldermore for a mortgage to finance the purchase of a new-build property.

The mortgage completed on 27 May 2022. A complained that there was some delay in completing because of failures by Aldermore and its solicitors. And A also complained that it wasn't made aware that it would have to pay legal fees in connection with the mortgage.

A's director, Mr W, said that he had first applied via a broker in February 2022. At this time, A had already exchanged contracts on the property in the expectation that it would purchase it outright. But Mr W decided to use some of the company's funds for other purposes, and so needed a mortgage to make up the remainder of the purchase price. A applied for a mortgage of around £100,000.

Mr W said he made clear at the time that it was essential the funds were in place by the expected completion date of mid-April. In March, Aldermore asked for further information which Mr W provided immediately. But Aldermore didn't issue a mortgage offer until 28 April 2022.

Mr W says that because contracts had already been exchanged, A's solicitors had done all the legal work and carried out searches. But when the mortgage offer was issued, he was told that A would also have to pay for Aldermore's solicitors. Mr W decided to go ahead because there wasn't time to look for an alternative lender, but complained that he hadn't been told that A would need to pay legal costs at the point of application.

Mr W says that by this point there was considerable pressure to complete the purchase in time. He and the broker repeatedly chased Aldermore, and A's solicitors had difficulty getting information from Aldermore's solicitors. Completion finally happened on 27 May 2022, over two weeks after the deadline – Mr W says the delay caused considerable stress and inconvenience, as well as the worry that A might lose its 10% deposit if completion couldn't happen in time. In fact, the developers A bought the property from didn't impose a penalty for late completion, but Mr W was concerned that A faced that risk because of the delay.

Mr W therefore complained, on behalf of A, that A had had to pay additional legal fees of around £1,300 that it hadn't been made aware of when it applied for the mortgage, as well as additional costs of around £500 for time its solicitors spent liaising with Aldermore's solicitors. Aldermore also required the directors of A to take independent legal advice at a further cost of around £400. And he complained that Aldermore had delayed the application, risking A losing the property and forfeiting its deposit.

Aldermore said it was standard for legal fees to be paid by the borrower. It had made that clear both in the illustration it issued in early March 2022 and in the mortgage offer. It said

that its solicitors had told A's solicitors what was required on 27 April 2022 but A's solicitors didn't reply until 11 May and didn't provide all the documents needed until 23 May, so completion couldn't have happened any sooner.

Our investigator said that there are always legal fees associated with a mortgage, and Aldermore made clear they were A's responsibility. But she wasn't persuaded Aldermore had made that clear at the earliest opportunity, which had caused A some inconvenience.

She recommended that Aldermore pay A £100 compensation. Mr W on behalf of A didn't accept that and asked for an ombudsman to decide the complaint. I took a different view so I issued a provisional decision setting out my initial thoughts to the parties.

My provisional decision

I said:

"This complaint is primarily about whether Aldermore made clear that A would need to pay legal fees as part of the mortgage.

Mr W says that he wasn't made aware of that until the mortgage offer was issued at the end of April 2022, by which time it was too late to apply elsewhere so A had no choice but to proceed.

Aldermore says that it told A's broker about this in an email in early March, when it sent the mortgage illustration. I've seen a copy of that email, and it does set out that A would need to pay legal fees as part of the process. The broker says that she didn't receive that email. But Aldermore says that it's checked its systems and the email was sent correctly, and not returned undelivered. I don't know for sure what happened. It's possible the email wasn't delivered to the broker, or was wrongly intercepted by a security system. The broker hasn't pointed to any technical difficulties with her system at the time.

On balance, I think it's more likely than not that the email was properly sent. I don't therefore think that I can hold Aldermore responsible if it wasn't received by the broker. In any case, I think this is something the broker should have been aware of and taken into account as part of giving A mortgage advice. I've checked, and Aldermore's policy regarding legal costs is set out on its intermediary website. I don't therefore think that I can fairly hold Aldermore responsible for A being unaware that it would need to pay legal costs as part of its process.

I've also thought about whether the fees A had to pay were fair and reasonable in all the circumstances.

Aldermore requires conveyancing work in respect of its own needs for processing the mortgage to be carried out by a firm it has approved. A borrower can use one of Aldermore's approved firms, or they can use their own solicitor. But if they use their own solicitor, they will be responsible both for their own legal fees and for those charged by Aldermore's solicitor. I don't think that's unreasonable. It's standard practice in the mortgage industry, in my experience. Most lenders require legal work to be done by a firm on the lender's approved panel.

I appreciate it would have been frustrating for some of the work already done by A's solicitor needing to be repeated by Aldermore's solicitor. But as I say it's reasonable for Aldermore to require legal work to be done by a solicitors' firm it has approved. In many cases, the borrower could have just used Aldermore's firm rather than

appointing their own alongside. That wasn't an option in this case because A had already instructed solicitors and arranged contracts before deciding to apply for a mortgage – but Aldermore isn't responsible for that. It's also not responsible for the extra costs charged by A's solicitor for liaising with Aldermore's solicitor.

It's also part of Aldermore's standard criteria for buy to let lending – as set out on its intermediary website – that where it lends to limited companies it requires a personal guarantee from the directors. Again, that's not unreasonable, even if some other lenders don't require this. Where a personal guarantee is required, it's important to make sure that the directors – in their personal capacity, and separate from the limited company – understand the nature of what they're agreeing to. So Aldermore required Mr W and the other director to take personal legal advice to confirm that. It's reasonable for Aldermore to want the extra security of a personal guarantee when lending to a limited company, and so it was necessary for Mr W and the other director to take advice to ensure Aldermore could rely on the guarantee if it ever needed to.

I'm therefore not persuaded that the legal fees A had to pay, required by Aldermore, were unfair or unreasonable. And so I don't uphold this part of the complaint either.

Finally, Aldermore issued the mortgage offer at the end of April, once it had all the information it required. It was only at that point that its solicitors were instructed. I don't think a period of around four weeks between a mortgage offer and completion is unreasonable.

And while A needed completion to happen as soon as possible in this particular case, I can see that Aldermore's solicitors didn't have all the information they needed until 23 May, and completion happened a few days later on 27 May. I appreciate that time was important for A, but it was A's choice not to apply for a mortgage until it had already exchanged contracts. I can't hold Aldermore responsible for the urgency that resulted, and I don't think there was unreasonable delay once the application was made."

The responses to my provisional decision

A accepted my provisional decision, and Aldermore said it had nothing more to add.

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.

I've considered again the conclusions I reached in my provisional decision. Having done so, and noted that neither party had any further points to make, I see no reason to change my mind. The reasons given in my provisional decision, set out above, are the reasons for my final decision in this case.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 15 December 2023.

Simon Pugh
Ombudsman