

The complaint

Mrs D's complaint is about an equity release lifetime mortgage taken out with more 2 life Ltd trading as Standard Life Home Finance, and referred to here as M2L.

Mrs D says that, due to an error by M2L, she thought she had until 16 April 2022 to complete her mortgage, at an interest rate of 2.69% fixed for the duration of the mortgage. However, the mortgage offer actually expired on 4 April 2022. On 8 April 2022 M2L issued another mortgage offer, but at a higher rate of interest, 3.40%.

To settle the complaint Mrs D would like M2L to honour the 2.69% interest rate.

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 Mrs D being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by 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.

After taking advice from her own independent financial adviser (IFA) Mrs D applied for a lifetime mortgage from M2L. She initially requested a lump sum of £120,000, with a drawdown facility of £10,000. A mortgage offer for this amount was issued on 10 January 2022, valid for 42 days, so until 21 February 2022. The interest rate was 2.69%.

As is required in such transactions, both parties instructed their own solicitors. M2L instructed a firm I will call E and Mrs D instructed a firm I will call BBH.

The mortgage didn't complete by 21 February 2022, so it was extended by a further 42 days. M2L informed Mrs D's IFA and BBH that the new expiry date was 4 April 2022.

Mrs D then decided to draw down the full amount of £130,000, so on 8 March 2022 another mortgage offer was issued for an initial maximum drawdown of £130,000 at the interest rate of 2.69%. Rather than this offer stating that it would expire on 4 April 2022, due to a systems error, it instead said it was valid for 42 days (which would be 19 April 2022).

On 8 April 2022 M2L issued a new mortgage offer, on the same terms as the 8 March 2022 offer, but at the prevailing interest rate of 3.40%. The offer expiry date was 16 May 2022. It was at this point that the issue with the expiry date on the March 2022 offer was identified. BBH said that they were working towards a completion date of 16 April 2022.

However, completion didn't take place on 16 April 2022. On 26 April 2022 BBH confirmed to E that they were happy to proceed with the April 2022 mortgage offer, and on 28 April 2022 sent attachments E required that had been missing from BBH's 26 April 2022 email. On 29 April 2022 (a Friday) M2L received confirmation from E that they had the remaining

outstanding documents from BBH, and a date for completion was fixed for the following Wednesday, 4 May 2022, presumably because Monday 2 May 2022 was a Bank Holiday.

Mrs D complained, saying that she and her solicitors were working towards the completion date of 42 days from 8 March 2022, which M2L was now saying was a mistake. M2L acknowledged there'd been a systems error, but was satisfied that BBH and IFA had been informed of the actual expiry date of the offer. But M2L noted that after 16 April 2022 there were still outstanding documents its solicitors needed from BBH, and so completion couldn't have taken place by that date in any event.

M2L declined to allow Mrs D to switch to the lower rate of interest, but offered £100 for the error on the March 2022 offer. Mrs D didn't accept this, and raised her complaint with our service.

An Investigator looked at what had happened and thought the complaint should be upheld. The Investigator found that M2L could have notified Mrs D's advisers of the earlier deadline in the mortgage offer, but didn't. She was satisfied that completion could have taken place by 16 April 2022. Given this, the Investigator thought M2L should unwind the 3.40% interest rate on the mortgage and instead apply the original rate of 2.69%, reimbursing Mrs D with the monthly interest she'd paid, plus 8% per annum simple interest.

Mrs D accepted the Investigator's findings, but M2L did not and asked for an Ombudsman to review the complaint.

Provisional decision of 16 January 2024 and responses

I issued a provisional decision where I reached the following conclusions.

First of all, I note M2L has accepted that there was an error in the March 2022 offer, which said it would expire after 42 days, when it in fact expired on 4 April 2022. What I have to decide is whether M2L should be bound by that offer, which purportedly showed that it expired on 19 April 2022.

After an initial review of the file, I asked the investigator to obtain BBH's file. That is because we have on file a detailed timeline of events from E, but very little information from BBH. It took some time for BBH to send their file, and unfortunately it contains no correspondence or emails showing what happened from Mrs D's side of the transaction. However, BBH did confirm that Mrs D had accepted the April 2022 mortgage offer, and the evidence from E shows that BBH confirmed to E that Mrs D was happy to accept the offer.

