

The complaint

Mr and Mrs S' complaint is about delays that occurred during the process of applying for a lifetime mortgage with more 2 life Ltd. They said the delays meant that the mortgage interest rate they would have eventually been able to complete with was considerably higher than it had been when their application was originally accepted. They chose not to accept the mortgage offer at that time.

What happened

Below is a summary of the key facts on which this case turns, along with some for context. While it is brief and documents the events in less detail than the parties have presented them, I would confirm that I have read everything that has been provided by both parties before reaching my conclusions.

In 2020 Mr and Mrs S' traditional interest-only mortgage reached the end of its term and the capital balance needed to be repaid. They decided to do so by re-mortgaging the property on a lifetime basis. They sought assistance from an independent mortgage broker to find them a suitable mortgage.

In order to obtain the amount of funds they wanted and an interest rate they were comfortable with, Mr and Mrs S were advised to wait until Mrs S reached the age of 71 in December 2021 and in the hope the property value would have increased. Mr and Mrs S' then lender agreed to wait until then for the existing mortgage to be repaid and in October 2021 the application process started.

m2l accepted Mr and Mrs S' application and an offer was issued with an interest rate of 3.61%. They were happy with this offer, but because of issues with the title to their property, including the fact that it had not yet been registered on the Land Register, the mortgage could not progress.

Following the title issues being addressed and registration being completed, a new application through a different mortgage broker was submitted to m2l in September 2022. The application was accepted, and an offer was made on 11 October 2022 for a mortgage of £113,000 at an annual interest rate of 5.51%. This offer was sent to Mr and Mrs S' solicitors on 21 October 2022.

A few days later Mr and Mrs S asked that the borrowing be increased to £114,000 due to higher legal costs than originally anticipated. This was agreed and Mr and Mrs S' solicitors returned the previous offer and conveyancing pack on 26 October 2022. The new mortgage offer was issued for the increased amount, on an interest rate of 5.51%. The offer was valid for 23 days from 30 October 2022. The offer (but not the documents needed for the mortgage to progress) was sent to Mr and Mrs S' broker and m2l's solicitors on 31 October 2022. m2l's solicitors should then have forwarded a copy of the mortgage offer, along with all other documents needed, to Mr and Mrs S' solicitors. It didn't do so.

The offer expired on 21 November 2022, but m2l has confirmed it was extended twice – with a final expiry date of 15 January 2023.

Despite communications from m2l, its solicitors didn't send anything to Mr and Mrs S' solicitors until 5 January 2023. Mr and Mrs S' solicitors confirmed it had received the offer pack on 6 January 2023. This was the offer of 30 October 2022.

Mr and Mrs S's broker contacted m2l on 13 January 2023 to ask that the offer was extended, as it expired on 15 January 2023 and m2l's solicitors was again not responding. A new offer was issued 16 January 2023, confirming the offer was valid for 42 days. The interest rate was documented as 8.56%. A further mortgage offer was issued on 31 January 2023. This was valid for 42 days, again, at an interest rate of 8.56%.

The mortgage was expected to complete on 9 February 2023, but Mr and Mrs S decided not to go ahead with it. When we asked them why, they said it was because the increase in the interest charged was almost £300 per month, which '*was just not affordable*'. They complained.

m2l responded to the complaint in its letter of 13 March 2023. It acknowledged that its solicitors caused delays in the process and so the complaint was upheld. It was confirmed that the result of the delays was that a new offer was made at the prevailing rate at the time, which was higher than the original rate offered. m2l offered Mr and Mrs S £2,000 toward their broker and solicitors fees, and £500 for the distress and inconvenience they had been caused.

Mr and Mrs S weren't satisfied with the response and referred their complaint to this service. One of our investigators considered the complaint and he concluded it should be upheld. He ultimately concluded m2l should reinstate the offer of 30 October 2022 to allow Mr and Mrs S to have the mortgage they should have had, if they now wanted to accept it. In addition, he considered the additional interest that had accrued on Mr and Mrs S' existing mortgage should be reimbursed by m2l. In relation to the compensation that should be paid for the upset the delays had caused, the Investigator found that a sum of £750 (including the amount already offered) should be paid to Mr and Mrs S as compensation for the delays and upset they had suffered. The Investigator also considered the offer made for legal and broker fees was reasonable in the circumstances.

Mr and Mrs S expressed disappointment that the Investigator didn't consider m2l had done anything wrong in relation to the first application, but accepted his conclusions.

m2l didn't accept the investigator's conclusions. It accepted that its solicitors delayed providing the offer to Mr and Mrs S' solicitors, but considered that Mr and Mrs S could have passed it on. In relation to the recommendation to reinstate the 30 October 2022 offer, it said that it could not be done due to Mr and Mrs S not having taken the mortgage in February 2022 and changes in the mortgage market. m2l also said that Mr and Mrs S' estate had not suffered any financial detriment as a consequence of the increase in the interest rate because they didn't complete on the mortgage. It also said that it could not be held responsible for their existing financial arrangements, as Mr and Mrs S were responsible for making appropriate payments to service them. However, it agreed to the increase in compensation the Investigator had recommended.

