

The complaint

Mr and Mrs R complain that more 2 life Ltd and its solicitors, a firm I'll call E, caused delay which meant their lifetime mortgage application didn't complete in time. This meant that Mr and Mrs R didn't get the mortgage they wanted, which caused them substantial upset and financial difficulty.

What happened

In 2022 Mr and Mrs R decided to sell their property and move to another property. They wanted to use a lifetime mortgage to assist with the purchase and so they consulted a broker, who recommended a mortgage with more 2 life.

The broker submitted an application and following a valuation of the property Mr and Mrs R wanted to buy more 2 life issued an offer on 27 October 2022. The offer was valid for 42 days – that is, until 8 December.

The offer contained a special condition – requiring the conveyancer to “take reasonable steps to verify assumptions by the valuer about the title in the valuation and as stated in the offer is correct”, as well as another condition requiring any incentives Mr and Mrs R would receive from the developer of their new property to be declared.

Mr and Mrs R instructed their solicitors, a firm I'll call H, to proceed and on 17 November H sent the title documents to E for verification. H sent the rest of the required documents including the signed mortgage deed on 23 November. E didn't respond, despite being chased on 6 December and 13 December.

Meanwhile, the mortgage offer had expired on 8 December but more 2 life agreed an extension until 19 January 2023.

The buyer for Mr and Mrs R's old property was pressing them to agree a completion date, because their mortgage offer would expire on 21 December.

On 15 December E said that it had reviewed the title documents and had further queries. H sent some further information on 19 December.

Mr and Mrs R felt they had no choice but to go ahead with exchange and completion of the property sale, because they were concerned that any further delay would result in their buyer pulling out. They were able to complete the purchase without the mortgage, but only by using up all their savings. So they continued with the mortgage process in the expectation they'd be able to complete the mortgage and receive the funds after the purchase had completed.

The purchase of the property completed on 21 December. On 22 and 23 December more 2 life told E that it was satisfied the special conditions were met and the mortgage could go ahead.

However, there was a further difficulty – Mr and Mrs R were not now using the mortgage to

purchase a property, they were mortgaging a property they already owned. But because completion had only just happened, the title entry at the Land Registry had not been updated to show Mr and Mrs R as the owners of the property.

Following the Christmas period, on 4 January, H tried to expedite the registration of Mr and Mrs R as owners at the Land Registry. H also tried to see whether E and more 2 life would agree to release the funds before the title was updated by the Land Registry, without success.

more 2 life said it couldn't complete the mortgage until the Land Registry entry was in Mr and Mrs R's names. It said that the mortgage offer couldn't be extended any further, and to be able to complete in time all checks needed to be completed and funds requested by 13 January. This wasn't possible, so the mortgage offer expired without completing.

Mr and Mrs R complained. They said that more 2 life and E had caused delay, particularly by not replying to H when H originally sent the title information to E in November. Had things happened more promptly then, the mortgage might well have completed at the same time as the property purchase. When that didn't happen, Mr and Mrs R said more 2 life agreed to allow them to proceed after completion – but then refused to go ahead because of the issue with registration at the Land Registry. And even though the offer didn't expire until 19 January, more 2 life brought that forward by insisting everything had to be in place by 13 January.

Mr and Mrs R said they were reliant on the mortgage and only went ahead with the purchase because more 2 life assured them they would be able to complete afterwards. If they were to re-apply now, because of the increase in interest rates in the meantime a mortgage would be much more expensive and the amount they would be able to borrow would be around £60,000 less as a result.

more 2 life didn't uphold their complaint, so Mr and Mrs R brought it to the Financial Ombudsman Service.

I thought it should be upheld, so I issued a provisional decision setting out my thoughts on the complaint and inviting the parties to provide any further evidence or arguments they wanted me to consider.

My provisional decision

I said:

“This case turns on whether it would have been possible to have completed the mortgage by 21 December, the last date by which Mr and Mrs R's buyer required it to happen.

more 2 life says that this was a purchase transaction – and a purchase of a new-build property, which is more complex – and that it generally takes around 8 to 12 weeks for a transaction of that type to go through. It accepts that there was some delay after H sent the title and other documents to E in November, but says that after that it and E expedited matters to make up for that. But there were still queries outstanding on 21 December, the overall time taken was within the timescales expected for a transaction of this type, and ultimately there just wasn't enough time to complete within the timescale imposed by Mr and Mrs R's buyer.

