

The complaint

A company, which I will refer to as 'C', complains that Fleet Mortgages Ltd treated its mortgage application unfairly.

One of C's directors, Mr P, brings this complaint on C's behalf.

What happened

Mr P told us:

- Acting on C's behalf, he applied through a broker for a loan from Fleet. His intention was to refinance the company's borrowing on a flat.
- C owned the leasehold of the flat, but not the freehold of the whole building. The freehold was owned by a separate limited company (which I will refer to simply as 'the freeholder').
- Fleet issued a mortgage offer in June 2022, which C accepted. However, before the mortgage was drawn down, Fleet withdrew the original offer and replaced it with an offer which included a term that C could not meet. Fleet unreasonably demanded a comfort charge over the freehold, even though the freehold is not in C's control and the flat to be refinanced is only 25% of the building.
- C had to move to its existing lender's standard variable rate (initially 8% but since increased) rather than the agreed Fleet rate of 5 years at a fix of 3%. In addition, C wasted money on legal and valuation fees, and its directors spent many hours trying to resolve the matter.
- He would like C to be put in the position it would have been in if the mortgage Fleet originally offered had gone ahead.

Fleet told us:

- Its lending criteria, which was publicly available on its website at the relevant time, said:

"Where a property is leasehold and the borrower either has an interest in the freehold or has a connection to the freeholder, it will insist on a legal charge over the freehold for the building as well as a first legal charge over the leasehold title of its security. This will require the consent of other owners of the freehold, including those who may not be party to the mortgage over the leasehold interest."

- In this case, it considers that C is connected to the freeholder. Mr P and his wife own all of the shares in C. Mr P and his father are both directors of the freeholder. Mr P personally owns 5% of the shares in the freeholder, with his father owning the other 95%. In correspondence with his solicitor, Mr P described the freeholder as "our

family company of which I am the managing [director]”.

- The June 2022 mortgage offer said:

“There is no binding legal agreement between you and us in relation to an advance until completion occurs in relation to that advance. Accordingly, you can decide not to proceed with an advance at any time before completion of that advance.

We can decide not to proceed with a proposed advance (including withdraw a mortgage offer altogether and decline to make that advance) or change the terms of a mortgage offer or an advance, in each case at any time before completion of that advance, but usually we will not do so unless any of the following things happen or we reasonably believe they have happened: ...

j) any other matter arises which leads us to believe, acting reasonably, that the advance should not be made, or the terms of the advance should be changed.”

- It was not made aware of the connection between C and the freeholder during the initial application process. It discovered the connection after making the June 2022 offer but before completion occurred. Given its lending criteria, it no longer believed the advance should be made on the original terms. It therefore considers that it acted reasonably when it withdrew its June 2022 mortgage offer and issued a replacement mortgage offer requiring a comfort charge over the freehold.

One of our investigators looked at this complaint, but did not uphold it. In the circumstances, she thought that Fleet had been entitled to withdraw the June 2022 offer, and overall, it had treated C fairly.

Mr P did not accept our investigator’s conclusions, so the matter was referred to me. Mr P specifically asked me to consider whether C, as the leaseholder/borrower, “has an interest in the freehold or has a connection to the freeholder”.

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.

Having done so, I’m not going to uphold it. I’m sorry to disappoint C’s directors, but there is very little I can add to what our investigator has already said.

My role as an ombudsman is not to decide what Fleet’s lending criteria should be, to whom it should offer loans, or what terms it should offer. My role is to consider whether Fleet has treated C fairly. And here, I’m satisfied that it has.

I think it was reasonable for Fleet to take the view that C and the freeholder were connected. Mr P owned shares in both companies, and he was also a director of both companies. I acknowledge that Mr P was only a minority shareholder of the freeholder, but I still don’t think it would be fair for me to criticise Fleet’s conclusion that it was connected to C through Mr P.

I acknowledge that, as a minority shareholder, Mr P was not in a position to arrange a comfort charge here. Mr P could not force the freeholder’s lender to consent to a comfort

charge in favour of Fleet, nor could he insist that the freeholder remortgage elsewhere. But Fleet was still entitled to say that it was not prepared to lend without a comfort charge.

I'm also aware that there were other lenders in the market, including C's existing lender, which did not require a comfort charge in these circumstances. But as I've said, it is not for me to decide what Fleet's lending criteria should be. The fact that other lenders had different criteria does not imply that Fleet has acted unfairly.

Finally, I am satisfied that Fleet did not know about the connection between C and the freeholder until after it had issued its June 2022 mortgage offer. Given Fleet's published lending criteria, I am satisfied that it would not have issued that offer if it had known about the connection. I therefore consider that it was fair for Fleet to make the decision that it was no longer prepared to lend on the terms originally offered, and that it wished to insist on a comfort charge.

My final decision

My final decision is that I do not uphold this complaint against Fleet Mortgages Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 28 March 2024.

Laura Colman
Ombudsman