DRN-4180972

## The complaint

Mr and Mrs T complain that mistakes by more 2 life Ltd trading as Standard Life Home Finance meant they ended up paying a much higher interest rate on their lifetime mortgage than they should have done.

## What happened

Mr and Mrs T applied for a lifetime mortgage – a form of equity release – through a broker in early 2022. They wanted to repay their existing interest only mortgage, and raise funds to cover future medical expenses and to plan for inheritance tax mitigation.

After considering Mr and Mrs T's application and a valuation of their property more 2 life issued an offer on 31 March 2022. The offer was for borrowing of £684,000 at an interest rate of 3.11% fixed for life. After an extension, the offer was due to expire on 23 June 2022.

Mr and Mrs T instructed solicitors and the process of arranging the mortgage continued, with a completion date set for 21 June 2022.

On 20 June, more 2 life realised that it had not included a special condition relating to buildings insurance on Mr and Mrs T's property in the mortgage offer as it had intended to. It withdrew the offer and issued a new one, this time with the special condition. The interest rate – 3.11% - was the same, as was the expiry date.

This left Mr and Mrs T and their solicitors only three working days to obtain the information more 2 life required, send it to more 2 life's solicitors and wait for more 2 life to confirm it was acceptable. The mortgage couldn't complete until this was done.

Although Mr and Mrs T sent the required information to more 2 life's solicitors on 20 June, the same day the new offer with the special condition was issued, more 2 life's solicitors did not consider it until 23 June. The solicitors then asked further questions – although Mr and Mrs T's solicitors were able to provide answers, by then the offer had expired.

more 2 life did not extend the offer further. Instead it issued a new offer, at the interest rate current at the time. This meant Mr and Mrs T would now be borrowing the same amount but at an interest rate of 4.58% fixed for life. It sent the new offer to Mr and Mrs T and their solicitors and broker on 7 July.

On 13 July Mr and Mrs T's solicitors confirmed that Mr and Mrs T were happy to proceed with the new offer. Mr and Mrs T have since said that neither the solicitors nor the broker noticed, and so Mr and Mrs T weren't informed, that the interest rate had been increased. All parties assumed, wrongly, that the new offer was on the same terms as the previous one. It was only after completion that Mr and Mrs T realised that the borrowing they'd taken was significantly more expensive than they were expecting.

Mr and Mrs T complained. more 2 life accepted that it had made an error in not including the special condition and then withdrawing the original offer at short notice. But it said it wasn't responsible for Mr and Mrs T ending up with a mortgage at a higher rate than they were expecting – it said their solicitors and broker should have realised that and made sure they understood what they were agreeing to before the mortgage completed. If Mr and Mrs T were unhappy with the new rate they would have had the choice of not completing on the mortgage – it was the fault of the solicitors and broker that Mr and Mrs T didn't have that choice. It therefore said that the solicitors and / or the broker were responsible for the extra interest Mr and Mrs T would pay over the life of the mortgage.

But to recognise its part in what went wrong, more 2 life offered two options. It said it would pay Mr and Mrs T a lump sum of £15,000 if they chose to continue with the mortgage at 4.58%. Or it would allow them to repay the money and exit the mortgage without early repayment charges or other costs, waiving all interest charged to date.

Mr and Mrs T weren't happy with that and brought their complaint to the Financial Ombudsman Service. Our investigator didn't think more 2 life had made a fair offer to resolve their complaint.

While she recognised that the solicitors and broker had failed to spot the increased interest rate and advise Mr and Mrs T of that, the investigator thought that ultimately more 2 life was responsible for the position they'd found themselves in. It was more 2 life's fault that the 3.11% interest rate was no longer available to them because it didn't include the special condition in the offer to start with, and then when it realised it didn't leave enough time for completion to take place before the offer expired.

