

## **The complaint**

Mr and Mrs H complain that more 2 life Ltd withdrew an offer for a lifetime mortgage and re-issued it at a much higher interest rate. They say that this means they'll pay up to £400,000 extra interest over the term if they take a mortgage at rates available now.

## **What happened**

Mr and Mrs H decided to apply for a lifetime mortgage to raise funds to gift to family. They applied to more 2 life via a mortgage broker. more 2 life told their broker that it would hold open a 4% interest rate as long as a full application was submitted by 6 July 2022.

Mr and Mrs H's property had experienced subsidence in the past and had been underpinned. The works had been completed some years ago. more 2 life said that it would be willing to lend in those circumstances, provided there was a certificate of structural adequacy.

Mr and Mrs H's mortgage adviser submitted the application to more 2 life on 6 July 2022, in time to secure the 4% rate.

Following the application more 2 life instructed a valuer to value the property. The valuer found internal and external cracking, and said that the property wasn't suitable security for the mortgage until this had been investigated by a structural engineer. more 2 life told the broker that rather than decline the application it would hold it open for a report to be obtained.

Mr and Mrs H instructed a structural engineer. The engineer reported no major structural problems beyond those expected of a house of this age and type. But the report said that further possible issues with drains, lintels and vegetation close to the property should be investigated.

more 2 life sent the report to the valuer, who said that these issues needed to be addressed before the property could be considered suitable for lending. more 2 life said that any works needed would have to be carried out before it would release any mortgage funds.

Mr and Mrs H thought that more 2 life were causing unnecessary delays and making unreasonable requests. But more 2 life said it couldn't go ahead until the valuer said that the property was acceptable security for the lending.

Mr and Mrs H say that more 2 life told them on 15 August that the 4% rate would still be available to them.

A further report confirmed there was no issue with the drains. Mr and Mrs H arranged for replacement lintels to be installed. more 2 life said that once the work had been carried out and the structural engineer was satisfied it would be able to progress the application. The work was completed on 21 September and an updated report sent to more 2 life on 27 September 2022.

On 3 October, the broker spoke to more 2 life to check that the 4% rate was still available to Mr and Mrs H. more 2 life said it was, it had been secured by the application in July and there was no deadline for moving from application to offer.

more 2 life issued a mortgage offer dated 14 October 2022, offering to lend Mr and Mrs H £980,000 as a lump sum at an interest rate of 4% fixed for life.

On 18 October more 2 life got in touch with Mr and Mrs H's mortgage adviser. It told them that the offer had been issued with the wrong interest rate and would be withdrawn. more 2 life issued a new mortgage offer at a rate of 7.16% fixed for life.

Mr and Mrs H complained. They said they and their broker had been assured several times that more 2 life would keep the 4% rate open. It wasn't fair that it had gone back on what it said and withdrawn the offer. They said that more 2 life should have issued an offer when they first applied in July, and should have honoured its later assurance to keep to the 4% rate. And having issued an offer, it should not then have withdrawn it and replaced it with one at a higher interest rate.

Mr and Mrs H said that the work more 2 life required to be carried out was trivial, costing less than £1,000, and should not have been used to hold up their application. more 2 life had told them in the original illustration that it would make a legally binding offer, had given them several undertakings about the rate, and then gone back on its word. To put things right, they wanted more 2 life either to reduce the interest rate to 4% as agreed, or to pay them the £350,000 to £400,000 they estimated the higher rate would cost them over the life of the mortgage.

I have issued a number of provisional decisions in this complaint, following which both parties have provided substantial further evidence and argument – leading me to revise my views on how to put matters right.

### **My first provisional decision**

In summary, I said:

- There are two key issues in this complaint, to my mind – was it reasonable for more 2 life to require works to be carried out on Mr and Mrs H's property before it would consider lending; and, secondly, if so, was it reasonable for more 2 life to withdraw the 4% offer and replace it with a 7.16% offer.
- I was satisfied it was reasonable for more 2 life to raise the issues it did. Mr and Mrs H's property would be security for its loan. As part of deciding whether to lend, it's standard to instruct a valuer to inspect a property and check it's good security for the loan. The valuer advised that certain steps needed to be taken before he could be satisfied the property was good security for the lending. It was reasonable for more 2 life to rely on the valuer's professional opinion.
- However, I wasn't persuaded that more 2 life acted fairly in the offer of lending that followed. Mr and Mrs H's broker was told that the 4% rate would be secured as long as the application was submitted by 6 July – which it was. Mr and Mrs H and their broker checked with more 2 life several more times that the 4% rate was secured, and were assured that it was.
- more 2 life offer different products, one of which is the Capital Choice product – the one Mr and Mrs H applied for. more 2 life said at the start that the 4% rate would be secured on application. It later reassured Mr and Mrs H and their broker that it had

been.

- more 2 life gave several assurances about this. It made clear that the rate was secured on application, and there was no deadline for an offer being issued following an application being submitted – there was no maximum “application to offer window”.
- more 2 life now says this was mistaken. The rate was not secured on application. An offer would be issued dependent on the rate available on the day it was issued. So the reassurances to Mr and Mrs H and their broker were mistaken and more 2 life was mistaken in issuing an offer at 4%. more 2 life says that that offer should never have been issued because that rate was no longer available and therefore it was fair to withdraw it and replace it with an offer at the correct rate.
- I wasn’t persuaded that what more 2 life now said was correct. I was satisfied that the evidence showed that there was in fact no maximum application to offer window.
- On balance, I wasn’t persuaded that more 2 life was mistaken at the time when it said that the 4% rate was secured on application. I think it’s more likely than not that this was the Capital Choice feature available at the time, and therefore that in getting their application in by 6 July Mr and Mrs H did secure that rate – regardless of the time it took for the application to move to offer stage (the application not having been declined in the meantime).
- I was therefore satisfied that in issuing an offer at 4%, more 2 life acted correctly – its mistake was not issuing that offer, but withdrawing it.
- In the circumstances, therefore, I didn’t think withdrawing the 4% offer and substituting it with one at 7.16% was fair and reasonable.
- To put matters right, more 2 life should reinstate that offer now, allowing Mr and Mrs H the standard 42 days – extendable for a further 42 days – to complete. If, because of the passage of time, a fresh valuation of the property is required that should be at more 2 life’s expense.
- I said that withdrawing the offer caused Mr and Mrs H substantial upset. It left them in the position that they didn’t feel able to go ahead with the revised offer on the grounds that the interest rate was too high. It also meant that they could no longer go ahead with their plans to gift money to family. I can’t consider the impact of that on their family members, as they are not party to this complaint. But not being able to make their planned gifts would have caused Mr and Mrs H upset and embarrassment. more 2 life should therefore compensate Mr and Mrs H for their distress and inconvenience – I think £600 is fair in all the circumstances.
- I considered Mr and Mrs H’s alternative proposal, that more 2 life pay them between £350,000 and £400,000 instead, their estimate of the extra interest they would have to pay if they took a mortgage with a different lender now, compared to what they would have paid at 4% with more 2 life, over the life of the mortgage. But I wasn’t persuaded that would be a fairer outcome. Reinstating the mortgage puts them back in the position they would have been in had nothing gone wrong.
- Paying them a cash lump sum now, as an alternative, is not in my view a fairer outcome. It is speculative, because it depends on what alternative interest rate Mr and Mrs H could secure from another lender and, more importantly, on how long they

would have the mortgage for – it's a lifetime mortgage and while their life expectancy can be estimated it's not possible to be certain about that. Where the original lending can't be reinstated an estimate based on life expectancy might be fair compensation as the best available alternative – but it's not ideal and risks over-compensating them (if they don't live as long as their life expectancy) or under-compensating them (if they live longer).

