

The complaint

This complaint's about an equity release mortgage that Mr and Mrs G hold with more 2 life Ltd (M2L). They took it out in 2018, and then applied to "port" – that is, move the debt over to a new mortgage on a different property. The essence of Mr and Mrs G's complaint is that M2L reduced the amount of the ported lending by around £54,000 on the day they completed. This has left them with very little of the money they were expecting to free up after moving house.

What happened

By way of a provisional decision dated 18 September 2023, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are known to Mr and Mrs G and M2L. I'm also aware that the investigator issued a comprehensive response to the complaint, which has been shared with all parties, and so I don't need to repeat the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mr and Mrs G being identified. Instead I'll give a brief summary of the key events, rounding the figures, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mr and Mrs G took the mortgage out in 2018; they borrowed a little over £158,000. In late 2021, they decided to move to a lower-priced property. At this stage, the mortgage debt had grown to around £196,000. In January 2022, M2L issued an offer for a mortgage on the new home. As the value was less than the existing one, around £36,000 of the balance would have to be repaid in order to keep within M2L's loan-to-value (LTV) limit of 40%.

This mean the new debt would be just under £160,000, but the offer contained a narrative indicating that the actual amount to be lent could vary and would be decided on the date of completion.

Mr and Mrs G's house move was long and protracted; the valuation of the new property had to be renewed, as did the offer, but the underlying figures didn't materially change. In December 2022, M2L's solicitors wrote to Mr and Mrs G's solicitors confirming they could proceed to exchange of contracts. On the scheduled completion date in January 2023, M2L issued a revised offer, showing the amount to be lent as being limited to 26.6% LTV, which mean just over £106,000 was released.

Mr and Mrs G had no option but to accept the mortgage offer, as they were committed to completing the transaction, but later complained that they'd been left short of the money they'd been expecting. M2L didn't uphold the complaint and when it came to us our investigator, whilst sympathetic towards Mr and Mrs G's situation, didn't think M2L had done anything wrong that the terms of the offer hadn't provided for.

Mr and Mrs G have asked for the case to be reviewed by an ombudsman. They argue, in summary, that the reason M2L varied the amount lent wasn't one that was annotated in the offer as being subject to variation. They exchanged contracts in reliance on M2L's offer; as a consequence, they say M2L is estopped from reducing the loan for the reason it used.

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.

Having done so, I've reached a different conclusion from the investigator's. I'm using this provisional decision to let the parties know how I am presently intending to determine the complaint, so they have the opportunity to comment before I do so.

M2L's position is that the documentation always made it clear that the final lending amount could be different from what it was offering, and that's fine as far as it goes. But when I take into account what Mr and Mrs G have said about how the potential for variation was presented to them I'm not sure how they could possibly have known that the LTV might change. I'll explain what I mean.

The offer detailed the critical dates and values in bullet points, annotating certain values with an asterisk. Below those values, the following narrative explained the relevance of the asterisks.

*“*Please note this figure is subject to change and a final figure will be issued once a completion date is set.”*

No asterisk was annotated to the maximum LTV or maximum total facility, so there'd have been no reason for Mr and Mrs G to think these might change. But that's not all; the only values annotated with asterisks were the current outstanding balance *and* the partial repayment amount. It's to be expected that the outstanding balance would vary from day to day, but the thing to remember is that the partial repayment amount is the difference between the outstanding balance and the maximum total facility. So if the offer makes clear that the outstanding balance and partial repayment amounts are both variable, the undeniable inference to draw is that the maximum total facility is *not* variable.

Put all that together and the conclusion I have reached is that once M2L's solicitors wrote to Mr and Mrs G's solicitors on 22 December 2022 confirming that exchange of contracts could take place, M2L was estopped from reducing the maximum total facility for the reason it gave; that is, a reduction in the maximum LTV. I think it's unlikely M2L's solicitors wouldn't have understood the implications for Mr and Mrs G of committing themselves to their purchase, or that Mr and Mrs G did so acting in reliance on the maximum LTV and maximum total facility values given in the January 2022 offer.

As M2L hasn't given any other reason for reducing the maximum total facility, it treated Mr and Mrs G unfairly, and subjected them to considerable hardship and worry when it did so.

In the circumstances, there is only one remedy I can fairly order M2L to provide; that is, to reinstate the original LTV of 40%, and lend Mr and Mrs G the difference between the January 2022 and January 2023 offers by issuing a further advance.

Also, I've considered the impact this situation has had on Mr and Mrs G; the whole experience will, I'm sure, have caused Mr and Mrs G a lot of worry and stress that could have been avoided if M2L treated them fairly in the first place. They are due compensation for that, which, having considered their testimony about how they've been affected financially, I'm minded to set at £500."

Both parties have responded to the provisional decision. M2L has told us it will reconstitute the mortgage from the outset at the level it originally offered in January 2022, to provide Mr and Mrs G with the extra funds they were expecting from the January 2022 offer. Mr and Mrs G thought the compensation of £500 should be higher, and that M2L should be ordered to reimburse them the interest – close to £6,000 – they've continued to accrue on their outstanding consumer credit debts that should have been repaid when the mortgage was released.

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.

Having done so, I won't be changing my decision. But I will respond to the further points from both parties.

I'm pleased that M2L has accepted my provisional decision and agreed to settle the complaint. However the remedy it has said it will do doesn't appear to be quite what I proposed in the provisional decision. If I've understood it correctly, M2L has said it will reconstitute the mortgage at the full amount of the January 2022 offer, from the completion date. What I said in the provisional decision is that it should issue a further advance for the differential amount.

There's an important distinction between the two, and the reason why I went for the further advance goes to Mr and Mrs G's point about the extra interest they've accrued with their current creditors in the interim. If M2L reconstitutes the loan at the full amount from the mortgage start date, the additional lending will accrue compound interest for life from that date. If the additional lending is issued as a further advance, it will still accrue compound interest for life, but the later start date means the interest will be substantially lower.

Over time, the saving will build to the point where it offsets the extra interest Mr and Mrs G have incurred with existing creditors, thus removing the need for a separate award to reimburse them. I opted for awarding redress on the basis I did specifically to avoid the need for the more complicated alternative.

Lastly, I've noted what Mr and Mrs G have said about how they've been affected by not having the money they'd expected to have been made available. I've no doubt it's been a difficult time for them, and I note the example they gave of how they've had to restrict their lifestyle. Overall, however, I think my original assessment of £500 is fair and reasonable in all the circumstances.

My final decision

My final decision is that I uphold this complaint, by ordering more 2 life Ltd to do the following:

- issue a further advance to lend Mr and Mrs G the difference between the January 2022 and January 2023 offers; and
- pay Mr and Mrs G £500 compensation for their time, trouble and upset.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 30 October 2023.

Jeff Parrington

Ombudsman