

The complaint

Mr D and Mrs J are unhappy that Cambridge Building Society (“Cambridge”) caused unnecessarily delays when they were trying to obtain a mortgage. They said that because of the delays, they have incurred costs and lost out on the stamp duty holiday.

What happened

Mr D and Mrs J applied to Cambridge for a mortgage. They were given a decision in principle on 21 April 2021. They say that Cambridge delayed instructing the surveyor and when the survey was carried out on 1 June 2021, they were told by Cambridge that an EWS1 form was required.

Mr D and Mrs J said that this was contested by the freeholder on the basis that it wasn’t a requirement based on the Royal Institution of Chartered Surveyors (RICS) guidance. They said that after long exchanges their application was declined. So they found another lender, but this meant that they missed out on the stamp duty holiday and also paid rental costs as they had to rent a property for three months for their son. They feel that the delays caused have meant they have incurred costs they otherwise wouldn’t have had to pay.

Cambridge explained that they were entitled to rely on the opinion of the surveyor and that at the time, they were extremely busy due to unprecedented demand for their services. They said that they made it clear to Mr D and Mrs J’s broker, that the application wouldn’t be guaranteed to complete in time for the stamp duty holiday.

Mr D and Mrs J were unhappy with what Cambridge said so they brought their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator thought that there was a delay in Cambridge updating Mr D and Mrs J of around a month in August 2021, but he was satisfied that Cambridge were entitled to rely on what the surveyor had said. So he partially upheld the complaint and thought that Cambridge should offer Mr D and Mrs J £150 compensation.

Mr D and Mrs J disagreed with what the investigator said. They made the following comments:

- With regards to the investigator explaining he hasn’t commented on everything, Mr D and Mrs J wanted to know what arguments were presented by Cambridge which countered their own arguments and what were the key issues that the investigators opinion was based on
- Their complaint focuses on Cambridge being accountable for their assignment and nomination of questionably competent third parties whose prolonged deliberations caused them to incur additional and unnecessary costs
- They believe it’s incorrect to link delays to a shortage of surveyors at that time
- The requirement for an EWS1 was challenged by the freeholder which was then accepted by Cambridge. Guidelines provided by RICs were very clear on the requirements
- Cambridge changed their minds and eventually agreed to the mortgage and would like to know what factors influenced them to change their mind

- They asked that we review the timeline between the date of the survey and the final approval by Cambridge. The fire certificate was available from the beginning of the process

In summary they said Cambridge nominated a firm who were not conversant with the building guidelines and regulations. Cambridge didn't seek professional clarification from their own management about the relevance of the EWS1 and this caused significant delays.

Cambridge also delayed notifying them on the outcome until over a month later on 17 August 2021 and even though this was acknowledged by the investigator, they are unsure how the compensation figure of £150 was arrived at.

As Mr D and Mrs J disagreed with the investigator, they asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

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.

The EWS1 form was introduced in collaboration between government, the mortgage industry and the surveying industry following the Grenfell Tower tragedy. The fire at Grenfell Tower led to concerns across the country about the possibility of combustible cladding and other fire safety issues – including balconies built on top of each other – which might allow fire to spread quickly through affected buildings.

The EWS1 process allows a qualified fire safety inspector to assess a building's external wall system. The building will then be given a rating – showing that there are no fire safety risks, that there are issues but the risk is low, or that there are issues which are high enough risk to require remedial work. Obtaining an EWS1 form is the responsibility of the building owner/management company, not individual leaseholders, since the form covers the whole building.

The EWS1 process was designed, among other things, to give mortgage lenders enough information to decide whether a building presented a particular fire safety risk. Lenders will only lend where the property which is subject to the mortgage is good security for the loan – and if there's a fire safety risk, it might not be good security. That's because the higher risk of damage to the property, and also a greater likelihood that it won't be able to be sold.

General guidance to surveyors and valuers from their professional body is that an EWS1 will be required where there are potential cladding or other issues and the building is six storeys or higher. And that an EWS1 may be required for smaller buildings too, if there are grounds for considering there's a risk that needs to be assessed.

In common with other lenders, Cambridge took these issues into account in setting their lending criteria for lending mortgages on properties in blocks of flats and similar buildings. Their instructions to valuers say that they require an EWS1 on smaller buildings where the building has potential combustible cladding or balconies. And they will only lend where there is an EWS1, and where the EWS1 shows there's no risk or need for remediation work.

In this case, Mr D and Mrs J applied for a mortgage. Cambridge took their financial details and considered their reasons for asking for the mortgage. They were given a decision in principle on 21 April 2021 and proceeded to application the following day. I can see from the contact notes provided by Cambridge, that the valuation was instructed on 29 April 2021.

The valuation was carried out on 1 June 2021. The valuer's report says that the external wall system of the property may contain potentially combustible materials. They requested an EWS1 form to determine if the property was adequate security for Cambridge to lend on.

It was reasonable for Cambridge to rely on the opinion of a qualified surveyor expert in assessing and valuing buildings, to decide whether Mr D and Mrs J's property was good security.

