DRN-4586597

The complaint

Mrs R's complaint is about an equity release mortgage she holds with more 2 life Ltd (M2L). Her complaint is that M2L will not agree to a further advance on the mortgage, because its surveyor says that the construction of her property does not meet M2L's acceptable criteria.

Mrs R says that, in order to obtain the additional borrowing she needs, she will now need to arrange a new equity release mortgage with a different lender.

To settle the complaint, Mrs R wants M2L to compensate her, not only for the set-up costs of this, but as her new mortgage is likely to be at a higher rate than her existing borrowing with M2L, for the additional interest she will now incur as a result.

Mrs R is represented by her financial adviser in this complaint, but for clarity I will refer to Mrs R throughout as if all submissions are made by her.

What happened

In 2013 Mrs R took out an equity release mortgage with M2L, arranged through a mortgage broker on a non-advised basis.

Before the mortgage offer was issued, M2L arranged a valuation report, and instructed an external third-party firm to do this. The valuation was carried out on 24 June 2013 by a surveyor who was a Member of the Royal Institution of Chartered Surveyors (RICS). His report concluded that the property was suitable security for the mortgage.

The mortgage had a borrowing limit of £76,000, and Mrs R initially took an advance of £16,000, at an interest rate of 5.83% for the lifetime of the mortgage, leaving a cash facility of £60,000. Further drawdowns could be made, at the prevailing rate of interest at the date of the drawdown.

By 2022 Mrs R had made further drawdowns to the limit of the facility, but needed to borrow additional funds. In order to do this she applied to M2L for a further advance.

As part of its assessment of the application, M2L needed to arrange a further valuation, and again commissioned a third-party firm of surveyors to do this. The valuation was carried out on 10 January 2023 by the same surveyor who had inspected the property ten years earlier. This time he noted that approximately 22% of the habitable footprint of the property comprised an extension which was of single skin construction. He had not mentioned this in his 2013 report, notwithstanding the extension was there at the time.

After reviewing the valuation report, M2L's underwriters declined the application. M2L said that the property having 22% single skin construction was outside its lending criteria. M2L said that this had always been the case, and that, had this been noted by the surveyor in 2013, the application would not have passed its lending criteria at the time.

Mrs R complained. She said that, in order to secure the additional borrowing she needed, she'd have to move her equity release mortgage to a new provider. However, this would

involve the expense of setting up a new product, including legal and broker fees. In addition, the mortgage over time would cost her more, because she'd need to re-arrange all her borrowing onto a new interest rate. Because interest rates had increased, this would result in her being charged more interest on the total amount.

M2L acknowledged that there'd been an oversight by the surveyor in 2013, and that, if M2L had known about the single skin construction in 2013, the application would not have been agreed. M2L said that it was entitled to decline the further advance, as it didn't meet lending criteria. M2L offered Mrs R an *ex gratia* payment of £300 for any distress and inconvenience she'd been caused.

Dissatisfied with this response, Mrs R brought her complaint to our service, where an investigator looked at what had happened.

The investigator thought M2L should either make an exception and allow Mrs R's application for a further advance to go ahead, or waive any early repayment charge (ERC) she might face if she decided to move to a new provider. The investigator also thought M2L should increase the compensation to £500.

M2L agreed to pay the £500 compensation, but didn't agree to the other redress the investigator had proposed. M2L said that it wasn't able to agree an application that was outside lending criteria. M2L explained that, due to the ERC being linked to gilt yields, there was not at the present time any ERC payable, should Mrs R decided to move to a new provider.

Mrs R didn't accept what the investigator said either. She said that the redress didn't cover either the set-up costs of a new product, or factor in the additional interest she'd be charged by taking out a new product. Mrs R said that if M2L hadn't lent the money to her initially then she wouldn't be in this position. She didn't see why she should bear the cost of refinancing an existing loan at a higher interest rate when she has been the innocent party. M2L made an error and so must compensate her for this.

Provisional decision of 5 January 2021

I issued a provisional decision in which I reached the following conclusions.

