

## **The complaint**

Mr G and Mrs G complain about the way more 2 life Ltd dealt with their application for an equity release mortgage and declined their application shortly before completion was due to take place.

## **What happened**

In October 2021 Mr G and Mrs G applied for an equity release mortgage with more 2 life Ltd (M2l) which would provide them with a lump sum of £43,000 and a cash facility of £86,000. They planned to pay off an existing equity release mortgage with another lender to take advantage of a lower interest rate.

On around 2 November 2021 M2l issued an initial offer. It was conditional upon Mr G and Mrs G providing proof of Mr G's residency in the United Kingdom (UK) and evidence of buildings insurance for the property over which M2l's charge would be secured. In February 2022 Mr G and Mrs G applied to borrow a bit more to cover the cost of works required to their property. A revised offer was issued in late February 2022 to include the additional sum. It was subject to the buildings' insurance evidence being provided. Completion was due to take place in early March.

On the day of completion M2l cancelled the application. They were concerned about the amount of time Mr G spent away from the property. And they said if the mortgage had completed, Mr G and Mrs G would immediately have been in breach of its terms and conditions.

Mr G and Mrs G were very upset their application had failed at the last minute and complained. They said M2l had known all along Mr G was abroad and the reasons why. And they were unhappy too with the way in which M2L had dealt with the application and the time it had taken.

M2L rejected their complaint. They said Mr G and Mrs G had signed a declaration as part of their application that they were both permanently resident in the UK when Mr G wasn't. The declaration allowed M2l to decline the application without giving a reason; it said any non-disclosure or misrepresentation may result in legal action and/or repayment of the lifetime mortgage; M2l could request additional information they thought they'd reasonably need to decide whether to lend; and Mr G and Mrs G were required to provide any information that could affect the decision to lend if it wasn't already set out in the application.

M2l said they weren't aware until March 2022 that Mr G's return to the UK was uncertain. They both needed to be permanently resident in the UK for the application to go ahead. And if the mortgage had completed, they would have immediately been in breach of its terms and conditions. M2L offered to consider another application once Mr G had returned to the UK.

Mr G and Mrs G were unhappy with M2L's response and brought it to the Financial Ombudsman Service. Our investigator didn't uphold the complaint. Broadly, he thought M2l had dealt with the application fairly. And he didn't think M2l were at fault in declining the application close to completion when information about Mr G's stay overseas came to light.

Since Mr G and Mrs G didn't agree, their complaint was passed to me to review afresh. I recently issued a provisional decision an extract of which follows:

***What I've provisionally 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.*

*Mrs G has brought this complaint on her and Mr G's behalf. I acknowledge her strength of feeling about what happened and I can understand it was upsetting for them both when the mortgage application fell through. The timeline is well known to the parties, so I won't set it all out here. I'll focus on what I think is key in coming to my decision. Since I've come to a different outcome than our investigator, I'm issuing a provisional decision to give the parties the chance to make further comments before I come to my final decision.*

*For context, I'll set out first the relevant parts of the documents involved in Mr G and Mrs G's application, including those M2I relied on in rejecting their complaint:*

- *The application*

*Mr G and Mrs G began their application in October 2021. The application form contained a declaration to which they agreed and confirmed "...We are permanently resident in the United Kingdom".*

*The declaration set out clearly:*

**"Payment of any fee does not guarantee approval for an equity release plan."**

**"more 2 life may decline the application and need not give a reason for doing so."**

**"more 2 life may request additional information it thinks is reasonably needed to decide whether to lend to you. If there is any further information that could affect more 2 life's decision to approve the loan that has not already been made known within the course of completing the application, please provide further details."**

- *The mortgage offer*

*The mortgage offer dated 2 November 2021 set out:*

**"This lifetime mortgage can only be arranged for either one or two people between the ages of 55-95, based on the age of the youngest applicant, who own and live permanently in the property which is subject to the lifetime mortgage".**

*The mortgage offer was subject to special conditions that included:*

- *Providing proof of Mr G's right to reside in the UK; and*
- *Confirmation the property was insured in line with M2I's requirements*
- *The mortgage terms and conditions*

*The terms and conditions of the mortgage Mr G and Mrs G were hoping to take out said under paragraph 9 entitled "Events of default" that the loan agreement would immediately terminate and the sums due under it would be payable in the event of, amongst other things,*

“9.1.4 You ceasing to occupy the Property as Your main residence for a period of: (i) three months; or (ii) more than three months; without in either case Our prior written consent