Our Investigator considered m2l's comments, but he wasn't persuaded to change his conclusions. In relation to the matter of Mr and Mrs S not having suffered a financial detriment, he did not agree with m2l. He explained that due to the failure of the lifetime mortgage application, they were presently at risk of losing their home. m2l continued to disagree with most of the Investigator's conclusions and so asked for an Ombudsman's decision.

I issued a provisional decision on 13 October 2023 in which I set out my conclusions and

reasons for reaching them. Below is an excerpt.

'I will initially comment on the first application Mr and Mrs S made - that application didn't proceed, but this appears to be due to an issue with the property title, rather than something that m2l or its solicitors did, or didn't, do. Since 2012 it has been a requirement for all properties in Scotland that are being sold or re-mortgaged to be on the Land Register. Mr and Mrs S' property was not and until it was, a re-mortgage to m2l or any other lender could never complete. Ensuring the property title is fit for a lender to use as security is the borrowers' responsibility and so I can't find that this mortgage application failed because of something m2l did or didn't do.

m2l has accepted its solicitors caused delays in the progress of Mr and Mrs S' second mortgage application. This means I don't need to determine if there was fault, and I need only focus on what should be done to remedy the error.

Initially I would respond to something m2l has said in relation to the delays caused by its solicitors. It has indicated that the failure of its solicitors didn't have the effect Mr and Mrs S have indicated, as they or their broker could have passed on the 30 October 2022 mortgage offer to their solicitors. While that is true, the offer was not the only document m2l's solicitors needed to send to Mr and Mrs S' solicitors and it just having the offer was not sufficient for the mortgage to progress.

Once m2l's solicitors started working on the case, it confirmed it was expecting completion to take place on 9 February 2023, subject to provision of Mr and Mrs S' insurance documents. As the latter would have been simple to provide, the expected completion date would have been 35 days from the date m2l's solicitors started work. While the offer of 30 October 2022 would have expired at this point, the first of the extensions would have meant the mortgage would have completed with an interest rate of 5.51%.

When considering redress, we try to place a consumer back in as close a financial position as is possible. In this case, it is clear that but for m2l's solicitors' failings, Mr and Mrs S would have had a lifetime mortgage with it on or around 22 November 2022, and the interest rate being charged would be 5.51%. As such, in order to place Mr and Mrs S in the appropriate position, m2l will need to reinstate the mortgage offer originally issued on 30 October 2022. This may involve m2l obtaining funding at today's rates but instead of passing that on to Mr and Mrs S, making up the difference itself so that they are charged 5.51%, even if it costs m2l more than that to provide the loan to them. However, this is a matter for m2l to resolve – ultimately it is responsible for finding a way to put Mr and Mrs S back in the position they would have been in but for its solicitors' mistakes.

Mr and Mrs S have commented that they have continued to make interest payments toward their existing mortgage. While they would not have needed to make interest payments following the lifetime mortgage being advanced, they would still have been charged interest on the amount of their borrowing, but it would have been at the rate of 5.51% and would have rolled up onto the balance of the lifetime mortgage.

Mr and Mrs S have been being charged on their existing mortgage their lender's standard variable rate. This has increased over time and is currently higher than the interest rate Mr and Mrs S would have been paying on their lifetime mortgage. They have explained that they have been unable to pay the full amount of the interest but have continued to pay what they can. As such, the mortgage balance has increased and they have been paying compounded interest on the payment shortfall.

As Mr and Mrs S would have paid some interest on the lifetime mortgage, I don't consider the payments they have made to the lender should be refunded. However, as they have

been being charged higher interest than they would have been on the lifetime mortgage, I consider m2l should be responsible for that sum. I could order that m2l completes a complicated calculation to establish what interest Mr and Mrs S would have paid on the lifetime mortgage to the date of advance, versus that which they have paid, including compounding, to the existing mortgage. However, this would take time and likely cause more delays in the mortgage process. As such, I consider a fair and pragmatic approach to this issue would be for m2l to pay the amount that Mr and Mrs S' existing mortgage increased by from 22 November 2022 to the date it is redeemed, assuming Mr and Mrs S continue to make the payments they historically have.

m2l offered Mr and Mrs S £2,000 toward the broker and solicitor fees they had paid, in light of the fact they did not benefit from them. I can't say that offer was inappropriate but given the above redress, the broker costs will not have been wasted and most of the solicitor costs will equally not have been. As such, I am minded to conclude the appropriate redress would be for m2l to pay any legal costs Mr and Mrs S incur in completing their mortgage if they wish to move ahead with it.

The above will place Mr and Mrs S in as close a position as possible to the one they would have been in, but for m2l's mistake. I now turn to the matter of compensation for the stress and inconvenience this matter has caused them. When doing so, I have to bear in mind that consumers have a responsibility to mitigate any obvious losses. As such, I am not persuaded I can hold m2l responsible for the upset and stress the situation with their existing lender has caused them. Overall, the mistakes on behalf of m2l caused delays of around three months. This would have been frustrating for Mr and Mrs S and a worry to them, as their existing mortgage term had already expired. In the circumstances, I consider the £750 suggested by our Investigator would be appropriate and proportionate in the circumstances.'