I therefore concluded by saying that I was provisionally minded to direct more 2 life to:

- Reinstatement of the 14 October 2022 mortgage offer, offering to lend £980,000 at 4%, keeping the offer open for 42 days extendable to 84 days to allow Mr and Mrs H to complete.
- If more 2 life required a fresh valuation before issuing an offer, it should be at more 2 life's expense. But the outcome of any valuation should not be used to reduce the amount offered unless it relates to a defect in the property that has arisen since the last valuation.
- Pay Mr and Mrs H £600 compensation.

### **The responses to my first provisional decision**

Mr and Mrs H were grateful that I proposed to uphold their complaint. They asked that I clarify that as well as lending the amount and interest rate set out in the 14 October 2022 offer, more 2 life would not be permitted to add additional terms or conditions which were not in that offer. They also asked that I consider requiring more 2 life to reimburse the wasted legal fees they had incurred, which amounted to £4,027.

more 2 life did not accept my provisional decision. It sent a detailed response making a series of further points. For the avoidance of doubt I have carefully considered everything it said in full. In summary, it said:

- My proposed outcome is wrong in law and not fair and reasonable in all the circumstances.
- In respect of my findings on the initial investigations and lending decision:
  - It noted that I had accepted it had acted reasonably in requiring further investigations and repair work on Mr and Mrs H's property before making an offer.
  - It emphasised that the time taken from application to offer in this case was unusual and outside the norm – taking three months rather than the more typical 10 days. This was due to the potential structural issues identified by the surveyor and the need for further investigation.
  - During this period, there were significant unexpected changes in the wider economic and market outlook.
- In respect of the factual background leading up to the withdrawal of the 4% offer:
  - more 2 life said that its business model is that it does not lend from its own resources. Its lending is funded by a number of third party funders. Those funders dictate the lending terms and interest rates that apply.

- At the time of Mr and Mrs H's application all but one of more 2 life's funders specified that an interest rate would only be available for 42 days from initial application. If an offer was not issued in that time, the rate applied for would no longer be available and any rate offered would be the prevailing rate at the time of offer.
- The exception to this was the funder of the Capital Choice product Mr and Mrs H applied for. That funder did not specify, and had never specified, a validity period. The information given to us by its case handler that there was a 42 application to offer period, which I referred to in my provisional decision (and found was not in fact the case) was incorrect. more 2 life apologised for providing this incorrect information.
- At the time of the application, and at the time of the later conversations between more 2 life and Mr and Mrs H and their broker, therefore, there was no application to offer window for securing a rate. more 2 life therefore explained the correct position at the time and had no reason to believe that would change.
- The nature of lifetime mortgages – in particular, that interest rates are fixed for life – means that setting interest rates is more complex and more sensitive to market conditions than standard mortgages with shorter fixed rate terms.
- At the time of the application in June 2022, more 2 life confirmed to the broker that, subject to valuation and underwriting and provided the application was finalised by 6 July, "we will honour the rate of 4.00%". This was because the Capital Choice interest rate had just risen to 4.29%, and more 2 life was therefore confirming that the application would proceed at 4% rather than 4.29% provided it was submitted promptly.
- However, this was not a guarantee that Mr and Mrs H could reasonably rely on, either that more 2 life would in due course make them an offer, the rate applicable to such an offer, or that if made an offer would not be withdrawn before acceptance.
- The application was made by 6 July and more 2 life issued an illustration in the format prescribed by the regulator. The illustration clearly stated that:
  - It was not a binding offer
  - It was only valid on the day it was produced
  - It did not oblige more 2 life to provide the illustrated mortgage to Mr and Mrs H
  - It was subject to valuation and the outcome of the valuation could change the illustration.
- Mr and Mrs H would have understood, and should have been advised by their broker, that following the illustration more 2 life had not made a legally binding commitment to offer them that or any other mortgage.
- Following further contact, in August 2022, more 2 life again confirmed that despite the issues with the valuation, an offer at 4% should be available if the issues were resolved.
- However, this contact was not an "unqualified assurance" that Mr and Mrs H

would be guaranteed an offer at 4%. more 2 life had not made a legally binding commitment to offer Mr and Mrs H a mortgage, at 4% or otherwise.

- The government's mini-budget of 23 September 2022 was followed by rapid changes in the lifetime mortgage market. Many products were withdrawn and where they continued to be available interest rates increased quickly and significantly. In the month following the mini-budget, interest rates on the Capital Choice product increased by 2%.
  - The phone conversation of 3 October, referred to in my provisional decision, was accurate at the time it took place. There was at that time no application to offer window for Capital Choice products.
  - However, the Capital Choice funder then changed its policy. It increased interest rates for new applications and introduced a 42 day application to offer validity window – meaning that a quoted rate would only be valid if an offer was made within 42 days of an application. This brought Capital Choice into line with products offered by more 2 life's other funders.
  - Mr and Mrs H had applied for their mortgage more than three months earlier. This was outside the new 42 day window and therefore the 4% rate they had applied for three months earlier could no longer be offered. By this time, new Capital Choice rates were over 7%.
  - more 2 life produced a mortgage offer at 4% on 14 October 2022. The offer clearly stated that "This Offer of Loan is valid for the period of 42 days from the date shown above. However, we may withdraw this Offer before that date if you have not accepted it". It was clear that the offer was not binding on more 2 life or Mr and Mrs H until accepted and could be withdrawn at any time.
  - That offer was issued by mistake. It should never have been issued. The interest rate of 4% was no longer available to Mr and Mrs H.
  - Although the offer was dated 14 October, it wasn't sent to Mr and Mrs H's broker until 17 October. One day later, on 18 October, more 2 life notified the broker that the offer contained the incorrect interest rate and would need to be withdrawn. more 2 life would offer Mr and Mrs H a mortgage at 7.16%, not 4%.
- In respect of my provisional conclusions, more 2 life said:
    - My provisional decision was based on a fundamental misunderstanding of more 2 life's position.
    - At the time of the application, the Capital Choice funder did not specify an application to offer window. So more 2 life reasonably believed that the rates quoted would remain valid for a reasonable period of time.
    - As such, the comments made to Mr and Mrs H and their broker between the application and 3 October were correct at the time they were made.
    - more 2 life's mistake was in issuing the offer on 14 October at a rate that was no longer valid. As soon as it discovered the error it withdrew the offer.

- I concluded that this was not fair and reasonable. more 2 life does not agree.
- The economic conditions which led to the funder's changes were unprecedented and could not have been foreseen.
- Requiring lenders to honour rates applied for in such circumstances would severely disrupt the operation of the mortgage market and place all risk on lenders such as more 2 life. As such it is a dangerous precedent.
- It is also wrong in law to suggest that a rate intimated on a non-binding basis three months earlier must be honoured.
- The illustration was clear that it was non-binding. Mr and Mrs H acknowledged that, and acknowledged that more 2 life could decline their application, when they signed the application form. No doubt their broker advised them of this too.
- more 2 life's comments between July and 3 October did not create an obligation to honour the rate. They were qualified and did not guarantee a mortgage would be offered, and were true and accurate at the time they were made.
- I have placed undue weight on the 3 October call. No legally binding offer had been made, and no guarantee that one would be made had been given either. Nor was there an express guarantee that 4% would be offered regardless of timescales. more 2 life said the rate would remain at 4% unless "the case gets formally cancelled or declined for whatever reason".
- The offer was not binding and said on its face that it could be withdrawn at any time. It is not fair and reasonable to require more 2 life to honour it merely because it was issued.
- As a matter of settled contract law, an offer can be withdrawn at any time before it is accepted. I should follow that legal principle or explain why I am departing from it. To depart from it would be unlawful.
- Even if more 2 life's comments were incorrect, or should not have been made, Mr and Mrs H would not have been able to secure a rate of 4% elsewhere in the market by this time. Had they applied to any other lender, their application would have taken much the same time because of the issues with the property. more 2 life is not aware of any other lender that guarantees rates on application. So Mr and Mrs H would always have ended up in the same position – taking a rate applicable in October, not June – whatever happened.
- There was no negligent mis-statement and no legal causation between any action of more 2 life and any loss Mr and Mrs H have claimed. Mr and Mrs H would not have a valid legal claim against more 2 life and I should take that into account.
- On the question of my proposed redress, more 2 life said:
  - It is not possible for more 2 life to do what I propose. more 2 life does not lend from its own resources. It can only pass on what funders make available; since this mortgage is no longer available more 2 life is not in a position to

comply.

