

The complaint

Mrs W and Mr W complain that Just Retirement Limited (JR) failed to support them in their legal dispute with a third-party and have declined to provide further borrowing.

What happened

Mrs W and Mr W have a Lifetime mortgage with JR taken out via a broker (who is not subject to this complaint).

Unfortunately, Mrs W and Mr W have experienced a dispute with their neighbours which has led to them owing a significant sum in costs. They think JR should have supported them in this legal dispute and covered the costs in order to protect its security over the property. JR declined to do so, other than responding to queries and carrying out its own check that the dispute did not amount to real risk to its security.

Mrs W and Mr W also asked for further funds from JR to help pay for the outstanding bill. JR appointed a surveyor to carry out a valuation (a cost it absorbed as a goodwill gesture given Mrs W and Mr W's circumstances at the time) but concluded that the application for more funds would exceed its lending criteria. So, it declined the request. It also refused to share a copy of the valuation report with Mrs W and Mr W.

JR also noted that Mrs W and Mr W were renting out part of their property in breach of their mortgage terms and conditions. It advised that Mrs W and Mr W would have to stop renting out the property or have the potential of it calling in the Lifetime mortgage.

Unhappy with JR's response, Mrs W and Mr W referred their complaint to our service.

One of our investigators looked into the complaint but did not think it should be upheld. She found that the dispute in question was over access to the property and therefore not a direct challenge on JR's security. As such, she didn't think it unfair that JR had chosen not to cover the costs of or offer legal support to a private dispute between neighbours.

She also considered JR's decision to decline further lending. She concluded that JR was not obligated to provide further funding. She also noted that it had carried out a valuation to see if it could lend to Mrs W and Mr W but, given the amount of their existing loan (including the compounding interest), she didn't think it was unreasonable for JR to have declined the request.

JR did not raise any objections to the outcome reached by the investigator.

Mrs W and Mr W, via their representative, disagreed with the investigator's outcome. They think JR is obligated to lend as per the original mortgage offer and the charges register. They also maintain that JR should have provided assistance to Mrs W and Mr W with the legal dispute.

As this complaint could not be resolved informally, it has been passed to me for a final decision.

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.

When considering what is fair and reasonable in all the circumstances, I am required by DISP 3.6.4R of the Financial Conduct Authority's ("FCA") Handbook to take into account:

'(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) (where appropriate) what [I consider] to have been good industry practice at the relevant time.'

I also focus on what I think is material and relevant to reach a fair and reasonable outcome. So, although I have read everything that has been supplied to me, I may not address every point that has been raised.

Having done all of that, I don't think this complaint should be upheld. I realise this will come as a disappointment to Mrs W and Mr W at what is an already difficult time. But I hope my explanation below helps them to understand why I have reached this conclusion.

Mrs W and Mr W have unfortunately been embroiled in a neighbourly dispute which has resulted in them being pursued for the third party's legal costs. The outstanding bill being significant. I appreciate how stressful this must have been and still is – and the worry it has and continues to cause Mrs W and Mr W. However, I can only uphold the complaint against JR if I conclude it has made an error or has in some way treated Mrs W and Mr W unfairly.

In considering the dispute with the third party I can see that JR took steps to check with its solicitors whether its security over the property was at risk. As the dispute was primarily over access and the subsequent legal costs, it was advised that its security was not at risk and there was no direct dispute to its charge over the land. As such, it did not take on the legal action for Mrs W and Mr W nor did it offer to cover the costs they were incurring.

While I can understand this was not the answer Mrs W and Mr W were hoping for and it meant that they were unable to rely on JR's legal team, I am not persuaded JR made an error here or treated Mrs W or Mr W unfairly. It is not unreasonable for a lender to remain separate from any private disputes which do not directly challenge its charge over the land. So, it follows that I do not uphold this part of the complaint.

I now turn to JR's decision not to grant any further lending against the property. Mrs W and Mr W's representative considers the mortgage offer and the registered charges to support their position that JR is obligated to lend more money to Mrs W and Mr W. But this is not the case.

It is not uncommon for a mortgage offer to make provision for future borrowing – subject to an assessment of that new borrowing when the application is made. The same applies to when a lender registers a charge over a property – it will often draft the charge in such a way that allows for future borrowing to be made and secured by the same charge. It is important to note however, that drafting a mortgage offer and a charge in such a way that future borrowing *can* be permitted is not the same as binding a lender to making further advances without assessment.

Any request for future funds will be subject to an assessment against the lender's lending criteria and the borrower's circumstances at the time – not doing so would be a breach of the lender's obligations under mortgage regulations. So, it is not the case that JR is obligated or in some way bound to advance further funds to Mrs W and Mr W without first determining if such an application would be in the consumers best interests and meet its lending criteria.

In this case, I can see JR was open to exploring the option of Mrs W and Mr W borrowing more funds if such an application met its criteria. And, given the difficult circumstances Mrs W and Mr W were in, it also covered the cost of a valuation which would ordinarily have fallen to the customer to pay. However, upon receipt of the valuation, JR determined that the application for further borrowing did not meet its criteria – namely, there was not enough equity in the property to support further funds being lent given the valuation that had been returned and the compounding nature of the interest on Mrs W and Mr W's existing borrowing. In light of this, I am not persuaded JR acted unreasonably or unfairly in declining the application.

It is worth setting out that JR is not responsible for the figure the surveyor valued the property at. That is the role of the surveyor and JR is entitled to rely on the expertise of a suitably qualified surveyor. So while I am aware Mrs W and Mr W consider the report to undervalue their property, this is not something I can hold JR responsible for.

I understand JR declined to share the survey report with Mrs W and Mr W. Their representative has said that this has prevented them from appealing the decision and JR has suggested that an appeal would not be worthwhile. While JR has chosen not to share the report itself, it has shared the valuation figure with Mrs W and Mr W's solicitors. Which would enable Mrs W and Mr W to obtain alternative valuations should they choose.

JR has said that if a consumer is able to provide evidence in the form of three recently sold, comparable properties in the area, being of a higher valuation to that produced by its surveyor, it will send such evidence to the surveyor for comment. Should Mrs W and Mr W wish to do this they are free to do so.

Overall, taking everything into account, I am satisfied JR has acted fairly and reasonably in this case.

My final decision

For the reasons set out above, I do not uphold this complaint and I make no award against Just Retirement Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 22 April 2024.

Lucy Wilson
Ombudsman