Mr and Mrs S said they were largely in agreement with my conclusions. They provided a detailed timeline of the second application. They also confirmed m2l had been provided with a copy of their insurance policy, covering the risks it required, during the first application in early 2022. Mr and Mrs S said that to date they had not had to make any payment to either their solicitors or the broker, as the mortgage didn't complete. However, they think that m2l should be made to pay both those businesses for the work they did, in the event the mortgage doesn't complete following my final decision.

In addition, Mr and Mrs S confirmed that the mortgage balance had increased to slightly under £116,000 by 16 October 2023. By their calculations this meant that they needed to be provided with a mortgage of almost £118,000 when costs and fees were taken into account.

m2l said that it didn't believe the mortgage would have completed before the extended offer expired because:

- Mr and Mrs S' solicitors had all the legal documentation it needed to progress the case, which is evidenced by it returning a signed (on 26 October) mortgage deed to m2l's solicitors in November. It highlighted that the deed is part of the legal pack, which proved Mr and Mrs S' solicitors had received it in October 2022.
- Mr and Mrs S/their broker could have shared the offer with Mr and Mrs S' solicitors and provided confirmation they were happy to proceed.
- The evidence of flood insurance required for the offer to progress had not been provided to it at the point Mr and Mrs S withdrew from the process.
- Its solicitors has denied that Mr and Mrs S' solicitors sent back the legal pack it received with the mortgage offer of 11 October 2022. As the legal packs for each of the offers would have been the same, had Mr and Mrs S forwarded a copy of the offer of 30 October 2022 to their solicitors, the solicitors had all the documentation it needed to progress the mortgage.

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 have noted the detailed timeline that Mr and Mrs S have provided. I would confirm that when I reached my provisional decision I was aware of what had happened. I am sorry if my summary of the key points in the application process made them think that I was not aware of the detail of what happened, but I can assure them that I was.

I note what m2l has said about the availability of documentation to Mr and Mrs S' solicitors, outside of the failures of m2l's solicitors. I would initially comment that while m2l's solicitors have said Mr and Mrs S' solicitors didn't return the documentation it said it had, it hasn't suggested this before. I can't be certain what was returned to m2l's solicitors in October 2022. However, I can be certain from the evidence provided by both parties, that m2l's solicitors were not working on Mr and Mrs S' mortgage in the manner it should have been, as it was not only failing to communicate with Mr and Mrs S' solicitors and broker, but also m2l. On this basis, I am not persuaded that the situation Mr and Mrs S found themselves in would have been materially different if their solicitors had acted differently or if they/their broker had compensated for m2l's solicitor's failure in not forwarding the mortgage offer and legal pack as it should have.

As for the issue of provision of the insurance policy, I was aware that m2l's solicitors had said it was still outstanding at the point Mr and Mrs S withdrew from the application. I don't consider this has a material effect on the redress I awarded in this case, as it is simply something that can be provided if Mr and Mrs S accept this final decision and decide to go ahead with the mortgage.

I have noted Mr and Mrs S' comments about the amount of the lifetime mortgage they will now need because of the additional interest that has been added to their existing mortgage. I addressed this matter in my provisional decision in such a way as to make it that Mr and Mrs S will not need a larger mortgage. The relevant section of the provisional decision was:

'As such, I consider a fair and pragmatic approach to this issue would be for m2l to pay the amount that Mr and Mrs S' existing mortgage increased by from 22 November 2022 to the date it is redeemed, assuming Mr and Mrs S continue to make the payments they historically have.'

This means that m2l will pay to Mr and Mrs S the additional amount they need to redeem their existing mortgage because of the extra interest that's been added to it. This is on the basis they continue to pay the £327.29 they have said they are paying each month until it's paid off.

Mr and Mrs S have confirmed that they have not paid anything to their solicitor or broker because the mortgage didn't complete. As such, there will not be a separate bill for any additional work needed on their solicitors' behalf if the lifetime mortgage goes ahead. In which case, if the mortgage does go ahead, I would ask Mr and Mrs S to ask their solicitor to provide a breakdown of any additional work that is now done, which would not have been needed had the application completed in 2022. It should then detail the costs associated with those activities. m2l should then pay this sum.

I note Mr and Mrs S' request that the solicitor and broker be paid for the work they completed on the failed application in 2022. However, both of those businesses committed to providing the service they did knowing that there was the possibility the mortgage may not go ahead, and they might not get paid. In the circumstances it would not be appropriate for

me to require m2l to pay their costs if the mortgage does not now go ahead.

My final decision

My decision is that I uphold this complaint. In full and final settlement of the complaint, I require more 2 life Ltd to:

- Reinstatement the 30 October 2022 offer.
- If the offer is accepted by Mr and Mrs S:
 - pay any additional legal costs they incur in completing the mortgage.
 - pay an amount equal to the increase in the balance of their existing mortgage that accrued between 22 November 2022 and the completion of the lifetime mortgage due to the addition of unpaid interest.
- Pay £750 compensation for the worry and inconvenience they have been caused.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S and Mrs S to accept or reject my decision before 15 December 2023.

Derry Baxter
Ombudsman