I can't know for sure how long it would have taken to answer those queries had the property purchase not completed in the meantime. However, I think they would have

been answered quickly. Many of the queries related to the property title, which would need to be referred back to the vendor – the evidence shows that previous queries of the vendor's solicitors had been answered immediately. H and Mr and Mrs R had also responded promptly to queries too, knowing time was of the essence. And I note that more 2 life confirmed to E on the 22 and 23 December respectively that it was satisfied that the two special conditions in the offer had been met and the mortgage could proceed.

I'm not therefore persuaded by more 2 life's arguments. It knew from the start that this was a purchase of a new build property – if, as it now says, it expected conveyancing to take at least eight and possibly twelve weeks, it's hard to understand why it issued an offer that was only valid, at first, for six weeks.

And in any case I'm not looking at standard notional timescales, I'm looking at what actually happened in this particular case. In this case, all parties knew time was pressing and worked quickly to try and meet the deadline for completion. They very nearly did so, even though in reality the process didn't get properly underway until E started work on or just before 15 December. Had E started work when it received the title documents on 17 November, or the mortgage documents on 23 November, I think it's more likely than not that if the parties acted with the same urgency they did after 15 December the completion deadline would have been met.

It follows that I'm satisfied that it's more likely than not that but for E's delay between 17 November and 15 December, Mr and Mrs R would have been able to complete the purchase using the mortgage funds rather than their savings.

In carrying out the legal work to give effect to the mortgage offer E was acting on more 2 life's behalf. more 2 life knew that its offer period was less than the timescale E has said is typical for transactions of this sort, and it knew that there was a particular deadline Mr and Mrs R had to meet.

I think it's fair and reasonable to expect that more 2 life instructs its conveyancer to ensure that the time taken to process the legal work to give effect to the mortgage offer is consistent with the deadline of the mortgage offer itself – I don't think it's reasonable to say that it's expected that the legal work will take longer than the mortgage offer is open for.

Although more 2 life did extend the offer into January 2023, all parties were aware that there was a deadline of 21 December for Mr and Mrs R's sale and purchase to complete. By not starting work until around 15 December, E created a situation where that deadline couldn't be met – I'm satisfied it could have been met without that initial delay. And since E was acting on more 2 life's behalf to give effect to the mortgage offer, I'm satisfied it's fair and reasonable to hold more 2 life responsible for that.

Putting things right

Had E acted more promptly when H first sent the required information, I'm satisfied that the mortgage would have completed in time for Mr and Mrs R's purchase. To put matters right, more 2 life should put Mr and Mrs R back in the position they would have been in had that happened.

It could have done this at the time, by agreeing to Mr and Mrs R taking the mortgage in early January 2023 before the offer expired. It refused to do so, because Mr and Mrs R weren't yet registered at the Land Registry as owners of the property. It takes

some time for the Land Registry to register a transaction and amend a title.

Ordinarily, a mortgage lender would not be willing to accept by way of security a charge over a property not in the names of the borrowers – and rightly so.

But this was not an ordinary case. There was not and could not have been any doubt that Mr and Mrs R owned the property and were in a position to agree to a charge over it, even if the charge couldn't have been registered immediately. Recognising the impact of the delay of its agent on them, more 2 life could have agreed to go ahead. There was no substantive risk to the long-term validity of its security, and it could, for example, have proceeded on the basis of a signed mortgage deed and an undertaking from Mr and Mrs R's solicitors that they were expediting the application to the Land Registry and would register the charge as soon as the title was amended. But more 2 life didn't think about how to put right what had gone wrong, it just applied its standard requirements without thinking about whether that was fair in these particular circumstances.

The delay which caused the mortgage not to complete on time, and the failure to take the chance to put it right at the time, means Mr and Mrs R lost out on the mortgage they otherwise would have had. Because interest rates have increased in the meantime, the amount they wanted to borrow, and the interest rate they were expecting, are no longer available to them even if they applied for another mortgage now. So they can't put themselves back in the position they would have been in had nothing gone wrong; that responsibility falls on more 2 life.