- *M2I's lending criteria*

*M2I's lending criteria included that applicants must be UK Nationals or individuals with settled status (permanent right to reside or indefinite leave to remain). And they had to be resident in the UK and provide an address history covering the last 36 months.*

*I'll now turn to Mr G and Mrs G's concerns using headings to make things easier:*

1. *What did M2I know about Mr G's situation and when?*

*M2I say it was reasonable for them to rely on Mr G and Mrs G's declaration that they were permanently resident in the United Kingdom. They've pointed to the requirement on Mr G and Mrs G to let them know of any information that might affect their decision to approve the loan. M2I say they only became fully aware in March 2022 that Mr G had been overseas for an extended period and his return date was uncertain. It's unclear what prompted them to review his whereabouts then. I currently think M2I had enough information about Mr G's situation to decide not to lend sooner than that.*

*Mrs G's explained Mr G went abroad in around August 2019 to visit family and carry out work to his property there. He was stuck there due to the travel restrictions imposed because of the coronavirus pandemic. He felt unable to return once the restrictions were lifted due to his age and vulnerabilities. Mr G was still abroad when they made the application in October 2021. But he planned to return later in 2022. And he's since come back.*

*Mrs G says M2I knew Mr G's situation from the time the initial application was made. And if that had meant their application wouldn't succeed, M2I should have let them know at the outset.*

*Mr G and Mrs G's broker has told us, amongst other things,*

- *They discussed the October 2021 application with all parties and explained Mr G was overseas and would be unable to travel back because of the pandemic restrictions in the country he was in*
- *In November 2021 Mr G and Mrs G's solicitors discussed with M2I's solicitors using a non-face to face process for dealing with the application for Mr G*
- *In December 2021 they confirmed to M2I the property was Mr G's only main residence in the UK and Mr G had spent less than 90 days in the UK because of the travel restrictions*

*M2I clearly had concerns about Mr G's residency from the outset. After they'd received the application form, they raised queries and asked for confirmation Mr G had permanent right to reside in the UK. Mrs G confirmed Mr G's British citizenship and that he lived in the property when at home – which suggested he was not there some of the time. It was a special condition of the offer that was then issued in November 2021 that proof of residency be provided. Based on what I know so far, I think M2I were aware of Mr G's situation when the application was made.*

*I appreciate M2I were focussed on establishing Mr G's residency and right to reside in the UK. But, in the end, they declined the application on grounds Mr G's main residence was not*

*the property they were mortgaging at the time of completion and that, if the mortgage had completed, Mr G and Mrs G would immediately have been in breach of clause 9.1.4 of the terms and conditions of the mortgage. Given it was unclear when Mr G might return, I think that ought to have been a concern for M2I when the broker confirmed Mr G's situation in October 2021. If they'd considered it then, I don't think the application would have gone ahead.*

*M2I have said that once they'd issued the offer, the application process was in the hands of the parties' respective solicitors. But the documents I've seen suggest they continued to have a close involvement in establishing Mr G's residency after that. Even if there's information I'm yet to see which changes my mind about what M2I knew initially, they knew, or ought to have known, at other points in the application process that Mr G was abroad. For example:*

- In responding to the complaint M2I mentioned that on 1 December 2021 they'd asked how long Mr G spends away from home. And although Mrs G disputes it, they suggested Mrs G had indicated earlier in the process he lived somewhere else when he was in the UK.*
- M2I were in regular communication with their solicitors about Mr G's residency from around 15 December 2021. They rejected a copy of Mr G's passport as it wasn't sufficiently clear. Shortly afterwards, their solicitors sent a copy of the passport which had been certified. M2I asked for clarification about who had certified it. The solicitors confirmed on around 10 January Mr G's passport had been certified by an overseas lawyer.*
- As I've noted, the broker says they confirmed to M2I in December 2021 that the property was Mr G's only main residence in the UK and he'd spent less than 90 days in the UK because of the travel restrictions.*
- Emails exchanged between M2I and a third party on around 13 January 2022 noted Mr G was currently stuck overseas due to pandemic restrictions.*
- By 26 January, M2I were aware the passport was being posted so it could be verified by Mr G's broker.*

*M2I had several missed opportunities to ask Mrs G more questions if Mr G's situation wasn't already clear to them. If they had, she's likely to have said Mr G's return date was unknown. M2I could then have managed her expectations about the application succeeding, rather than leaving it until the very last moment to withdraw the offer.*

