DRN-4289498

The complaint

Miss A and Mr W's complaint is about the advice they received in 2021 from Leslie James Mortgages Limited (LJM) relating to a new residential mortgage and a linked buy-to-let re-mortgage. They believe the mortgages were mis-sold because of the split of borrowing between them should have been different – more on the residential and a smaller mortgage on the rental property. Because of this perceived mistake, Miss A and Mr W don't believe the buy-to-let mortgage will be affordable when the interest rate product ends and they will have to sell the property it is attached to.

What happened

In the autumn of 2021 Miss A and Mr W owned their home outright. They wanted to move and keep their existing property as an investment. However, they needed a deposit for the new residential property. So they sought advice from LJM which recommended they take out a buy-to-let (BTL) mortgage on their existing property to release the money they needed for the deposit for the new residential property. LJM then arranged a residential mortgage for the remaining money Miss A and Mr W needed to buy their new home.

LJM obtained two decision in principles (DIPs) for a BTL and a residential mortgage to see what Miss A and Mr W could potentially borrow in the autumn of 2021. The BTL amount was £165,000 from lender N and the residential was £200,000 from lender L.

Subsequently, the property Miss A and Mr W wanted to buy fell through. However, they found another property they wanted to buy the following month and went back to LJM for further advice. It provided illustrations for the residential mortgage over terms of 10, 15 and 20 years and the BTL costs over 25 years so that Miss A and Mr W could consider what they could afford. They confirmed a monthly budget of £550 and said they would like a term of less than 20 years on the residential mortgage if at all possible.

In light of the budget set and request for a residential term of less than 20 years, LJM recommended a mortgage of £104,500 over 18 years on a repayment basis. In light of the amount being borrowed on the residential property, the BTL then needed to be for £165,000.

However, when the valuation was completed on Miss A and Mr W's existing property, it concluded the rental value was lower than they had thought and included on the application. As such, Lender N said it would only lend £143,100. Miss A and Mr W were given revised costings for the smaller BTL mortgage and higher residential one. As they were concerned about the increased costs, it was decided the term of the residential mortgage would be increased to 22 years. The applications were changed in line with the further discussions so that a BTL of £143,100 over 25 years, and a residential mortgage of £126,400 over 22 years, were applied for.

Both applications had interest rate products linked to them to fix the interest rate for a period. In the case of the BTL, this was a two-year product and for the residential, the term of the product was five years. It was detailed that the two-year term for the BTL was recommended as Miss A and Mr W were first-time landlords and it gave them the opportunity to review what they wanted to do with the property in the event that didn't work for them. The five-year rate for the residential mortgage was to provide stability for the period, given Miss A and Mr W didn't think there would be any changes to their circumstances during that time period.

The applications were accepted and offers made. The BTL offer detailed the fixed interest rate would end on 30 December 2023 and the monthly payments during that time would be £206.30. The residential mortgage fixed rate was set to end on 31 December 2026 and required Miss A and Mr W to pay £549.61 each month.

In November 2022, Miss A and Mr W contacted LJM again regarding the then recent interest rate increases. LJM told them that when the BTL product was due to end they would have two options – to arrange a new interest rate product or sell the property and use the equity to reduce the residential mortgage. LJM reassured Miss A and Mr W that even with interest rate increases, the rental income from their original property would still likely cover the cost of the BTL mortgage. Miss A and Mr W complained about the advice they received at the beginning of 2023.

LJM responded to the complaint in its letter of 20 January 2023. It set out the events and discussions that its records detailed. It didn't uphold the complaint as it believed the mortgages recommended had been suitable for Miss A and Mr W at the time they were sold.

Miss A and Mr W were not satisfied with LJM's response and asked us to consider the complaint. They told us they had not been comfortable with the amount of borrowing on the BTL mortgage at the time of the advice and had wanted it to be a smaller amount and the residential mortgage to be bigger. The reason for the split in amounts was that given their incomes, the £126,400 was likely the most they would be granted on the residential mortgage. Miss A and Mr W have sought advice from other independent mortgage brokers and report being told that they would always apply for a larger mortgage on a residential property than that on a BTL in such circumstances. They told us size of the BTL mortgage means that when the interest rate product ends the rent won't cover the new monthly payments. Whereas if the residential mortgage, which is tied into a longer-term product, had been larger the recent interest rate increases wouldn't affect them so soon.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld. He was satisfied the advice was suitable given Miss A and Mr W's needs and circumstances.

Miss A and Mr W didn't agree with the Investigator. He considered their further comments, but he wasn't persuaded to change his conclusions. As Miss A and Mr W remained unhappy with the Investigator's conclusions, they asked that the complaint be referred to an Ombudsman.

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.

Miss A and Mrs W have highlighted the fact that the DIPs produced in the autumn of 2021 showed that they could potentially have borrowed up to £200,000 on the residential mortgage. I would confirm that this was only a possibility, and there was no guarantee that amount would have been agreed had they asked to borrow it. In addition, even if lender L had been willing to lend that amount once full checks were completed, that is not the only thing that a mortgage adviser has to take into account. It is important that a borrower is comfortable with the cost of a mortgage. Miss A and Mr W confirmed how much they were comfortable spending on their mortgages, taking account their lifestyle and family arrangements. That sum quite simply would not have supported a repayment mortgage of a third more over a term that fitted with their requirements.

I note that Miss A has said the adviser decided what budget they could afford, but this was done over the phone and so there is no evidence that support was the case. She said they could have afforded to pay more than the £550 for the residential mortgage at the time and there was no need for the term to be short, although this was desirable. It would be usual for a financial adviser to assess a customer's financial circumstances to establish what their disposable income was. However, there would be a step beyond that, where the customer confirmed what they wanted/felt comfortable to spend. While Miss A has said this was determined by the adviser, I am not persuaded that was the case. It is clear he asked them how much they wanted to pay, having given them examples of the cost of different terms for the borrowing, some of which would have been significantly higher than others. They responded with a figure. It was not unreasonable for the adviser to use what he was told when making his recommendation.

It is also clear when Miss A expressed uncertainty about the amount of borrowing on each of the properties, the adviser offered to provide information on the costs divided differently over the two mortgages. While Miss A has said that the adviser told her they would likely be rejected for a larger residential mortgage, there is no other evidence to support those recollections. In addition, that wasn't the case when they asked to increase the residential borrowing due to lender N reducing the amount it was willing to lend on the BTL. I would also not have expected the adviser to have offered to look into different options had he believed none of them would be viable, as it would simply have been a waste of his time to do so. Quite simply, if a mortgage adviser had believed a customer had been offered the most they could borrow, I would have expected them to have said just that.

I have carefully considered all of the evidence from the time of the sale of Miss A and Mr W's mortgages and I am not persuaded the advice they were given was unsuitable. It allowed them to keep a property they wanted to rather than sell it, and buy the new property they wanted, which Miss A has described as her dream home. The mortgages were arranged to fit with the budget they were comfortable with at the time and the reasons for the terms of the interest rate products again fitted with their circumstances. While Miss A and Mr W are now dissatisfied with how the borrowing was proportioned over the two mortgages, I am not persuaded what was recommended was inappropriate and didn't fit with what they wanted at the time.

My final decision

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Miss A and Mr W to accept or reject my decision before 4 January 2024.
Derry Baxter
Ombudsman