

The complaint

Mr and Mrs Q have complained that more 2 life Ltd (which I will refer to as M2L here) refused to allow them to port (transfer) their equity release mortgage onto a new property, because M2L's valuer said it was unsuitable.

Mr and Mrs Q say that, on redeeming the mortgage, they had to pay an early repayment charge (ERC) of about £7,000, which they believe to be unfair because they do not believe the new property is unsuitable. They believe that M2L should have agreed their application.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs Q being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

In 2020 Mr and Mrs Q took out an equity release mortgage with M2L. They say they specifically chose this product because it had the facility to port the mortgage onto another property, subject to meeting lending criteria.

In 2022 Mr and Mrs Q decided to move and applied to port the mortgage. As part of the application process it was necessary for M2L to have the new property inspected. An independent third party surveyor was instructed to carry out a valuation. After the surveyor inspected the new property and reported back to M2L, the request to port the mortgage was declined. The surveyor had noted that the property was directly adjacent to commercial premises, with other commercial premises "*within influencing distance*". The surveyor had noted another issue – the absence of a firebreak wall – but "*the use and proximity of commercial premises*" meant that he gave the property a £0 valuation.

Mr Q, who has dealt with the complaint throughout, queried this. The surveyor confirmed the issue with the firebreak wall was an error, but the concerns relating to the property being next to commercial premises remained. As a result, M2L wasn't able to change its decision to decline the request to port the mortgage.

Mr and Mrs Q complained about the decision to decline their mortgage application, and also said they'd been overcharged the valuation fee – paying £385 instead of £310. M2L upheld the complaint about the valuation fee, and offered compensation of £150, made up of a refund of the £75, plus £75 for distress and inconvenience. However, M2L didn't change its stance on its decision not to lend on this particular property.

Dissatisfied with M2L's response, Mr and Mrs Q brought their complaint to our service. The crux of the complaint is that Mr Q notes that M2L's lending criteria says that properties close

to commercial premises can be considered, and he disputes that the commercial premises in question have any adverse effect on the property he and Mrs Q wanted to buy. As a result, Mr Q says that the lending criteria have been unfairly applied.

An investigator looked at what had happened but didn't think the complaint should be upheld. He was satisfied that M2L was entitled to rely on the expert opinion of the surveyor when deciding whether or not the property offered suitable security for a mortgage.

Mr Q disagreed and asked for an ombudsman to review the complaint. He's made some further points, which I summarise below.

- having due regard to his interests, and bearing in mind that the decision would result in substantial financial loss to him, it would be fair and reasonable for the decision to be reviewed;
- the report contained mistakes;
- he paid for the report, not M2L, and was due a fair assessment;
- the report M2L received contained additional information from the report he and the solicitor received, which is unethical, misleading and dishonest;
- in the light of this, the underwriters should – and could – have approved porting the mortgage;
- because M2L has failed to take his interests into account, it has not acted fairly or reasonably.

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.

M2L is entitled to set its own lending criteria. Decisions that M2L makes in respect of what those criteria are, its attitude to risk involved in this particular lending assessment, and whether it should lend and if so, on what terms are clearly discretionary matters for M2L's own commercial judgement that I would not interfere with.

M2L has provided information about its lending criteria and about what was taken into account in its consideration of the application. In relation to the valuation report, even though Mr and Mrs Q paid for it, it was for the benefit of M2L in order for M2L to decide if the property would be suitable security for the mortgage. M2L isn't a surveying business, and so it does not carry out its own property inspections; instead it instructs a firm of surveyors to do this.

The valuation was carried out by an independent third party, who I note from the report is an Associate of the Royal Institution of Chartered Surveyors (RICS). I'm satisfied, therefore, that M2L instructed a suitably-qualified person to carry out the inspection, and that M2L was entitled to rely on the surveyor's opinion.

After the issue with the firebreak wall was drawn to his attention, the surveyor confirmed that he'd inadvertently ticked the wrong box, which had led to this information populating the valuation report (which is in the form prescribed by RICS). Nothing turns on this, though, because the decision not to lend was based on the surveyor's opinion that the adjacent commercial premises adversely affected the property.

As I said above, M2L was entitled to rely on this opinion, but I'm also satisfied that it took Mr Q's concerns seriously and raised them with the surveyor. Mr Q argues that the needs and interests of customers should come before M2L's commercial interests. However, M2L

has to give consideration to the risks involving in any lending decision, and weigh those against the benefit of agreeing to the application. This does not mean that Mr and Mrs Q's needs, wishes and interests are paramount and must come before all other considerations.

Mr Q has highlighted information he found on M2L's intermediaries website about commercial premises, which he believes helps his argument that M2L made the wrong decision. However, I'm not persuaded that it does, in fact, support Mr Q's position – in fact, rather the opposite. The information states:

“Any property adjacent/adjoining a commercial premises is unacceptable unless otherwise agreed. While the property may not be directly adjoining a commercial premises, it still may be unsuitable based on unsightly premises or noise concerns.

If you become aware of any commercial premises within the vicinity, it might be worth considering:

The type of premises

• Is it a food outlet, a pub? If so, it's highly probable these will have an impact, whereas a local village post office, for example, may not have the same impact.

The volume of premises

- Is it just one or is there a row of commercial premises? How close is it/are they?*
- Is it/are they clearly visible or noticeable?*
- Could there be any noise concerns?”*

In this case, the property Mr and Mrs Q wanted to buy is directly adjacent to a cocktail bar with a large outside drinking area/beer garden, and directly opposite the property is a concert hall which also contains a bar. Given this, I'm not persuaded that M2L has unfairly or incorrectly applied its lending criteria in relation to this particular application.

Overall, I'm satisfied that M2L reached its lending decision fairly, after taking into account all relevant factors, including (but not limited to) exposure to risk, and Mr and Mrs Q's specific circumstances. Given this, I'm satisfied that M2L gave fair consideration to this application and so legitimately exercised its commercial judgement when deciding whether or not to agree the application. This means that there is no basis upon which I can find that M2L has treated Mr and Mrs Q unfairly or unreasonably.

I appreciate Mr Q doesn't think the valuation report was fair, or that the decision M2L reached as a result was fair either, because he doesn't agree with the outcome. But I'm satisfied that M2L gave fair consideration to Mr and Mrs Q's application and, because the application didn't meet its lending criteria, M2L was entitled to decline to lend.

I can understand that Mr and Mrs Q are unhappy about the ERC they had to pay when they redeemed the mortgage with M2L. But this was a term of the mortgage contract. That contract also said that any application to port must meet M2L's lending criteria.

Because the application was outside lending criteria and the mortgage couldn't be ported, I'm satisfied that it was fair and reasonable for M2L to apply the ERC, in line with the terms of the contract to which Mr and Mrs Q had agreed to be bound in 2020.

In all the circumstances, whilst I acknowledge Mr Q's strength of feeling about what happened, I'm unable to find M2L has done anything wrong in relation to its decision not to lend on the new property.

Putting things right

M2L has accepted that it charged the wrong valuation fee, and it has offered to refund the extra £75 charged for this and pay £75 for distress and inconvenience, £150 in total. I am satisfied this is fair and reasonable in all the circumstances, and I don't require M2L to do anything more.

My final decision

My final decision is that, in full and final settlement of this complaint, more 2 life Limited must pay Mr and Mrs Q £150 compensation. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q and Mrs Q to accept or reject my decision before 22 December 2023.

Jan O'Leary
Ombudsman