I have reviewed the timeline of events provided by E, as well as M2L's system notes. From these I'm satisfied that on 19 April 2022, three days after the date Mrs D said she wanted to complete, E was still awaiting outstanding documentation from BBH. Although BBH purported to send these to E on 26 April 2022, there was no attachment with the email and so E had to chase this up again and didn't receive the remaining outstanding documents until 28 April 2022.

Overall, the evidence doesn't persuade me, notwithstanding the error made by M2L in saying the March 2022 offer was valid for 42 days, that completion could have taken place within 42 days of 8 March 2022. In the circumstances, even if I had found that M2L was bound by the error in the March 2022 offer, BBH hadn't provided E with all the documents it needed within 42 days of that March 2022 offer in any event.

In the circumstances, I'm not persuaded it would be fair or reasonable to order M2L to be bound to the incorrect 42-day deadline in the March 2022 offer, or to honour the interest rate of 2.69%. This is because I can't see that M2L (or E, as its agents) were at fault in completion not taking place until 4 May 2022.

M2L offered Mrs D a payment of £100 as a goodwill gesture for any upset she may have been caused. I think this is fair and reasonable, and I'm not asking M2L to do anything further.

M2L accepted my provisional decision. Mrs D did not. She has made some further points, which I summarise below.

- it wasn't possible for either solicitor to have completed by 19 April 2022 because discussions were still going on with M2L about its system error and that the interest rate should be 2.69%;
- there were many emails to and from M2L from her solicitor and broker about this;
- her solicitor couldn't send the outstanding documentation until M2L confirmed it would honour the offer at 2.69%;
- because M2L agreed it had made an error with the dates, it's unfair that she should be penalised for this mistake.

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've reviewed the file from the outset, re-visited my provisional decision and taken note of the comments made by Mrs D. Having done so, I'm afraid I have disappointing news for Mrs D; I'm not upholding the complaint.

Mrs D hasn't provided any additional evidence to show that BBH and her broker were negotiating with M2L about the interest rate in the mortgage offer. BBH was asked to provide its complete file, which it agreed to do. Extensions of time were given for this and it took almost three months before the file was received. However, BBH did not provide any emails between themselves and M2L, or the broker, or Mrs D, nor any documentation that covered the period in question, March-May 2022.

In an email to our service dated 17 October 2023, BBH told us:

"The offer dated 8 April 2022 was accepted by our client. We attach a copy of our email to the client, together with a signed copy of the Mortgage Offer.

We can confirm the completion was set by [E], once all required conditions had been complied with. The signed revised offer was received via email on 26 April 2022. Buildings insurance information was received on 28 April 2022 and these documents was forwarded to [E]. Completion was subsequently set for 4 May 2022 – correspondence attached." [sic]

I will note here that there were, in fact, no attachments with this email and, despite us requesting these, the attachments were never sent to us by BBH.

However, I am satisfied that what BBH have told us matches the timeline of events provided by E. This shows that, after 19 April 2022, it was still awaiting buildings insurance information. BBH has told us that it hadn't received this from Mrs D until 28 April 2022.

I also note from E's timeline that BBH told E on 26 April 2022 that it had emailed the insurance documents to E, which would have been impossible if, as BBH has told us, it didn't receive them from Mrs D until 28 April 2022. But in any event, E said that there was no attachment with the email from BBH dated 26 April 2022.

BBH has confirmed that E set a completion date once all conditions had been complied with, and BBH told us that this didn't happen until 28 April 2022, which is what E's evidence also reflects. Overall, I am not persuaded completion could have taken place any sooner than 4 May 2022.

In the circumstances, there is no basis on which it would be fair or reasonable to order M2L to reinstate the interest rate of 2.69% on the lapsed mortgage offer.

Putting things right

I appreciate Mrs D was caused some upset and I note M2L has offered Mrs D £100 compensation, which I am satisfied is fair and reasonable in all the circumstances.

My final decision

My final decision is that, if it has not already done so, more 2 life Ltd trading as Standard Life Home Finance must pay Mrs D £100 compensation in full and final settlement of this complaint.

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 discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 27 February 2024.

Jan O'Leary
Ombudsman