- My proposed award amounts to an order of specific performance, which is only available in cases of breach of contract. It cannot be in dispute that there has been no breach of contract in this case – as there was no contract in the first place. As such no court would award this as a remedy.
- The only ways to achieve what I proposed would be for Mr and Mrs H to be advanced a loan at current interest rates with more 2 life making up the difference each year for the life of the product; or by way of a lump sum payment. A lump sum payment is problematic for the reasons I identified. And it would be grossly unfair to impose an open-ended commitment to pay annual compensation on more 2 life. It's likely that this would also exceed the Financial Ombudsman Service's maximum award limit.
- Mr and Mrs H have not obtained an alternative mortgage, either from more 2 life or any other lender. They have not therefore suffered any identifiable financial loss. At most, they have lost an opportunity to obtain a mortgage at a lower interest rate than they might otherwise have done. And even this is not a loss, since Mr and Mrs H would not have been able to obtain such a rate given economic conditions at the time. Their predicament is the result of changes in market conditions, not because of any failure by more 2 life. That is not something for which more 2 life should be required to compensate them.
- However, more 2 life recognised that Mr and Mrs H's customer journey is not what it would have wished for and that making and then withdrawing the offer would have caused them some distress. It said that if I was minded to uphold the complaint the appropriate award would be compensation in the range of £2,500 to £5,000 but not a requirement to offer them a mortgage or compensate them for a higher interest rate.

Following more 2 life's response, I noted that it had changed its position on the complaint. It now accepted that the Capital Choice product did involve securing a rate on application with no application to offer window, and that what Mr and Mrs H were told about that up to 3 October was correct at the time – but that between 3 and 14 October the funder changed its position.

I therefore asked more 2 life to provide evidence to show that was the case. I noted that more 2 life had previously told us that there was no documentary evidence of the funder's lending criteria at the relevant times, but said I didn't think that was likely to be the case given the detailed account it had now given of the change. I therefore asked more 2 life to provide me with the evidence it had relied on in responding to my provisional decision – and to confirm the exact date the criteria had changed and what transitional arrangements for applications already in progress had been put in place.

In reply, more 2 life sent me three documents:

- 1) An update to its lending criteria dated 3 October 2022. This confirms that there were no changes made to the Capital Choice product on this date.
- 2) A further update to its lending criteria dated 17 October 2022. This said that interest rates had been increased on 13 October and certain products in the Capital Choice range would be withdrawn from 19 October. This document introduced a new requirement (emphasis in original):



**“Applications must reach offer stage within 42 days or the application will be removed to the prevailing rate or we reserve the right to remove the product”**

- 3) A further update dated 18 October 2022 announcing interest rate increases from 19 October. This version also included the 42 day application to offer window introduced in the 17 October document.

I then issued a further provisional decision dealing with the further arguments more 2 life had made.

### **My second provisional decision**

In summary, I said:

- Following my first provisional decision and the responses to it, there were now three questions for me to consider:
  - 1) Did more 2 life act fairly and reasonably in issuing and then withdrawing the 4% offer?
  - 2) If not, did that result in Mr and Mrs H suffering any loss or detriment?
  - 3) If so, what is fair redress?
- At the time Mr and Mrs H applied for their mortgage there was no restriction on the time by which an application had to be completed and reach offer stage, and by submitting their application by 6 July they had secured the 4% rate. Given the issues raised by the valuation, it wasn't unreasonable that more 2 life wasn't in a position to issue an offer before it in fact did so on 14 October.
- In its response to my first provisional decision, more 2 life focussed on its understanding of the legal position. Relevant law is an important factor for me to take into account – but it is not the only factor, and I am not bound to follow the legal position, or reach the same outcome a court would, if I don't think that would result in a fair and reasonable outcome in all the circumstances.
- I agreed with more 2 life that as a matter of law and regulation it was not bound by the offer it issued on 14 October. Ordinary settled contract law says that a contract is only created once an offer has both been made and accepted, and that prior to acceptance a party can amend or withdraw an offer. I agree, therefore, that more 2 life did not act in breach of contract when it withdrew the offer. Nor, in respect of the rules specifically applying to lifetime mortgages, did it act in breach of the regulator's rules.
- The relevant lending criteria, as set out by the funder, for the Capital Choice product that Mr and Mrs H applied for were that an interest rate was secured on application. Once secured on application then – subject to valuation and other underwriting matters – if the application was accepted and an offer issued, the offer would be at the rate secured on application, regardless of the length of time between the application being made and the offer being issued. Unlike more 2 life's other products there was no 42 day limit between application and offer. more 2 life's response to my provisional decision confirms that these findings were correct.

- So more 2 life had not acted in breach of contract in withdrawing the offer. Rather, more 2 life had not correctly applied its own lending criteria and should not have withdrawn the offer – and, in those circumstances, it would be fair and reasonable for it to be reinstated.
- more 2 life's funding model is not relevant to my decision. Mortgage lenders raise the funds they lend in all sorts of different ways. But more 2 life itself – not any funder it raises funds from – is the lender. more 2 life is the other party to the contract with borrowers; more 2 life is the regulated entity; more 2 life makes the lending decisions. more 2 life is the lender. Any separate agreement it has with its funders about how it will use the funds provided by the funder no doubt informs the choices more 2 life makes about when and how to lend. But those agreements do not substitute the funder for more 2 life; more 2 life is the lender. And as such, more 2 life has obligations to act fairly and reasonably – regardless of how it raises the money it lends or any separate agreement between it and those it raises the money from. more 2 life is not required to accept any application or lend to any applicant. But in making its lending decisions it should act fairly – which in my view includes making consistent decisions informed by its own criteria.
- The further evidence more 2 life provided following my first provisional decision shows that there was no 42 day application to offer window at the point Mr and Mrs H applied for the mortgage. And the evidence also shows that such a window was later introduced, in the 17 October document.
- I had no evidence that the 42 day limit was in place before 17 October. Based on the evidence I did have, I thought it most likely that this policy was introduced on 17 October. And that is three days after more 2 life issued the first offer.
- The first mortgage offer, at 4%, was dated 14 October, three days before the change. Even if it wasn't actually sent to the broker until 17 October, the fact is that more 2 life had completed the application and underwriting stage and moved to the offer stage on 14 October. As at that date, the 42 day limit had still not been introduced. The 42 day limit was only introduced on 17 October – after more 2 life had moved to offer on Mr and Mrs H's mortgage – and therefore wasn't of relevance to Mr and Mrs H's application.
- I wasn't therefore persuaded that more 2 life made a mistake in issuing the 4% offer on 14 October. more 2 life's mistake was not issuing that offer, it was withdrawing it. The restriction that applications must reach offer within 42 days was not in force when Mr and Mrs H's application reached the offer stage. more 2 life's lending criteria do not say that this change was retrospective or that offers previously issued would now be withdrawn as a result of the change; I thought the document was clear that in referring to "pipeline" cases the change only applied to applications which had not yet reached offer.
- Therefore the change of rule didn't apply to Mr and Mrs H, their application having already moved to offer, and so there was no need for more 2 life to withdraw the offer when the rule came into force. Doing so was not required under the lending criteria, and in fact was contrary to the criteria in force at the time the offer was issued.
- I was therefore satisfied that more 2 life's mistake wasn't issuing the offer on 14 October, it was withdrawing it on 17 October. That withdrawal was based on a change to pre-offer rules which were not in place when Mr and Mrs H's application moved to the offer stage. In other words, more 2 life acted against its own lending

criteria when it withdrew the offer.