## *2. Was it fair for M2I to decline Mr G and Mrs G's application?*

*The application made clear M2I were entitled to reject the application without giving a reason. But they provided explanations, so it's reasonable to consider them.*

*M2I said on 14 March 2022 that they couldn't complete on the mortgage when the applicant's main residence was not the property they currently resided in at the time of completion. On 16 March 2022 they said they couldn't complete given Mr G's circumstances which meant they'd immediately be in breach of the terms and conditions of the mortgage – and referred to clause 9.1.4. They said they'd consider a further application once Mr G had returned.*

*I've thought about Mrs G's point that the purpose of paragraph 9.1.4 in the mortgage terms and conditions is to require borrowers to let M2I know if they plan to leave their property vacant for more than three months, which might cause issues for M2I's security. She said since she was there, that wouldn't cause M2I a problem. And if they planned to leave it empty for more than three months, they would get consent.*

*M2I haven't responded to that directly. Ultimately their decision to lend was a commercial decision about the risk they were prepared to take. I can't interfere in the decision-making process. But I can consider if they came to their decision fairly. On balance, I think they did.*

*M2I's lending criteria and the mortgage offer required Mr G and Mrs G to be living in their property permanently. Their decision was in line with that. I think it was reasonable for them to have concerns about Mr G's intentions to return given Mr G and Mrs G weren't sure about when he'd be coming back themselves. M2I said they'd consider a further application once Mr G had returned. I think that was fair and reasonable in the circumstances.*

### 3. M2I's handling of the application

*I don't think M2I treated Mr G and Mrs G fairly in handling the application. For the reasons I've explained, I think M2I should have made their decision to decline the application at the outset. Bearing in mind it went ahead, I've thought about M2I's actions. I think M2I were responsible for prolonging the application process in some regards.*

*They required a certified copy of Mr G's passport. I think they should have made their specific requirements clear after they'd received the unacceptable photocopy in October 2021. That would have avoided the time wasted and inconvenience to Mr G of obtaining certification from the overseas lawyer.*

*M2I said a few times they were satisfied their requirements as to proof of residency had been satisfied. But each time they raised further queries, contradicting that. It was on around 14 February that M2I finally confirmed to the broker they were satisfied with the passport evidence. They acknowledged they'd made a mistake and said the confirmation they'd provided earlier had been correct. Their solicitors' notes suggest they'd had confirmation in the format they required about buildings insurance at the beginning of February too. The solicitors provided a further copy on around 23 February.*

*M2I failed to provide any clear reasons why they'd declined the application until around two weeks afterwards. They didn't call Mrs G when they said they would at a time when she was clearly upset about what had gone wrong.*

### 4. How were Mr G and Mrs G affected by what happened?

*I've thought about the impact on Mr G and Mrs G of what went wrong. They were put through a lengthy application process over a period of around six months which ultimately ended in their application being declined at the last minute. Although I think it was reasonable, on balance, for M2I to decline to lend, I don't currently think the application process should have got off the ground at all.*

*M2I made mistakes during the process that caused inconvenience for Mr G and Mrs G. The last minute refusal to lend was clearly very disappointing for them - the broker reported how upset Mrs G was to M2I at the time. And it took around two weeks for M2I to provide an explanation as to why the application didn't go through.*

*Bearing everything in mind, I think it's fair and reasonable for M2I to compensate Mr G and Mrs G for the distress and inconvenience they suffered. I currently think compensation of £650 would be fair.*

*If the application hadn't gone ahead, Mr G would have avoided the cost of posting Mr G's passport from and back to the country he was staying in. I understand that was around £50. Subject to evidence of payment, I think M2I should pay that sum with interest.*

*I understand Mr G and Mrs G planned to pay their advisers' fees from the M2I loan. I understand the advisers waived their fees. Since this is Mr G and Mrs G's complaint, I can only look at costs they've paid, not the fees their advisers have missed out on. Since Mr G and Mrs G haven't paid these fees, I can't ask M2I to pay them.*

*I'm not aware Mr G and Mrs G paid any other costs. If they did, I'll consider them if they are able to provide proof of payment.*

*Mrs G feels M2I should contribute £2,000 towards the property repair costs they incurred of around £3,000, which they'd planned to fund with the additional borrowing. I won't ask M2I to pay that. I appreciate it may have been inconvenient to have to find money for the work elsewhere. But I don't think M2I's decision to lend was unreasonable. So even if Mr G and Mrs G could show they'd suffered a loss here, it doesn't flow from M2I's mistakes.*