Mr D and Mrs J say that the freeholder didn't think that an EWS1 form was required, and I've seen an email where this has been challenged. It was mentioned by both the freeholder and Mr D and Mrs J that the RICs guidelines were not adhered to because the block was less than six storeys. The block was in fact only three floors with Mr D and Mrs J's property being on the ground floor. And as their building is less than six storeys, there is more discretion about whether an EWS1 is needed than there would be if it was taller. But the guidance to surveyors is that an EWS1 can be required even for smaller buildings – like this one – if there are grounds for thinking there's a risk.

I can see this put Mr D and Mrs J in a difficult position. Their freeholder didn't think an EWS1 was needed but the valuer said one was needed – and so Cambridge couldn't proceed without it. Just because the freeholder didn't agree, that doesn't mean the qualified surveyor was wrong.

I have seen the contact notes that Cambridge have provided which shows email exchanges between Cambridge and also that of the surveyors between themselves. Cambridge was entitled to rely on the opinion of the valuer but I can see they did question the surveyor on the fact that the property was under six storeys after being told by Mr D and Mrs J that an EWS1 form wasn't required.

There is an exchange from the surveyor to Cambridge which says the cladding on the block could be a form of HPL. They asked for confirmation from the architect/developer or freeholder to provide a construction report detailing the building material used and that the cladding is of a non-combustible material and not HPL. They said they would be happy to review it if Cambridge were happy to accept all liability and over-rule the need for an EWS1.

Cambridge then responded to say they were not in a position to overrule the surveyor and were guided by their expertise – which isn't unreasonable. This eventually got accepted and Cambridge proceeded to send out the mortgage offer on 17 August 2021. I understand that Mr D and Mrs J said this fire safety report was available from the beginning of the process – but the surveyor initially asked for an EWS1 form.

Cambridge said they didn't hear anything from Mr D and Mrs J once the mortgage offer was issued so they contacted them on 30 September 2021 and Mr D replied on 1 October 2021 saying they no longer wished to proceed. So Cambridge cancelled the application. The application was never declined by Cambridge, but they wanted to make sure the property was suitable security before they would lend.

Mr D and Mrs J made comments around Cambridge's accountability in terms of the third-party surveyors they use to carry out their valuations. Cambridge, as is any lender, is entitled to decide which third party agent they use. The situation here is that Cambridge was entitled to rely on the information provided to them. I also note that Mr D and Mrs J made a separate complaint about the surveyors and their actions – and this wasn't upheld. It's not for us to tell Cambridge who they use. Our role is to ensure that Cambridge acted fairly and reasonably in the circumstances.

But ultimately, I don't think Cambridge acted unreasonably here. They didn't have to grant mortgage applications, and where they lend money, they are entitled to satisfy themselves that the property is adequate security – including factoring fire safety risks. Cambridge is entitled to have a cautious approach. Some lenders have a lower risk appetite than others, and that's not unreasonable. In the end, Cambridge accepted the opinion of the valuer that an EWS1 form was needed before they could be sure the property was acceptable, and that wasn't an unfair position for them to take.

I have looked at the timeline to decide if there were unreasonable delays which were caused by Cambridge and other than notifying Mr D and Mrs J in August that they were ready to go ahead with the mortgage offer – I can't agree that any other delays were caused by them. There were multiple exchanges between Cambridge and the surveyor in trying to get things moving which all stemmed from the EWS1.

Mr D and Mrs J argue that they missed out on the stamp duty holiday because of the delays. I've not seen anything that suggests that Mr D and Mrs J were guaranteed that their mortgage would have completed by the end of the stamp duty holiday window on 30 June 2021.

The decision in principle which was sent to the broker had the following notice clearly visible:

“due to unprecedented mortgage activity, we are not able to guarantee that this application will meet the stamp duty deadline of 30 June 2021”.

The valuation was instructed by Cambridge on 29 April 2021. Cambridge sent us a screen shot that shows the valuer tried to contact Mr D and Mrs J on 14 May 2021 to book the valuation but didn't get an answer. They then managed to make contact on 17 May and the valuation was booked for 1 June 2021 which then brought up the issue with the EWS1.

There was never a guarantee that this mortgage would have completed before the deadline. There are a number of outside factors that could cause an application to be delayed such as valuation issues (as in this case), title issues etc, which would make it extremely difficult to suggest that Mr D and Mrs J would have completed on the property within the necessary timeframe to save on stamp duty.

I note that Mr D and Mrs J don't believe that the shortage in surveyors can be linked to the delay in the valuation being carried out. Lenders and surveyors were extremely busy during this period and the pandemic slowed things down in most aspects. But surveyors were able to visit properties at this time to carry out surveys, however it was still a busy time following on from the pandemic. And Cambridge did instruct the valuation within a matter of days from the application being completed.

I do agree about the one-month delay that was caused when Cambridge could have let Mr D and Mrs J know that they were able to proceed with the application after the fire safety report had been accepted, and I think the £150 the investigator has offered is fair in these circumstances.

I appreciate that Mr D and Mrs J feel very strongly about this complaint and will be disappointed with my decision, however I won't be asking Cambridge to pay anything further.

My final decision

For the reasons given above, I uphold this complaint and direct Cambridge Building Society to pay Mr D and Mrs J £150 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs J to accept or reject my decision before 14 July 2023.

Maria Drury
Ombudsman