- As a matter of law and regulation more 2 life was entitled to withdraw the offer. It was not obliged to lend to Mr and Mrs H even once it had issued an offer unless and until it was accepted by Mr and Mrs H – which hadn't happened when it was withdrawn. And I agree that as a matter of law and regulation there was no obligation on more 2 life to honour the 4% interest rate.
- But just because more 2 life is legally entitled to do something, it does not *automatically* follow that doing so is fair and reasonable. more 2 life's focus on the legal position in its response to my provisional decision was based on a misunderstanding of my provisional decision – in that I did not conclude that it had acted unlawfully, I concluded that it had acted unfairly.
- In my view, withdrawing the offer in these circumstances was not fair and reasonable. Nothing in the regulator's rules relating to equity release mortgages<sup>1</sup> requires an offer to be binding on the lender before acceptance, or says that it cannot be withdrawn. But in addition to the specific rules on equity release, more 2 life also has wider obligations, including regulatory obligations, to act fairly and have regard to the interests of its customers. That these provisions exist in addition to the law, and that the rules of the Financial Ombudsman Service require me to determine what is fair and reasonable taking into account (but not necessarily following) the law, show in my view that there may be times when a firm is acting *lawfully* but nevertheless not acting *fairly*.
- I concluded that this was one of those situations. There are many reasons a lender has lending criteria – including to ensure that it lends responsibly and within the rules, but also to ensure that it considers applications fairly and consistently. Withdrawing a mortgage offer and replacing it with one at a much higher interest rate when there was no need to do so (and doing so was not line with its lending criteria) does not in my view show that more 2 life acted fairly, having regard to the best interests of Mr and Mrs H.
- When Mr and Mrs H's broker recommended the Capital Choice product, this was one of the features that formed part of the product. It's clear that securing the interest rate was a key concern for Mr and Mrs H from the start, and their broker had a series of discussions with more 2 life to reassure them about that. As a result of those assurances they'd continued with their more 2 life application rather than considering applying to other lenders; had they done so even in September once the issues with the property had been resolved they would have secured a better rate than the one in the 18 October offer. But instead, Mr and Mrs H continued with their more 2 life application, on the understanding that the 4% rate would still be available to them.
- But it was relevant to note that more 2 life was not obliged to lend to Mr and Mrs H. The 4% offer was not legally binding, and more 2 life was legally entitled to withdraw it. The application had been ongoing for several months, and wider economic circumstances can affect the viability of mortgage lending. Had more 2 life actually changed its lending criteria before 14 October because of difficulties in securing funding, I might potentially have thought differently. But that's not what happened.
- Rather, in this case, more 2 life knew that Mr and Mrs H were relying on their

---

<sup>1</sup> The relevant rules are found in chapters 8 and 9 of the MCOB section of the Financial Conduct Authority's Handbook - <https://www.handbook.fca.org.uk/handbook/MCOB/>

understanding that the 4% rate remained available to them. more 2 life's lending criteria had not changed by the time the offer was issued; that change happened a few days later. When the criteria did change, it was at most for pre-offer cases only, but Mr and Mrs H had already had an offer issued.

- In those circumstances, withdrawing the offer meant that more 2 life was not acting in line with its lending criteria and lending policy. Mr and Mrs H's understanding that they would get the July rate meant that they didn't look elsewhere in September and ended up, after 18 October, being offered a worse rate than they would have got had they looked elsewhere. more 2 life's failure to apply its lending policy correctly, recognising that Mr and Mrs H had moved to offer before the 42 day limit was introduced, meant that it mistakenly withdrew the 14 October offer. And in turn that had a substantial impact on the cost of mortgage lending Mr and Mrs H would be able to obtain.
- In my view, withdrawing the offer in this way, in a way not in accordance with its own policy, was not fair and reasonable in all the circumstances. more 2 life may have been legally entitled to withdraw an offer that it was not bound by to replace it with one at a higher interest rate – but in doing so in error, not in accordance with its lending criteria, and without good reason, it did not take account of Mr and Mrs H's best interests and that did not result in fair treatment.
- The consequence of that was that Mr and Mrs H could no longer withdraw equity from their property, or could only do so at a more expensive interest rate than would have been the case had more 2 life not withdrawn the offer. I was satisfied that as a result they incurred actual or prospective financial loss and material distress and inconvenience, and that as such it's appropriate for me to make an award in this case.
- I was also satisfied that requiring more 2 life to reinstate the offer was a direction, not a money award. It does not require more 2 life to pay compensation to Mr and Mrs H or give them money; it requires it to lend them money, and so creates a liability not a benefit for Mr and Mrs H, albeit a liability on more favourable terms than they would otherwise get. As a direction, it does not fall under the Financial Ombudsman Service's maximum award limit – which applies only to money awards.
- more 2 life said it can't reinstate the offer, because this mortgage is no longer available from the funder. I didn't think that is a relevant consideration. Mr and Mrs H's application wasn't to the funder, and the funder wouldn't have been their lender. Their application was to more 2 life. more 2 life would have been their lender. more 2 life is the regulated firm which made the error and is responsible for putting it right. It is more 2 life, not the funder, that is required to put matters right for Mr and Mrs H. If more 2 life can no longer obtain funds from this funder to reinstate the mortgage, it will have to obtain them from another funder – or lend from its own resources.
- I wasn't persuaded that it was relevant that Mr and Mrs H haven't obtained another mortgage in the meantime. They've pursued this complaint, with a view to having this mortgage reinstated, ever since more 2 life withdrew the offer. In circumstances where they were actively pursuing a complaint to get matters resolved, and taking an alternative mortgage would have made putting things right more complicated and expensive (potentially requiring more 2 life to pay additional interest and an early repayment charge to an alternative lender as well as reinstating this mortgage, for example), I didn't think it could fairly be said that they've failed to mitigate their losses – or that in choosing to complain rather than take another mortgage they've not

suffered a financial loss.