### **My provisional decision**

*I intend to uphold this complaint and direct more 2 life Ltd to pay Mr G and Mrs G*

*1. their expenses of posting Mr G's passport from and back to the country he was staying in, subject to them providing evidence of payment, plus interest at the rate of 8 per cent a year from the date Mr G and Mrs G paid until they are reimbursed by M2I; and*

*2. £650 compensation for distress and inconvenience.*

### **Developments**

Mr G and Mrs G have made several comments on my provisional decision. I'll summarise them here:

- They remain concerned M2I declined their application based on clause 9.1.4 of the mortgage terms and conditions. They say M2I could not use the term to decline the application - it could only have applied if the mortgage had completed as there was no contract in place between the parties until then; clause 9.1.4 was unlikely to apply in any event so would not have been a valid reason for turning down their application; M2I used it as an excuse after turning the application down; and they failed to respond to Mr G and Mrs G when they raised this issue.
- M2I were aware of Mr G's situation so it's not true to say it only became apparent to them in March 2022. It's also wrong to suggest Mrs G discussed with them how long Mr G spent away from home or that she said he lived elsewhere when in the UK.
- Mr G and Mrs G think M2I has a responsibility towards their solicitors and brokers and should pay their fees.
- They no longer have the receipt for the postage costs which they've clarified were around £10 each way for posting Mr G's passport from and to overseas. They've provided an invoice dated 21 November 2021 relating to the overseas' solicitors' fee of £168 for certifying the passport.

M2I raised no substantive comments on my provisional decision and were prepared to pay the compensation I proposed.

## **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 appreciate Mr G and Mrs G's strength of feeling about what happened in relation to their application. They haven't raised any substantively new points. But I'm grateful to them for explaining their concerns further and for the additional information they've sent.

I appreciate the terms and conditions of the mortgage would only have applied once the mortgage contract had been entered into. I acknowledge Mr G and Mrs G don't think M2I's explanation that clause 9.1.4 would have been breached had the mortgage gone ahead stands up to scrutiny given the purpose of the clause. But I don't need to decide who is right about that.

As I explained in my provisional decision, M2I said their decision to reject the application was not only because of clause 9.1.4 but also because Mr G wasn't permanently resident at the property at the time of completion. I still think it was reasonable, on balance, for them to have had concerns about Mr G's intentions to return given Mr G and Mrs G weren't sure about when he'd be coming back. And I still think, on balance, M2I reasonably declined the application in line with their lending criteria and the mortgage offer, which required Mr G and Mrs G to be living in their property permanently.

I appreciate Mr G and Mrs G don't want to deal with M2I anymore. But given M2I said they'd consider a further application once Mr G had returned, I still think they treated Mr G and Mrs G fairly in the circumstances. I think it would have been helpful for M2I to have explained their reasons for declining the application more fully. But the compensation I've proposed M2I pay Mr G and Mrs G takes that into consideration.

I've already explained why I can't direct M2I to make any payment to Mr G and Mrs G's broker or solicitors. Nothing Mr G and Mrs G have now said changes that.

I think it's fair for M2I to reimburse the postage costs for sending Mr G's passport from and to the country he was staying in even though Mr G and Mrs G can't provide proof of payment. They are nominal and it's reasonable to accept they were incurred given the events that happened. I think M2I should also reimburse the overseas' solicitors' fees. Mr G and Mrs G incurred them because M2I didn't make clear their requirements for the passport to be certified.

## **Putting things right**

For the reasons I've explained, more 2 life Ltd should pay Mr G and Mrs G their expenses of £188, plus interest, and compensation of £650 for distress and inconvenience.

## **My final decision**

I direct more 2 life Ltd to pay Mr G and Mrs G

1. their expenses of posting Mr G's passport from and back to the country he was staying in of £20;
2. the overseas' solicitors' fees of £168;
3. simple interest on 1 and 2 at the rate of 8 per cent a year from 21 November 2021 to the date they are reimbursed by more 2 life Ltd; and

4. £650 compensation for distress and inconvenience.

If M2I deduct tax from the interest they pay to Mr G and Mrs G, they should provide them with a tax deduction certificate, if they ask for one, to enable them to reclaim the tax from HMRC, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 6 February 2023.

Julia Wilkinson  
**Ombudsman**