

## **The complaint**

Mr and Mrs P's complaint about Broom Consultants Ltd (BCL) relates to their application for a lifetime mortgage, for which they used BCL as their mortgage brokers, in May 2022.

## **What happened**

In 2020 Mr and Mrs P set up discretionary trusts (the Trust) and placed their home (the Property) into that Trust in February 2021. This was handled by a the firm CSE which is a trust and tax consultancy.

In early 2022 Mr and Mrs P approached BCL seeking advice on raising money so they could assist their son, and also redeem their existing mortgage. BCL advised an equity release mortgage on the Property with M2L was suitable, and an application was made, and a mortgage offer received.

On 10 May 2022 BCL told Mr and Mrs P that a firm of solicitors had been appointed to represent them (FBS). FBS accept they were so appointed and state they were retained to provide independent legal advice only. Enact solicitors were appointed to take care of the conveyancing work.

Mr and Mrs P say that BCL told them that M2L would not advance the mortgage monies whilst the Property was vested in the Trust, but that the solution was to remove the Property from the Trust, complete on the mortgage and then vest it back into the Trust.

On 18 May 2022, BCL sent the mortgage illustration to Mr and Mrs P and confirmed a video conference had been scheduled to discuss the application. They also asked Mr and Mrs P (copying in CSE) to speak to CSE regarding the dissolution of the Trust. Mr and Mrs P did so the following day.

On 31 May 2022, a valuation on the Property was performed leading to an amended suitability and recommendation letter being issued to Mr and Mrs P on 6 June 2022. An amended mortgage offer was issued on 28 June 2022 which expired on 9 August, although BCL say that they had an agreement from M2L that the offer could be extended by 10 days.

On 1 July 2022, M2L told BCL that restrictions, which had been imposed upon the Property's Title at the Land Registry, must be removed. BCL then had some discussions on this subject with FBS and on 28 July BCL stated that the restrictions must be removed. The solicitor from FBS managing the case didn't believe this was necessary, but then M2L's solicitors also confirmed it to him on 3 and 5 August. BCL again confirmed it to FBS on 9 August.

On 29 July CSE sent to Enact, the conveyancing solicitors representing M2L all the paperwork necessary to deal with the removal of restrictions.

On 11 August FBS was notified by Enact that it was a requirement of M2L that the Trust be removed. FBS has said this was the first time it became aware of this requirement. FBS notified CSE that day that the Trust needed to be dissolved anticipating it could be done

immediately, and that applications to remove the restrictions could also be made that day. Thereafter there was an exchange of correspondence between FSB and CSE regarding progression of matters with FSB directing what should be done.

On 18 August BCL notified Mr and Mrs P that a completion date of 22 August had been proposed. Also, on that date M2L issued a new mortgage offer as the old one had expired. The interest rate had however increased. Completion was postponed on 22 August so that Mr and Mrs P could confirm their instructions that they wished to proceed. In the event, the amended offer was not acceptable to them, and the completion did not take place.

Mr and Mrs P accept that BCL is a separate legal entity to CSE and not responsible for advice given by CSE but argue BCL knew the Property had been put into a Trust when the mortgage offer was issued, and that M2L required it to be removed from the Trust. They argue this should have been done by CSE within days of 18 May. Through their solicitors FSB, they have argued that their inability to complete the mortgage on the original terms was caused by BCL's failure to procure compliance with the requirements of M2L.

BCL did not believe they were at fault. They have argued that their role was one of broker and issues surrounding the removal of the Property from the Trust or removal of restrictions at the Land Registry did not fall within their remit. As far as their role was concerned they felt they had done as much as they could to chase matters with all relevant parties making it known of the need for the Property to be removed from the Trust at an early stage.

Mr and Mrs P were unhappy with BCL's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that BCL hadn't done anything wrong and had dealt with the complaint fairly. Mr and Mrs P didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision.

### **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 know the parties have provided a lot more detail than set out in my summary, but I have focussed on what I see as the key issues, because it reflects the nature of our service. We are an informal dispute resolution service and an alternative to taking Court action. So, if I've not mentioned something then this isn't because I've ignored it, it's simply because I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Naturally, I have considered the views of both Mr and Mrs P and BCL and all the available evidence.

The accepted facts are that Mr and Mrs P received a mortgage offer which expired on 9 August. They were happy with the terms of that offer and would have completed the mortgage on those terms if they could. The mortgage offer was extended and then expired, and a new offer issued. In fact, I have seen two mortgage offers issued on 18 August, one with an interest rate of 3.85% and one with a rate of 5.85%. I have assumed that the first must have been issued in error, since it is the latter which is the offer Mr and Mrs P found unacceptable.

This is not a complaint against M2L, and so if Mr and Mrs P wish to make a complaint about that, then they must bring a fresh complaint against that firm. I can find no fault with BCL since it is outside of their remit to control what M2L were prepared to offer.

The work necessary to ensure successful completion of any mortgage is legal work and. It is clear that Enact were doing the conveyancing work and FSB were providing independent

financial advice. I cannot say how far FSB's retainer extended since I have not seen any retainer documentation. However, I can see that FSB became aware of the issue of the restrictions on 1 July. They became aware of the issue of the dissolution of the Trust on 11 August. However, Mr and Mrs P knew about the issue of the dissolution of the Trust as early as 18 May and they told CSE about this the following day.

Although this complaint is not against FSB, CSE, M2L or Enact I would have expected them all to have asked sufficient questions to ascertain what was in fact required to ensure the mortgage could proceed smoothly. BCL are mortgage brokers and do not undertake legal work, and I cannot say it was within their role to ensure all necessary legal requirements were met.

There were clearly two distinct problems with this mortgage, (a) the requirement by M2L to have the Trust dissolved and (b) to have the restrictions entered at the Land Registry removed. None of this could have been done by BCL. That was the role and work of others. In my view BCL's role is to obtain a mortgage offer on acceptable terms to Mr and Mrs P, and that they did.

So, I don't agree with Mr and Mrs P's complaint that BCL have been the cause of their being unable to complete the mortgage on the original terms. In my view the reason or fault for the mortgage not completing within the life of the mortgage offer is as a result of those tasked with protecting Mr and Mrs P's legal interests.

So, I can't say BCL has acted unfairly or unreasonably here and I'm not upholding this complaint.

### **My final decision**

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 15 May 2024.

Jonathan Willis  
**Ombudsman**