### **The responses to my second provisional decision**

Mr and Mrs H said they had no further comments to make themselves. They were concerned that more 2 life was raising further arguments at each stage to delay resolution of their complaint.

more 2 life reiterated that it didn't agree with my proposed outcome. It made further arguments in response to what I had said in my second provisional decision, supplementing the arguments it had made in response to the first. It said:

- I had proposed to uphold the complaint despite accepting that more 2 life had acted within its legal rights – and in doing so accepted that my decision is contrary to law.
- I had also accepted that there were no specific regulatory requirements which prevented more 2 life withdrawing the offer.
- more 2 life does not accept that it made a mistake in withdrawing the 4% offer, the mistake was issuing it in the first place.
- The effect of my decision is that it is unfair for a mortgage lender to rely on its legal rights. It is open to lenders to withdraw offers where circumstances change or they are no longer commercially viable – that is a central pillar of the mortgage market.
- The legal position is beyond dispute. more 2 life acted in line with its clear and unequivocal legal rights – that is a factor that weighs heavily in favour of it having acted fairly. Lenders should be able to proceed on the basis that, acting lawfully, they are protected by the law and will not be required to lend on an uncommercial basis because of a complaint where there has been no legally binding offer and acceptance.
- More 2 life cannot evidence when the application to offer window was introduced. But it might well have happened before 17 October – even if a change of criteria hadn't been committed to writing before then it was in contemplation, it existed and could be applied.
- But Mr and Mrs H were made aware that more 2 life was not obliged to make them an offer, at 4% or at all.
- The effect of my provisional decisions is to say that a lender can never withdraw a mortgage offer where not doing so is not envisaged in its lending criteria – nullifying their legal right to do so. That cannot be a fair outcome and would set a dangerous precedent.
- I said that my decision might have been different had more 2 life's lending criteria been changed before the 4% offer was issued. more 2 life said that the outcome would have been the same – that Mr and Mrs H would not have been given a mortgage at 4%. For a decision to turn on when a lender changes its lending criteria is arbitrary.
- My second provisional decision focussed on whether the outcome proposed is fair to Mr and Mrs H. But I am required to consider whether an outcome is fair to both parties; it is not fair to more 2 life.

- My decision did not take account of the economic turbulence of the time and its profound effects on the equity release market. Circumstances, and lending products, were changing rapidly and unpredictably. Interest rates increased for all borrowers, not just Mr and Mrs H. It is not fair and reasonable to require more 2 life to bear all the risk, and that should weigh heavily in favour of more 2 life.
- more 2 life remains of the view that Mr and Mrs H have not suffered loss or detriment. In pursuing this complaint rather than seeking lending elsewhere, any loss has not crystallised.
- All that Mr and Mrs H have lost is the opportunity to obtain finance at a lower rate. But that is a function of the changes in the market in late 2022 and is common to everyone seeking to borrow at that time. It is not something caused by any action of more 2 life. If markets move in their favour in future, Mr and Mrs H may be able to borrow at 4% or better at some future time – and so would not ever suffer a loss.
- I am wrong in characterising my award as a direction rather than a money award. The courts have said that an award requiring the payment of money is a money award, even if it cannot be quantified at the date of the award.<sup>2</sup> It depends on the substance, not the form, of the award. Requiring more 2 life to make a loan to Mr and Mrs H requires, as a matter of fact, it to make a payment to them. It is immaterial that the payment is a loan. In any case, making a loan carries risk to the lender, as it is possible it will be unable to recover the principal sum. And the award is clearly for Mr and Mrs H's benefit. It is therefore clearly a money award – and as it is in excess of the maximum award limit, not one I have the power to make to the extent that it exceeds the maximum.
- The only award I have the power to make is a direction requiring more 2 life to lend a sum significantly below the maximum award limit – because it must take into account not only the principal sum lent but also the loss to more 2 life in lending on uncommercial terms – losses in interest more 2 life cannot recover would also count towards the award limit. That is the case even if the initial lending is not caught by the award limit. Any such losses are complex and could not be easily quantified.
- It is open to me to recommend that more 2 life lends at above the maximum award limit – but it is not open to me to direct it to do so.

more 2 life also provided further evidence about the change to its lending criteria. In a witness statement from a senior manager, it said:

- more 2 life's business model is that it lends mortgages using funds provided by external investors, or funders. Each funder funds a specific product or range of products. Based on the funders' needs and risk appetite, more 2 life designs a range of mortgage products which it then offers to customers.
- The Capital Choice product Mr and Mrs H selected did not specify an application to offer window until October 2022, unlike all other more 2 life products.
- The September 2022 mini-budget led to significant market turmoil, which in turn impacted mortgage funding costs – and led to re-pricing of products across the

---

<sup>2</sup> *Bunney v Burns Anderson Plc and others* [2007] EWHC 1240 Ch, and see also *R (Aviva Life and Pensions (UK) Ltd) v Financial Ombudsman Service*

market.

- During September and October 2022, the interest rate on new Capital Choice mortgage applications rose from 4.51% to a high of 8.74%.
- Because of the absence of an application to offer window, there were a number of Capital Choice applications – including Mr and Mrs H's – which had been outstanding, without proceeding to offer – for a significant period of time, and which had now become “wholly uneconomic” if lent at the application rate.
- In early October, senior members of more 2 life staff were in discussions with the funder about introducing a 42 day application to offer window, and withdrawing from applications which were over that timescale but had not yet moved to offer.
- The phone conversation between Mr and Mrs H's broker and more 2 life on 3 October was accurate at that time. It was in the two weeks after that conversation that pressure on rates became particularly acute.
- A decision was taken not to proceed with Mr and Mrs H's application at the 4% interest rate (along with other outstanding applications at similar rates). This decision was taken before the offer was issued on Friday 14 October, earlier in that week.
- At that point, more 2 life should have contacted Mr and Mrs H's broker to let them know that because of the policy change and because they were past 42 days from application without reaching offer, the 4% rate would no longer be available. If they still wanted to proceed it would be replaced with the prevailing rate of 7.16%.
- In error, instead a member of underwriting staff processed the application and issued an offer at 4% on the afternoon of Friday 14 October. This should not have happened and was the result of an internal breakdown in communication.
- This error was identified on the next working day, Monday 17 October, and communicated to Mr and Mrs H's broker. The offer was withdrawn and replaced with one at the prevailing rate, then 7.16%.
- In support of the manager's statement, more 2 life provided evidence that all other older outstanding applications – other than Mr and Mrs H's – either did not proceed, or were offered at higher interest rates than the rate at application. This corroborates the evidence that Mr and Mrs H's 4% offer was issued in error
- The document I referred to, setting out the change to a 42 day application to offer window, was dated 17 October 2022. But that is the date the document was published, not the date more 2 life's lending criteria changed. As evidence, more 2 life provided internal correspondence from 14 October – earlier in the day than when Mr and Mrs H's offer was processed and issued – showing staff implementing the change which was already in place.

### **My third provisional decision**

Having considered the further evidence more 2 life provided in its response to my second provisional decision, I found that I had changed my mind as to what a fair outcome would be. I said:

“It's very unfortunate that it has only provided that evidence now, at this very late

stage. But I have no reason to doubt the content of that evidence. It's in the form of a sworn witness statement from a senior manager (and regulated person), and the content of the statement is consistent with the additional evidence of internal discussions exhibited alongside it.

With that in mind, I've thought about whether my provisional conclusions still stand – taking into account this further evidence.

I'm satisfied that the evidence now shows that more 2 life had changed its policy before it issued the offer to Mr and Mrs H on 14 October, even if the document describing the change wasn't published until 17 October. At the point of the policy change, they did not have an offer in place – their application was still in the "pipeline". That means that my provisional conclusion that more 2 life's mistake was withdrawing an offer which was issued before the change – rather than issuing it in error after the change – can no longer stand.

Instead, I'm satisfied that more 2 life did change its policy, by introducing an application to offer window, before Mr and Mrs H's offer was issued. It applied that policy to existing applications which hadn't reached offer as well as to new applications – which means that Mr and Mrs H ought to have been told that the 4% interest rate was no longer available to them towards the end of the week of 10 October, and an offer on that basis should never have been issued on 14 October.

