

The complaint

This complaint's about an equity release mortgage that Mrs G hold with more 2 life Ltd (M2L). She took it out in 2018, and then in 2022 applied for a further advance. M2L refused the further advance application, saying that a change of lending policy meant that Mrs G's house (which has two kitchens) was no longer considered acceptable security. Mrs G says this has left her trapped in a mortgage that she could only exit at high cost.

What happened

The broad circumstances of this complaint are known to 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 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.

Mrs G took the mortgage out in 2018; she borrowed £155,000. Whilst not required under the mortgage terms, Mrs G by her own choice then repaid about £50,000 of the original borrowing. In September 2022, Mrs G applied for a further advance of £50,000. After having the property valued afresh, M2L refused to lend. The new valuation had identified the property as having two kitchens. The presence of two kitchens had also been listed in the 2018 valuation, but M2L said there had been a change of lending policy.

When the complaint came to us, Mrs G asked her broker, a firm I'll call L, to help her present her case. L provided us with an email from M2L which revealed that far from being a policy change, the presence of two kitchens in a property was already an exclusion from M2L's lending policy when the original mortgage was granted in 2018. In other words, Mrs G had a mortgage she should never have granted in the first place.

The investigator recommended the complaint be upheld. Whilst recognising that M2L was under no obligation to grant further lending, he pointed out that Mrs G was in her current position due to an error on M2L's part in the first place. He said M2L should reconsider the further advance application, but disregarding the reason it had refused it the first time. He also said M2L should pay Mrs G £250 compensation for her time, trouble and upset.

Mrs G broadly agreed, albeit she thought the compensation could have been higher given the impact on her of not being able to borrow the extra money. Conversely, M2L agreed to the £250 compensation but then listed several other factors that would cause the further advance application to be refused in any event.

Our investigator pointed out that all of the additional objections M2L was now raising were also present in 2018, and M2L knew, or should have known, about them at the time. He expanded his view of the case to say M2L should reconsider the further advance application,

excluding all of the reasons it had listed, and in the event it was still rejected, M2L should then meet the cost of Mrs G moving her mortgage to another lender.

M2L's position remained unchanged, so the case has come to me to decide what's fair.

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's primary arguments appear to be that the original offer made it clear that future lending wasn't guaranteed, and that this service cannot order it to lend. The first point is true, and the second is too, up to a point, but both are entirely irrelevant here. Our investigator has always made it clear that future lending wasn't guaranteed, and at no time has he told M2L it must lend. What he has done, and what I am now doing, is seeking to place Mrs G, as far as practicality allows, in the position she would now be in, but for errors and omissions on M2L's part.

My starting point here is that no one, is entitled to borrow money; and even when they've borrowed before, they're not automatically entitled to do so again. But a lender must treat customers fairly. In the context of an application for borrowing, that means assessing it fairly in accordance with its lending criteria and appetite for risk, and being mindful of what regulation requires of it. Lenders' criteria are commercially sensitive and not generally made public.

The overarching problem here is not that M2L refused the further advance in 2022; it's that it *granted the original mortgage in 2018*. Due to M2L's failure to apply its lending criteria and appetite for risk fairly in 2018, Mrs G now finds herself with a mortgage that offers her zero prospect of future borrowing. That is in complete contrast to what M2L said in the 2018 mortgage offer, which was, in essence, that further borrowing was possible but not assured.

If M2L had still lent the money it did in 2018, but had said in the offer that under no circumstances would any future borrowing be granted, I'm satisfied Mrs G would not have taken the mortgage up with M2L but would have looked elsewhere for her lifetime mortgage, if only to preserve the possibility of future borrowing. As it is, Mrs G finds herself in a position where, just to restore the possibility of future borrowing, she'll be forced into the time-consuming and costly process of re-mortgaging to another lender.

As that is solely as a result of M2L's shortcomings in 2018, I'm satisfied this complaint should be upheld. I'm also satisfied that our investigator correctly identified a two-stage process for M2L to remedy the situation; firstly

- by revisiting Mrs G's application for further lending at the same time disregarding any of the exclusion factors that already existed in 2018;

and if that still failed:

- by covering all of the reasonable costs Mrs G would incur to move her mortgage to another lender.

That leaves the question of compensation. I appreciate why Mrs G thinks it should be higher than £250, given the financial impact on her of not having access to the extra funds the further advance would have freed up. However, that's not something I can factor into the award, as it would beg the assumption that Mrs G was assured of receiving the extra

borrowing. That was never guaranteed with M2L, and for clarity, won't be with any new lender Mrs G might end up moving to.

That is not to say that some compensation isn't justified. It very much is, not least because of M2L's attempts to conceal its original mistake by referring to a policy change when there hadn't been one in the period since the mortgage was granted. In all the circumstances, I consider £250 to be fair.

My final decision

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

- revisit the application disregarding any of the exclusion factors that already existed in 2018, and mean that the property fails its lending criteria. If the application is accepted lend Mrs G the additional £50,000 at the same rate she would have been eligible for in September 2022; or
- in the event Mrs G is successful in securing a re-mortgage within six months of accepting this final decision (assuming she does);
 1. waive any early repayment charge or other exit fees on redemption of the current mortgage;
 2. subject to Mrs G providing the relevant evidence, reimburse all costs associated with the re-mortgage transaction, including but not limited to, broker fees, legal costs and lender product fees;
 3. using Office for National Statistics (ONS) or an equivalent accredited data source, on life expectancy for people sharing Mrs G's demographic characteristics, assess the likely duration – and resulting notionally forecast repayment date – of the current mortgage;
 4. using the figure that results from 3 above, calculate the interest that would have accrued on the current mortgage at 4.52% up to the notionally forecast repayment date;
 5. using the figure that results from 3 above, calculate the interest that will accrue on Mrs G's new mortgage at the interest rate charged by the eventual lender, up to the notionally forecast repayment date; and
 6. pay Mrs G the difference between 4 and 5 above.

Regardless of which of the above remedies more 2 life provides, it must also pay Mrs G £250 compensation for her time, trouble and upset. I did consider awarding Mrs G more compensation if she ends up having to re-mortgage, but as the proposed remedy for that awards her, at 6 above, a lump sum in advance of potential future loss, I decided against doing so.

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 Ms G to accept or reject my decision before 31 October 2023.

Jeff Parrington

Ombudsman