

The complaint

Mr and Mrs W complain about their mortgage with The Stafford Railway Building Society trading as The Stafford Building Society. They're unhappy it refused an application for further borrowing and believe they've been discriminated against on grounds of their ages.

What happened

Mr W is in his early eighties and Mrs W is in her late seventies. They have a mortgage with Stafford BS which, at the time of this complaint, had around three years remaining on its term and an outstanding balance of around £35,000. It was due to expire by the time Mr W was 85.

Mr and Mrs W asked Stafford BS for further borrowing. They wanted to increase the balance to around £80,000 and increase the remaining term.

Mr and Mrs W have good personal pensions and substantial equity in their property. They therefore believed that they should have no difficulties passing an affordability assessment. However, Stafford BS turned their application down. It said that under its current policy it did not lend to borrowers past the age of 85 – Mr and Mrs W's existing mortgage ended before then, but any extension would go beyond that point.

Mr and Mrs W complained. They didn't think Stafford BS had considered their application fairly. They said they had the means to be able to support the mortgage, and had been discriminated against on the grounds of age. They said they understood that Stafford BS had to take into account the risk of one joint borrower passing away and whether the other could afford the mortgage if that happened – but that could happen at any age, and the risks are manageable and something it should accept as part of its normal business. They said that Stafford BS's approach appeared to be trying to protect them from themselves, as if they could not make rational financial decisions because of their age, which they found offensive. They said that as a result they had incurred costs of around £3,150 in moving to another lender, which they wanted Stafford BS to reimburse. These included an early repayment charge – as well as advice, lending, and legal fees for new borrowing.

Stafford BS said that it had a maximum age limit of 85 – which is higher than most mortgage lenders – and that it had set the limit at that level because of the increased risk of later life lending. It did not agree that it had unlawfully discriminated against Mr and Mrs W.

Our investigator didn't recommend that the complaint should be upheld, so Mr and Mrs W asked for it to be reviewed by an ombudsman. They said that Stafford BS should look at individual cases not apply a blanket restriction. They said that Office for National Statistics (ONS) data shows that death and ill-health are risks at any stage of life, and that while the risks are somewhat higher for customers already in their eighties they are not substantial, and the number of such borrowers is likely to be small. They pointed to other firms that do allow borrowing beyond the age of 85. They reiterated that they had been discriminated against.

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 taken careful account of the points Mr and Mrs W have made, both in their original complaint and in their response to the investigator. But having done so, I'm afraid I'm not persuaded that Stafford BS has acted unfairly.

It's for individual firms to decide whether or not to lend – there is no regulatory or legal requirement to do so. Each firm can decide for itself where its risk appetite lies. This means that one firm may choose to lend where another one does not. This does not mean either firm has acted wrongly or unfairly, it simply reflects that different firms take different views of when to lend. This allows for competition and a range of options in the lending market.

However, there are certain standards that are required. Mortgage lending must come within the regulator's rules on affordability. And decisions on when and when not to lend must be made lawfully – which includes not acting in a way contrary to the Equality Act.

The Equality Act allows financial services firms to use age as a factor in their decision making, but it says that if they do so, and in doing so rely on a risk assessment, that risk assessment should be based on information relevant to the risk from a source on which it is reasonable to rely. The Act also says that even where a firm cannot show that, it would still not be acting unlawfully if it could show that it acted proportionately – proportionality is a complex legal question, but in summary means that the firm has taken the least discriminatory approach to achieving a legitimate aim.

Questions of law, such as whether the Equality Act has been breached or not, are matters for the courts not the Financial Ombudsman Service. It's not therefore for me to say whether Stafford BS has or has not acted unlawfully. But I am required to take into account relevant law, including the Act, in deciding what's fair and reasonable in all the circumstances.

Stafford BS has explained that it set its maximum age limit based on ONS data, concluding that 85 is a reasonable maximum age, beyond which there is increased risk.

Mr and Mrs W have explained why they don't agree – in summary, while they accept that there is increased risk of death or ill health in borrowers over the age of 85, they don't think the risk is substantial or one that Stafford BS should refuse to accept. I've considered what they say. But it's not for me – or for Mr and Mrs W – to decide what Stafford BS's risk appetite should be. Stafford BS is entitled to set its own risk appetite. Mr and Mrs W might not consider the increased risks to be significant, but that is a decision for Stafford BS to make. In doing so, it had regard to demographic data from the ONS, which is clearly data relevant to the risk and from a source on which it's reasonable to rely.

Mr and Mrs W also say that Stafford BS should not have a blanket policy, and should have considered their application on an individual basis – whatever the increased risks in lending to older borrowers in general, they don't apply to their individual situation. I understand their point about this. A blanket policy is a blunt instrument, and not every case will raise the risks such a policy was designed to combat. But Stafford BS is entitled to have lending policies, and to apply them, such that it will only give individual consideration to applications that fall within the policy. That's not unusual or inherently unfair.

Taking all that into account, I'm not persuaded Stafford BS acted unfairly here. Mr and Mrs W were existing customers looking to borrow more money, but even as existing customers it was not obliged to lend to them. It was entitled to have lending policies, and to apply those

policies to Mr and Mrs W's application. Taking into account its legal and regulatory obligations, including the Equality Act, I'm not persuaded that doing so was unfair in all the circumstances of this complaint. It follows that Stafford BS is not responsible for any costs they incurred in seeking lending elsewhere.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 7 January 2025.

Simon Pugh
Ombudsman