That being the case, I think the crucial questions for me to decide now are:

- Was it fair to apply the new policy to Mr and Mrs H's application, notwithstanding the basis on which they had made the application and the assurances they'd been given in the meantime?
- If so, and as a result the 4% offer should never have been issued – was it fair to have withdrawn it after it was issued and then replace it with an offer at a higher rate? Or is it fair to expect more 2 life to honour the offer even though it was issued in error?

I've already said that, under the rules of mortgage regulation, and unlike the situation with standard fixed term mortgages, an offer of a lifetime mortgage is not binding on the lender until it's been accepted and the mortgage completes. This is also the position in ordinary contract law – one party to a potential contract is not bound by its offer unless and until the offer is accepted by the other party.

The same is true of a mortgage illustration. An illustration is no more than the name suggests; it's an illustration of what a lender might be able to lend, subject to assessment of the application, underwriting checks, valuation of the property, and so on. A lender is not bound to issue an offer on the same terms as are contained in an illustration – or even to issue an offer at all.

In this case, Mr and Mrs H were given an illustration when they first applied to more 2 life. But they weren't just given an illustration – they were told (via their broker) that in submitting their application by the deadline of 6 July 2022, they had secured the rate of 4%, and that rate would be applied to their mortgage if, having considered their application, more 2 life decided to make an offer. In other words, more 2 life wasn't guaranteeing that it would lend to them – but it was guaranteeing that if it chose to do so, it would be at the rate of 4%. This assurance was repeated to Mr and Mrs H or their broker several times while their application was in progress, most recently in the call at the beginning of October.



At the time more 2 life gave those assurances, they were true. It was more 2 life's policy that there was no application to offer window and so Mr and Mrs H had secured their rate on application.

But before the offer was issued, more 2 life's policy changed. It would no longer hold rates on the product Mr and Mrs H had selected for more than 42 days – and it applied this policy not just to new applications, but also to ones in progress like Mr and Mrs H's.

As a matter of law and regulation, more 2 life was entitled to do this. It wasn't bound by those assurances or the illustration, and was entitled to issue an offer on any terms – or not issue an offer at all.

As I've explained in my previous provisional decisions, though, my role is not just to follow law and regulation – it's to take them into account (among other things), but ultimately to decide what I consider to be fair and reasonable in all the circumstances.

The fact that more 2 life wasn't bound by the assurances it gave to offer Mr and Mrs H a mortgage at 4% is an important factor to weigh in the balance in thinking about whether it acted fairly – but so is the fact that it did give those assurances, and Mr and Mrs H relied on them.

Those assurances were correct at the time they were given. And I've not seen evidence that more 2 life explicitly said that they were time limited, or that it reserved the right to change its approach.

But equally I don't think Mr and Mrs H could reasonably have expected more 2 life to hold the 4% rate open indefinitely. If, for example, the works on their property hadn't been minor but had required substantial structural work taking months or years to complete, I don't think more 2 life could have been expected to hold the rate open for such a long period. There would always come a point when it wouldn't be available to them anymore.

I think it's also relevant to bear in mind the changing economic circumstances at this time. There was considerable turmoil in the market. Mortgage lending is a commercial activity, and it's understandable that more 2 life was no longer prepared to honour interest rates that weren't commercially viable any longer – and that this was changing rapidly at the time.

It's well known that, across the mortgage market, interest rates change all the time – lenders add and withdraw products from sale constantly. The reasons for this are relatively complex, and relate to changes in the cost of funding lending (which isn't generally directly tied to fluctuations in Bank of England base rate). One of the features of the Capital Choice product, and one of the reasons Mr and Mrs H selected it, was that it offered a degree of protection from that market volatility by locking in a rate on application. But given that mortgage lending is a commercial activity, it's not unreasonable for a lender to withdraw a product, or change some of its features, if changed market conditions mean it's no longer viable to offer those features.

By the week of 10 October, when more 2 life changed its policy, Mr and Mrs H's application had been in progress for over three months. The reason for that was because of issues with their property which meant that more 2 life wasn't prepared to lend until those issues were resolved. I've already found that was fair. I've not seen

any evidence that the length of time the application remained in progress, without reaching the offer stage, was because of any delay or lack of progression on more 2 life's part. Although it finally had all the information it needed to make a decision on 27 September, I wouldn't expect it to review and decide on an application instantly and I don't think it was unreasonable that no decision had yet been made by the week of 10 October. As a result, no decision had been made on Mr and Mrs H's application when the policy changed.

In the changed economic circumstances, with a more volatile lending market, I don't think it was unreasonable for more 2 life to introduce a 42 day application to offer window. I also don't think it would have been unreasonable to apply the changed policy to Mr and Mrs H's application, on the basis that it had been outstanding for substantially more than 42 days by the time the policy changed.

more 2 life wasn't required to hold a rate open for that length of time – or at all. It had chosen to do so in a very different economic climate, but in the changed circumstances of October 2022 lending to Mr and Mrs H at 4% was no longer commercially viable. Mr and Mrs H had already had around double the new 42 day limit to move to offer stage – that this hadn't happened was because of issues with their property, not because of the way more 2 life had handled their application.

I think there has to be a fair balance struck between Mr and Mrs H's interests in proceeding with a rate they thought was guaranteed – and having to pay more to borrow if it isn't – on the one hand, and more 2 life's interests in not being tied in to an uneconomic application indefinitely on the other hand. It's not unfair that the risk of market movements during the life of a mortgage application falls on both parties.

I also need to think about the effect of the assurances more 2 life gave Mr and Mrs H. As a matter of law, they don't change the fact that more 2 life wasn't obliged to lend to Mr and Mrs H at 4% - or at all. But they are relevant to what's fair and reasonable in all the circumstances.

Mr and Mrs H were clearly concerned to make sure that 4% was going to be available to them. Even before the market turmoil following the mini-budget in late September, interest rates had risen since the summer.

If more 2 life had been clearer with Mr and Mrs H, it wouldn't have said that the rate was secured without qualification. It would have said that its current policy was that the rate was secured, that it had no plans to change that policy – but that the policy could be withdrawn at any time and at that point, if no offer had been made, Mr and Mrs H might lose the 4% rate and instead be moved to the prevailing rate at that time.

In other words, more 2 life ought to have made Mr and Mrs H aware that there was a risk that it might change policy, and they might lose the 4% rate, even if that wasn't currently its intention. Clearly more 2 life couldn't have warned them that the policy *would* change, because it couldn't have foreseen the need to do so – at least at the time of the August assurances. But it could have warned them that the rate was secured under its current policy, but the policy was subject to change.

However, if more 2 life had done that in August, I'm not persuaded Mr and Mrs H would have done anything differently. They would have understood that they had the 4% rate secured, albeit with some risk that might not be the case forever. Their options at that point would have been to carry on with more 2 life – knowing that it was highly likely (in the circumstances as they were known at the time) but not

absolutely certain they'd get the 4% rate. Or to have withdrawn from the more 2 life application and switched to another lender – at a rate which would definitely be higher than 4%, but might or might not be lower than they might get with more 2 life in the future should it ever decide to change its policy. I don't think it's likely Mr and Mrs H would, at that time, have swapped the strong likelihood of a 4% rate for the certainty of a higher rate to mitigate the risk that something unforeseen might happen to the 4% rate.