While the broker and solicitors could have made sure that Mr and Mrs T were aware of the mortgage they were actually taking, the investigator said that the 3.11% had already been unfairly removed by the time of that mistake. It was because of more 2 life's error that Mr and Mrs T lost the chance to complete at that rate, and more 2 life's error was at the root of what went wrong. She said that more 2 life should restructure their mortgage to reduce the interest rate to 3.11% and pay Mr and Mrs T £200 compensation.

more 2 life didn't agree, and asked for an ombudsman to review the complaint. It said the solicitors and broker were to blame for Mr and Mrs T completing on a mortgage without understanding what they were agreeing to. It said that if the solicitors had identified this before completion more 2 life "could have done something about it, such as an attempt to arrange a solution there and then" – it was too late to change the mortgage after completion. It said it had made a fair offer and by rejecting it and bringing their complaint to the Financial Ombudsman Service Mr and Mrs T had chosen to continue with the 4.58% mortgage.

**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.

The offer of 31 March said that it was valid for 42 days – that is, until 12 May – and offered to lend Mr and Mrs T £684,000 at 3.11%. It included provision in the standard conditions that

> "We require you to have buildings insurance during this lifetime mortgage. Our interest must be noted on it."

The only special condition was that Mr and Mrs T's previous mortgage would need to be redeemed on completion. The offer was later extended for a further 42 days, expiring 23 June.

On 21 April Mr and Mrs T's solicitor wrote to them to advise on the contents of the mortgage offer – the letter drew their attention to the insurance requirement and asked Mr and Mrs T to give their solicitors a copy of the schedule of insurance with more 2 life's interest noted. This was done and sent to more 2 life's solicitors.

On 20 June more 2 life withdrew the offer and issued a new one. This was for the same borrowing and interest rate. It was valid for 42 days. This offer included a special condition that, because of the size of Mr and Mrs T's property, their buildings insurance must be for at least 25% more than the reinstatement value set out in the mortgage valuation, and that their insurer should confirm it was aware of the size of the property and was providing standard cover with no special terms.

On the same day, 20 June, more 2 life issued a further offer on the same terms – but this time only valid for three days, until 23 June. This offer superseded the earlier one.

As I've set out above, Mr and Mrs T's solicitors provided information about the terms of their insurance, but following questions from more 2 life's solicitor, this issue was only resolved on 29 June, by which time the offer had expired.

A further offer was issued on 7 July, for £684,000 at 4.58%. This offer did not include the insurance special condition.

I don't think more 2 life acted fairly and reasonably here. If it needed confirmation of Mr and Mrs T's buildings insurance in specific terms, it should have made that clear from the start – whether by a special condition or through enquiries via solicitors. It shouldn't have just withdrawn the offer at the last minute to add a special condition.

And, having done so, more 2 life shouldn't then have issued a replacement offer that was only valid for three days, making it virtually impossible for Mr and Mrs T to provide the information it needed and be able to complete in time.

more 2 life says that its offers are only valid for 84 days (42 days plus a maximum extension of 42 days), and therefore the offer could not run beyond 23 June. I don't find this at all persuasive. It might well be more 2 life's policy that an offer does not run for longer than 84 days. But that's not a regulatory or legal requirement. It's more 2 life's choice to impose this limitation on its offers; it could – and in my view, acting fairly should – have put this policy aside to ensure that it treated Mr and Mrs T fairly in the specific circumstances of this case. It was more 2 life's fault that this situation arose, and it was in more 2 life's power to put it right.

more 2 life hasn't explained the rationale for this policy, but it may be related to the requirements of its funders. But if so that wouldn't change my view. more 2 life is the lender and the firm that has the regulatory obligation to act fairly. That obligation doesn't change because more 2 life funds its lending in a particular way. It is for more 2 life to find a way to treat its customers fairly, and it is no answer to say that contractual arrangements it has chosen to enter into with a third party funder prevent it doing so. If the funder wasn't prepared to continue past 23 June, more 2 life ought to have continued at its own expense in recognition of its own error.

In any case, this wasn't a matter of extending an offer beyond 84 days. The March offer had been withdrawn and replaced with a new one on 20 June. The March offer couldn't have been extended past 23 June – past 84 days – because it no longer existed. If more 2 life is right about its policy, the new offer issued on 20 June should have been valid for 42 days (with the option of a further 42) – not three days. This is in fact what more 2 life did, and it's not clear to me why it issued that offer only to withdraw it and replace it with an offer only valid for three days later the same day.