That means more 2 life should reinstate the mortgage offer now, or alternatively issue a new mortgage offer on equivalent terms. It says that the particular product it offered is no longer available as it's been withdrawn by more 2 life's funder. But I don't think that's a reason not to put Mr and Mrs R back in the position they would have been in but for the delay. If the particular product more 2 life offered at the time is not available from its current funders, more 2 life may need to fund the mortgage or make up any funding difference itself. Since Mr and Mrs R have already paid for a valuation and legal fees, more 2 life should also ensure that they do not have to bear these expenses again.

I also think that the delay had a substantial impact on Mr and Mrs R. It left them having to choose between pulling out of their sale and purchase, and losing the property they anticipated spending their retirement in, or going ahead and using all the capital they had expected to have available to fund the purchase instead of the mortgage. They chose to go ahead, and I don't think that was unreasonable in the circumstances. But the upset of having to make this decision, and make alternative arrangements, at short notice and the upset of losing the capital they expected to have available was substantial. I think compensation of £650 is fair in all the circumstances."

The responses to my provisional decision

Mr and Mrs R said they had no further information to provide.

more 2 life said that when E wrote to H on 10 November 2022 it set out the documents it required. But when E reviewed what H had sent on 15 December 2022, it found that there were still documents missing. more 2 life said that conveyancing of purchasing transactions can take around five months, and as this was a new-build property it was more complex than normal. It said it was unrealistic to expect to move to completion within a few weeks.

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 also considered again what I said in my provisional decision, and I've taken into account the responses to it. But having done so I haven't changed my mind about the outcome of the complaint.

more 2 life said that H did not include all relevant title documents when it responded to E. I accept that. But that doesn't change the fact that H sent what it did to E on 17 November but E did nothing with it until 15 December. I've said that when queries were raised, H, Mr and Mrs R and the vendor's solicitors all responded promptly. So if E hadn't failed to do anything for a month, I have no doubt this could have been resolved in good time.

I'm not persuaded either by more 2 life's argument that a transaction of this sort should be expected to take five or more months just for the conveyancing. From my experience of the mortgage market and other complaints, that seems to me to be excessive and not reflective of reality – particularly in a relatively straightforward transaction with a minimal chain. In any case, more 2 life knew this was a purchase transaction; if it really expected conveyancing to take five months or more I would have expected that to have been reflected in the duration of the offer it issued, but it wasn't.

And regardless of that, I'm not concerned with notional timescales for a typical transaction, as I said in my provisional decision. I'm concerned with what actually happened in this complaint. All parties knew that time was of the essence because of the deadline for Mr and Mrs R's buyers to complete. Once E actually started work after 15 December, it showed that it could move quickly. The issue in this case is that it wasted a month before doing so – and I don't think it's fair and reasonable that Mr and Mrs R should bear the consequences of the failure of more 2 life's agent to act within a reasonable time. I also bear in mind that even in January 2023, more 2 life had the chance to put matters right by allowing the mortgage to complete after the purchase had gone through, but it chose not to do so.

Putting things right

For those reasons, and the reasons I gave in my provisional decision, I think it's fair and reasonable to expect more 2 life to put Mr and Mrs R back in the position they would have been in had E not caused delay, and had more 2 life not declined to put matters right in January 2023. That means it should make available to them now the mortgage they should have been able to take at the time. I also think that my proposed award of compensation remains fair, for the reasons given above.

My final decision

My final decision is that I uphold this complaint and direct more 2 life Ltd to:

- Issue a new mortgage offer to Mr and Mrs R, for the same amount and interest rate as the previous offer, keeping the offer open for a reasonable time to allow it to complete. Should a fresh valuation be required, it must be at more 2 life's expense.
- Ensure its solicitors act promptly and effectively to enable the mortgage offer to complete by the deadline.
- Pay any reasonable costs Mr and Mrs R are charged by their own solicitors to give

effect to the mortgage. If more 2 life does not pay the solicitors direct but instead refunds payments Mr and Mrs R make, it should add simple annual interest of 8% if the refund is not paid within 14 days of the date Mr and Mrs R make payment. In this eventuality, more 2 life may deduct income tax from the 8% interest element of the refund, as required by HMRC, but it should tell Mr and Mrs R what it has deducted so they can reclaim the tax if they are entitled to do so.

- Pay Mr and Mrs R £650 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 18 March 2024.

Simon Pugh
Ombudsman