By early October, things were different. The mini-budget had happened, and the market turmoil had begun. By then, I think it probably was foreseeable that more 2 life might end up needing to change the policy even if it hadn't yet decided to do so. But even if more 2 life had been clearer about that, and if as a result Mr and Mrs H had decided not to accept the higher risk of losing the 4% rate, they wouldn't have been any better off. Their choices were either to stick with more 2 life, accepting the possibility of losing the 4% rate but with the possibility of keeping it, or start a fresh application with a new lender. Had they chosen that option, by early October I don't think they would have secured an alternative rate significantly better than the 7.16% more to life included in the second offer.

Ultimately, therefore, I'm not persuaded that more 2 life's assurances made any substantial difference to the position Mr and Mrs H ended up finding themselves in. When it couldn't have been known that there was any substantial risk of losing the 4% rate, in August, they wouldn't have seen any need to look elsewhere. And by the time there was a clear risk of that, in early October, it was too late to look elsewhere for a better rate even if they had understood they might now lose the 4% rate.

Weighing all that up, I'm persuaded, in light of the further evidence from more 2 life, that applying the changed lending policy to Mr and Mrs H – before their application had proceeded to offer – was fair and reasonable in all the circumstances. The cost of mortgage lending is always dependent on market conditions, which can change at any time. While some degree of protection from that was a feature of the Capital Choice product, more 2 life was entitled to withdraw that feature once it was no longer viable to offer it. Doing so impacted the rate at which Mr and Mrs H were able to secure lending, but they were able to secure lending at the (now higher) market rate at the time of the second offer. Their application had been outstanding for more than three months by then – because of issues with their property, not because of delays by more 2 life – and the rate they had applied for three months earlier was no longer viable in the unforeseen and unforeseeable changed economic conditions. more 2 life ought to have done more to make clear that its policy was subject to change (even where it had no plans to do so and had no reason to suspect it might need to), but its unqualified assurances didn't make any difference to the position Mr and Mrs H found themselves in. It's very unfortunate that their application happened to coincide with a period of exceptional market volatility, but not unfair for that volatility to be reflected in the lending they were offered. Because their application had not reached offer stage before the policy changed, it was impacted by those changes – and that wasn't, in all the circumstances, unfair or unreasonable.

That's not the end of the matter, though. Even if more 2 life intended to apply the policy to Mr and Mrs H's application before it reached offer stage, the fact is that it didn't. It might have been human error in the underwriting department that meant a 4% offer that should never have been issued was issued – but the fact is that more 2 life did issue that offer. So I also need to think about the effect of that on this complaint, and in particular whether more 2 life should fairly be required to honour that offer.

I've already concluded that in light of the further evidence from more 2 life, my earlier provisional findings weren't correct; it wasn't that withdrawing the 4% offer was a mistake and not in line with more 2 life's lending policy at the time the offer was issued – rather, issuing the 4% offer was the mistake because the lending policy had already changed, and it was issued because of human error rather than because that rate was still available to Mr and Mrs H.

The general principle is that where a mistake has been made, the correct approach to redress is not to enforce the mistake, but to put the complainant back in the position they would have been in had the mistake never been made – including compensating them, where appropriate, for the consequences of the mistake, such as action taken in reliance on it. Applying that to this case, it would mean that it would not now be appropriate redress to require more 2 life to reinstate the 4% offer. Had nothing gone wrong that offer would never have been issued, and it's not therefore appropriate to require more 2 life to lend on that basis.

Having given it careful consideration, I'm satisfied it's fair and reasonable in all the circumstances to take that approach in this case. I recognise that this will be very disappointing to Mr and Mrs H – not only will they feel they've lost out on the mortgage offer they consider they were entitled to, but also they've had their hopes raised in the course of this complaint only to have them dashed again now. That's most unfortunate, and I'll say more about the impact of that when I turn to what I do think more 2 life needs to do to put things right below. But I'm satisfied, on the evidence I've now seen and taken into account, that more 2 life had changed its lending policy before the offer was issued – and that doing so was not unfair or unreasonable. That being the case, it should never have issued an offer at 4%. It ought to have explained to Mr and Mrs H that it could no longer hold their application open at 4%, and that if they wanted to proceed the lending would be at the then prevailing rate of 7.16% – and it should have done that without issuing an offer at 4% first, which caused Mr and Mrs H so much upset.

The conclusions I've now reached are that Mr and Mrs H's application had not been decided before the 4% rate was withdrawn, that as a result the 4% rate was no longer available to them, and that an offer to that effect should not have been issued. It follows that it would not be fair and reasonable to require more 2 life to reinstate that offer now, and to that extent I can no longer fairly uphold their complaint.

But while I don't require more 2 life to reinstate the 4% offer, I do now think it's appropriate that it compensates Mr and Mrs H for the upset caused. I previously said that it should pay £600 compensation – but that was on the basis that the 4% offer would be reinstated, and therefore was to compensate them for the distress and inconvenience caused by delay to the mortgage being implemented. However, I am no longer upholding the complaint on that basis. Instead, Mr and Mrs H now have the disappointment of knowing that they will not be able to obtain lending at that rate at all. Interest rates have fallen since October 2022, so Mr and Mrs H may now be able to obtain lending at less than 7.16% should they still want to take a mortgage, but I'm afraid it's unlikely they'll be able to obtain an interest rate as low as 4%.

I think the disappointment and frustration caused by being led to believe they had a mortgage offer, and then having it withdrawn and now learning that any lending they can secure will be more expensive, will be very substantial. And that is compounded by the delay in getting them a final answer to their complaint caused by more 2 life's failure to provide the crucial piece of evidence until after two years had passed, and after I had issued two provisional decisions indicating I would reinstate the lending – increasing the upset Mr and Mrs H feel by once again leading them to believe they

would be able to borrow at 4% before taking that prospect away again.

In response to my first provisional decision, and while maintaining that it should not be required to lend, more 2 life accepted that Mr and Mrs H had had a very poor experience, and said that it accepted that compensation of £2,500 or more would be appropriate. Having taken everything I've said into account, I now think that its offer of compensation of £2,500 is a fair way to resolve this complaint.

Finally, I would just briefly say that I remain unpersuaded by more 2 life's arguments that – if I were to intend to require it to reinstate the mortgage – that would amount to a money award falling outside my powers. I'm still satisfied that this would be a direction, and that I have the power to make such a direction where it is fair and reasonable – but since I'm no longer satisfied that doing so would be fair and reasonable in the particular circumstances of this specific complaint, in light of the facts and evidence as I have now found them to be, it's no longer necessary for me to respond to those arguments in any further detail."

### **The responses to my third provisional decision**

more 2 life confirmed it accepted my proposed award of redress.

Mr and Mrs H did not accept my revised proposed outcome. They provided a detailed response which I've considered in full. In summary, they said:

- I should not rely on more 2 life's evidence – firstly because there was evidence it had sought to mislead us during the progress of the complaint, and secondly because the witness statement provided ahead of my most recent provisional decision should not be accepted on its own terms.
- The first misleading statement was contained in an internal email, in which one member of senior more 2 life staff said to another that the evidence of movement found in the initial survey "clearly ... needed to be investigated. It took ages (customer not us) to organise a structural engineer (2 months) and we couldn't have offered before this was closed out." Mr and Mrs H say that this is a false statement – they obtained, and submitted to more 2 life, an engineer's report within a few days of more 2 life requesting it in July 2022. This falsely gave the impression that any delay in the offer being issued was the fault of Mr and Mrs H not more 2 life.
- The second misleading statement was when a more 2 life complaint handler told us that there was, and always had been, a 42 application to offer window for this product in place. I found that this was not the case in my first provisional decision, and more 2 life accepted that this wasn't correct in its response to that decision. It is not credible that more 2 life did not know the correct position, and it must have sought to mislead our investigation.
- Mr and Mrs H say that more 2 life also misled us when it said that there was a period of uncertainty and volatility in the markets following the September 2022 mini-budget which extended into October and led the funder to increase interest rates and introduce the 42 day application to offer window. Mr and Mrs H say this is not true; in fact, there were two interest rate increases, one on 30 September 2022 and a second on 19 October 2022. The first, substantial, increase meant that the funder could not have been under any pressure in October. And the timing of the second rate increase, after the introduction of the 42 day window, shows that there was no urgent need to implement the window. Mr and Mrs H pointed to market data which they said showed that significant movements in interest rates had come to an end by

the end of September 2022, and that wider market rates were falling by mid-October.