> It's important to note that the Financial Ombudsman Service doesn't regulate the financial services industry, and we have no power to force a business to lend to a customer (including further advances) if it doesn't want to. My role is to decide whether M2L has made a mistake and, if so, what it should do to put things right.
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> However, I can only look at what M2L has done. M2L isn't accountable for any acts or omissions by the surveyor or the firm he works for. We can't consider a complaint against M2L in relation to things a separate business – not covered by the Financial Ombudsman Service – did, or didn't do. All I can consider against M2L is if it discharged its duty in instructing a suitable firm of surveyors. I'm satisfied that this was the case here, with the surveyor being a member of RICS.
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> The surveyor isn't covered by the Financial Ombudsman Service and so I can't comment on whether or not the valuations he carried out in 2013 and 2023 are accurate or not. But I can look at whether or not it was reasonable for M2L to rely on the surveyor's opinion in 2013. This was a basic valuation report, prepared only for M2L, not Mrs R.
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> The valuation report states:

1. *This report … has been solely obtained by the lender to enable consideration of a mortgage advance to be underwritten.*

2. *This is a report to the lender and no warranty, representation or assurance whatever is given or made to* [Mrs R] *by* [M2L] *or any other person that the statements, conclusions or opinions expressed or implied in this document are accurate or valid.*

3. *The valuers have made this report without any acceptance of responsibility to* [Mrs R].

As part of its lending criteria M2L is entitled to decide what type of property it considers adequate security for a mortgage, taking into account such things as the property type, location and construction. This is a matter for M2L's own judgement and risk appetite. I've looked at M2L's lending criteria in place in 2013, and I'm satisfied that, if M2L had known of the single skin construction of the extension and the extent of this on the property footprint, it would not have agreed the original mortgage application.

However, there was nothing in the 2013 valuation that would have led M2L to conclude that the property did not meet its lending criteria in terms of its construction – or indeed for any other reason. I'm satisfied that M2L was entitled to rely on the opinion of the surveyor that, in 2013, the property was suitable security for the loan.

I appreciate that, now the true position has come to light, this has implications for Mrs R, because she isn't able to borrow any additional funds from M2L. But there are also implications for M2L, too, because, without knowing the true picture, it agreed an application that was outside its lending criteria and risk profile.

The evidence is persuasive that M2L did nothing wrong in 2013. It agreed the application on the basis of the information it had before it, and could not have known that any of this information was inaccurate, to the extent that it was outside its lending criteria. I'm satisfied M2L was entitled to rely on the expert opinion of the surveyor.

So whilst I have considerably sympathy for the position in which Mrs R is now in, I don't think it would be fair or reasonable to order M2L either to agree the further advance outside its lending criteria (which, as I said above, I don't have the power to force it to do in any event), or to cover the cost and additional interest of Mrs R moving to another provider. This is because, although I have no doubt that a mistake was made in 2013, it was not a mistake by M2L – it was a mistake by the surveyor. As I've said above, I can't comment on the acts or omissions of the surveyor, as neither he nor his firm are covered by the Financial Ombudsman Service.

I note that, without any admission of liability, in its final response letter M2L offered Mrs R an *ex gratia* payment of £300 in full and final settlement of the matter. Because I'm satisfied M2L has done nothing wrong, I am not ordering it to put any redress in place in relation to the mortgage. If M2L is still willing to offer Mrs R the £300 on an *ex gratia* basis, it should say so when responding to this provisional decision.

Responses to the provisional decision

M2L accepted my provisional decision, and confirmed it was happy to offer Mrs R the £300 *ex gratia* payment. Mrs R's IFA asked for an extension of time to reply, but despite this, the extended deadline has passed with no further evidence or arguments submitted.

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 reviewed the file from the outset, including my provisional decision. As no further evidence or arguments have been submitted, I can see no reason to depart from the conclusions I reached in my provisional decision, which are set out in full above.

My final decision

My final decision is that I do not uphold this complaint. I simply leave it to Mrs R to decide if she wants to accept the £300 offered by more 2 life Ltd on an *ex gratia* basis.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 26 February 2024.

Jan O'Leary
Ombudsman