

The complaint

This complaint's about a mortgage Mr L used to hold with Clydesdale Bank Plc trading as Virgin Money (hereafter referred to as Virgin). Earlier this year, Mr L applied for a new mortgage to buy another home, hoping to port the interest rate product from the existing mortgage to the new one. However, Mr L's application for a new mortgage with Virgin was turned down, because the new-build house he was proposing to buy didn't meet Virgin's lending criteria on acceptable property. He ended up taking a mortgage with a different lender at a higher interest rate; meanwhile he incurred an early repayment charge (ERC) on redemption of the Virgin mortgage.

Mr L complained that the decision to refuse him a new mortgage was unfair.

What happened

I don't 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 Mr L 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.

Mr L took the mortgage out in 2021; it was for just over £130,000 inclusive of fees, on an initial interest rate of 1.37% fixed until December 2026. At the beginning of 2024, Mr L applied to Virgin for a new mortgage to fund the purchase of a new property; his objective was to port the fixed rate product from the existing mortgage to the new one. Virgin issued a decision in principle for the amount Mr L wanted to borrow, and an application was started.

However, when the proposed new property was referred for valuation, it was discovered that the new-build warranty was in a form that doesn't meet Virgin's lending policy. As he was an existing customer, the case was referred to underwriters for consideration as an exception to normal lending policy. Unfortunately, the appeal was unsuccessful, and Virgin rejected the application,

Our investigator didn't recommend the complaint be upheld. He thought Virgin had considered the porting request fairly and in accordance with its lending policy.

Mr L remain unhappy so the case has come to me for review.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference

from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've set out my conclusions and the reasons for them below.

My starting point here is that no one is entitled to borrow money; and even when they've borrowed before, they're not automatically entitled to borrow again and a lender isn't obliged to lend again. But a lender must treat customers fairly. In the context of an application for a new mortgage, that means assessing it in accordance with the bank's lending criteria and being mindful of what mortgage regulation requires of it, which includes considering what is in a customer's best interests.

Lenders' criteria are commercially sensitive and not generally made public. That said, under the Consumer Duty introduced by the FCA in July 2023 a lender needs to provide an explanation that supports a consumer's understanding of why their application has been declined. In my view, Virgin met that obligation here. It communicated its decision to Mr L as soon as it reasonably could have done, and in a manner that I'm satisfied would have supported Mr L's understanding, even though he clearly didn't agree. Considering all of the circumstances, I think Virgin assessed Mr L's application for a new mortgage fairly.

The fact that another lender was prepared to lend Mr L the money he wanted to buy another property has no bearing on the fairness or otherwise of Virgin's decision not to lend. Every lender's appetite for risk is different, and this will be reflected not just in the different criteria they apply to their lending decisions but also to the interest rates they charge. The issue in this case was that Mr L's proposed new property was a new build. New build properties generally require a building warranty to insure against defects in construction. There are various warranty providers in the market – only some of which are acceptable to Virgin.

That's not unreasonable, because its loan would be secured over the property and if any problems with the property were to emerge which affected its re-sale value, Virgin might not be able to recover its loan. So it requires an acceptable insurance policy to be in place. It's also reasonable for it to accept warranties from some firms but not others, depending on the terms offered by individual insurers. In this case the warranty provider was not one of the firms on the list acceptable to Virgin, so it declined to lend on the property.

In addition, the warranty was in a format that Virgin would only accept for single dwelling buildings – not flats in blocks like the property Mr L wanted to buy. I don't think it was unfair for Virgin to have, and apply, a policy about which types of warranty, and provider, it would and wouldn't accept. And I'm satisfied Virgin made this clear to Mr L once it understood what the warranty was – as I think it ought fairly to have done. Virgin also refused Mr L's request to upgrade the warranty, because retrospective warranties carry additional risks it doesn't accept – again, this is not unfair.

Mr L says that Virgin should have made all this clear before he applied. But it didn't know there was an issue until it assessed the specific property he applied to borrow against – there are many different factors it takes into account in deciding whether to lend, which change from time to time – not just warranties, but many other considerations too. It wouldn't be practical to go through every individual one and warn customers about them during an initial consultation.

The effect of this was that Mr L was left with the choice of finding another property acceptable to Virgin, or keeping this property and moving to another lender which would accept the warranty. Mr L chose to move to another lender.

A consequence of Mr L not being accepted for a new mortgage with Virgin, and deciding to move elsewhere, was that the existing mortgage with Virgin was repaid when Mr L sold his former home without a new Virgin mortgage taking its place. With no new mortgage available to port the terms of the fixed rate onto, an ERC was charged on redemption of the old mortgage. As Virgin fairly assessed Mr L's new application, charging the ERC in these circumstances wasn't unfair.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from her submissions how important this is to Mr L. That's a natural reaction, and entirely understandable when you're as close to a situation as she is here.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome. Having done that, and having considered everything that both parties have said and provided, I don't find that Virgin has treated Mr L unfairly.

My final decision

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 December 2024.

Jeff Parrington
Ombudsman