- The sole purpose of the witness statement was to convince me that the application to offer window was introduced before 17 October and not on that day (when it was published). But there is no documentary evidence – such as records of internal decisions or sign-offs – which show that to be the case.
- The witness statement should be disregarded for the following reasons:
  - Given more 2 life's other attempts to mislead, no credibility should be attached to it.
  - Even before the introduction of the 42 day application to offer window, more 2 life had the right to withdraw or amend any offer. It could have told Mr and Mrs H that the 4% rate was no longer available to them at any time. That it didn't use the pre-existing powers shows that there was no urgency to introduce the new window.
  - Neither the broker that Mr and Mrs H used, nor another independent broker they have since consulted, were told of a change before 17 October 2022. Both have said that it was more 2 life's invariable practice at the time to give brokers advance notice of any change to criteria but it didn't tell them about this change before 17 October – and more 2 life reassured Mr and Mrs H's broker that the 4% rate was secure on several occasions between 3 and 14 October. Nor was the explanation about the introduction of the window given at the time the first offer was withdrawn. This all suggests that the criteria did not in fact change before then.
  - There must have been internal discussions and decision making, as well as sign offs, before the change in policy. If so, they should be included with the statement – but they are not. In the absence of documentary evidence supporting its assertions, the statement is worthless. The fact that it is in the form of an affidavit and not a simple letter is simply a trick to give it credibility.
  - The exhibits to the statement are not credible. One is an internal email and the other a spreadsheet. The email says that the spreadsheet contains 30 cases, but it only contains 15. And the email says that there are actually over 1,000 cases in the pipeline – not 30 or 15. The spreadsheet could not have been created on 14 October as stated, because it contains information that could only have been known after that, such as that two of the mortgages later completed.
  - The attachments to the email are not included. The email is therefore not complete and so is worthless.
  - Much of the statement is not relevant to its purpose.
- The evidence shows that the application to offer window was not introduced until 17 October, as I originally found. The offer at 4% was properly issued, and should not have been cancelled.
- Given everything that has happened, Mr and Mrs H have no desire to have an ongoing relationship with more 2 life. They do not want the mortgage reinstated.

Instead, they say more 2 life should pay them £430,000 compensation – reflecting the difference between 4% interest and 7.16% interest on a lifetime mortgage of £980,000, as well as the impact of everything that has happened on them.

### **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 carefully considered what Mr and Mrs H have said. I'm sorry to disappoint them, but I'm afraid I haven't changed my mind about the fair way to put things right.

For all the reasons I gave in my most recent provisional decision, I'm still satisfied that more 2 life did in fact change its policy before it issued the first offer to Mr and Mrs H, that the offer was issued in error, and that it would not be fair and reasonable to require more 2 life to honour or reinstate that offer.

I'm not persuaded that there is evidence that more 2 life has set out to mislead either Mr and Mrs H or the Financial Ombudsman Service. The email they've highlighted does say that the delay in proceeding to application was because of delays in appointing a structural engineer. That wasn't correct; the issue was that it took time to act on the engineer's recommendations and satisfy the valuer's requirement for that to be done.

But I don't think this is evidence of an attempt to mislead, or hide the truth. It's an error of the sort that can happen when a relatively complex issue is summarised quickly in an informal setting. And it reflects the broader truth that the delay in proceeding to offer was because of potential structural issues with Mr and Mrs H's property that needed to be explored and rectified in line with the valuer's requirements, rather than because of a delay in processing the application by more 2 life. I remain satisfied that it was fair and reasonable for more 2 life to act on the valuer's advice and to want to be sure that the property was structurally sound and offered adequate security before it would consider lending.

It's also true that one of more 2 life's complaint handlers told us that there had always been a 42 day application to offer window, and that wasn't true. more 2 life accepts that was a mistake. Clearly it was, and we should have been given the correct information. But it hasn't affected the outcome of the complaint – I found at the time that this wasn't correct and have never relied on it.

I've taken these examples into account. But I don't think two isolated mistakes in an otherwise complex and long-running case are evidence of a systematic attempt to mislead or a cover up, and I don't think they taint the credibility of everything else more 2 life has said such that I can't rely on it. That would be to put too much weight on what are relatively minor mistakes.

I don't think more 2 life has misled us in referring to the period of volatility in the mortgage market in September and October 2022. What more 2 life has said is consistent with what I've seen from other lenders in other cases, and from my wider knowledge of the mortgage market. At the time, and without the benefit of hindsight, there was significant turmoil in the mortgage lending market, with rapid changes in interest rates and lending criteria across the industry, and no certainty about when that would end. I attach substantial weight to a sworn statement of a senior member of staff who is a regulated person, and his evidence of the position more 2 life was in at this time is corroborated by my knowledge of what was happening elsewhere in the industry.

more 2 life says this was a fast moving situation, with decisions being made in a faster and

more informal way than would normally be the case – in conversations and phone calls, rather than formal minuted meetings. The statement explains this.

I accept what more 2 life says about this. The supporting evidence shows this to be the case – including emails from the time. I'm satisfied that until the revised document was published, more 2 life was focussed on contacting affected customers and brokers, rather than publicising the change more generally.

I'm not persuaded that the spreadsheet accompanying the statement is not credible either. It's normal for a spreadsheet tracking progress to be updated over time. So the fact that it includes information about offers that completed later doesn't mean that it wasn't created at the time. I attach little or no weight to what Mr and Mrs H say is a discrepancy in the numbers of cases; I think that merely means that an extract of the section including their mortgage has been provided rather than the whole spreadsheet.

I've carefully considered what Mr and Mrs H say. But I'm still satisfied that the conclusions I reached are the fair and reasonable outcome to this complaint. I'm satisfied that Mr and Mrs H's application had not been decided before the 4% rate was withdrawn, that as a result the 4% rate was no longer available to them, and that an offer to that effect should not have been issued. It follows that it would not be fair and reasonable to require more 2 life to reinstate that offer now.

It also follows that it wouldn't be fair and reasonable to compensate Mr and Mrs H on that basis either. If the 4% offer should never have been issued, and was fairly withdrawn, then Mr and Mrs H have not unfairly lost out by not completing on that mortgage. Even if they had taken a different, more expensive, mortgage instead, therefore, it would not follow that more 2 life ought to compensate them for the difference between those two mortgages. And in any case Mr and Mrs H have not, as far as I am aware, taken an alternative mortgage. I'm not persuaded that there is any basis on which I can fairly require more 2 life to compensate them for the difference between the 4% mortgage and the 7.16% mortgage they did not take.

For the reasons I gave in my provisional decision, I do think that wrongly issuing and then withdrawing the 4% offer caused Mr and Mrs H considerable upset. more 2 life has offered to pay £2,500 compensation, and I think that's fair in all the circumstances.

### **My final decision**

My final decision is that I uphold this complaint and direct more 2 life Ltd to pay Mr and Mrs H £2,500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 15 April 2025.

Simon Pugh  
**Ombudsman**