In my view, acting fairly and reasonably, more 2 life ought to have included the special condition from the start. And having discovered that it hadn't done so, acting fairly and reasonably it ought to have extended the original offer to give Mr and Mrs T a reasonable time to provide the information it required, or it ought to have ensured a new offer on the same terms that was open for a reasonable time was in place. Introducing a new requirement with three days to go, refusing to give Mr and Mrs T a reasonable time to satisfy this requirement, and then increasing the interest rate they would pay when they couldn't meet the deadline, was not fair and reasonable in all the circumstances.

In my view this failing is the sole cause of a mortgage at 3.11% no longer being available to Mr and Mrs T. Had more 2 life done either of those things – asked for the insurance information in a timely way, or allowed a reasonable time to provide it – the offer at 3.11% would not have expired before Mr and Mrs T could complete and they would have ended up on that mortgage.

Mr and Mrs T's solicitors failed to notice that the replacement offer, issued in July, was at a higher interest rate. The solicitors therefore didn't advise Mr and Mrs T of that, and Mr and Mrs T gave authority to complete believing they were doing so at 3.11% not 4.58%. Clearly this should not have happened. But it was not the cause of Mr and Mrs T not getting a mortgage at 3.11%, as they ought to have done. The solicitors' error meant that Mr and Mrs T did complete at 4.58% believing they were getting 3.11%, but it wasn't the reason 3.11% was no longer available.

In my view, the fair and reasonable outcome to this complaint is for more 2 life to restructure Mr and Mrs T's mortgage as if it had completed at 3.11%. The sole responsibility for that mortgage no longer being available to Mr and Mrs T lies with more 2 life, and as the lender more 2 life is the only party involved in this case which can put Mr and Mrs T back in the position they would have been in had nothing gone wrong.

I don't think it's fair and reasonable to say that the solicitors' error means more 2 life is not obliged to put things right for Mr and Mrs T in this way. The solicitors' error was not the reason Mr and Mrs T were unable to get a mortgage at 3.11%.

more 2 life says that the solicitors should have ensured Mr and Mrs T didn't complete on the mortgage at 4.58%, and because they did it is now too late to correct matters, and more 2 life didn't have the opportunity to try and resolve things before completion. I don't accept that. more 2 life did have the opportunity to resolve things before completion – but it chose not to do so, issuing a new offer at 4.58% rather than extending or re-issuing the 3.11% offer. And it is not too late to correct matters – as the lender, more 2 life can vary the terms of the mortgage Mr and Mrs T ended up taking.

In my view, it wouldn't be fair and reasonable to regard the solicitors' error as removing or reducing the responsibility of more 2 life to put matters right. Nothing the solicitors did caused the loss of the 3.11% offer. At most, the solicitors could have prevented Mr and Mrs T taking the 4.58% mortgage – but that would have led to them not having the funds they needed to repay their existing mortgage; it would not have led to them being able to borrow from more 2 life at 3.11%. And by this time a mortgage at that rate would not have been available from other lenders either – so the solicitors did not prevent Mr and Mrs T mitigating their losses by applying to another lender either.

I think it's fair and reasonable to regard more 2 life's failure as the reason Mr and Mrs T didn't end up with the mortgage they should have done. Had the solicitors seen the interest rate on the new offer, and had Mr and Mrs T not completed and complained as a result, I would have directed more 2 life to reinstate the 3.11% offer. In other words, the outcome would have been the same; that more 2 life ought fairly to reinstate the 3.11% mortgage it should not have withdrawn. Considered in that light, the solicitors' error ultimately made no difference to the overall outcome of this complaint.

## Putting things right

To put matters right, more 2 life should amend the terms of Mr and Mrs T's mortgage so that it is at an interest rate of 3.11% fixed for life. This should be backdated to the start of the mortgage, with the current balance being reduced to reflect the revised interest rate. Its error caused Mr and Mrs T distress and inconvenience – they've accepted the investigator's suggested award of £200, and I think that's fair.

## My final decision

My final decision is that I uphold this complaint and direct more 2 life Limited trading as Standard Life Home Finance to put matters right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 15 January 2024.

Simon Pugh
**Ombudsman**