

The complaint

Mr and Mrs S complain that more 2 life Ltd unfairly refused them a further advance on their lifetime mortgage.

What happened

Mr and Mrs S took out a lifetime mortgage – a form of equity release – in 2020. They borrowed around £600,000 to pay off their existing interest only mortgage; their property was valued at around £2.4million at that time. The interest rate was 3.05%, fixed for the duration of the mortgage.

In 2022 they applied to more 2 life for a further advance. They paid a valuation fee and the application proceeded. more 2 life considered it, and declined the application on the basis that Mr S had been disqualified as a company director some years previously.

Mr and Mrs S complained. They said Mr S's disqualification was before they first took out their mortgage and it wasn't a barrier at the time, so it shouldn't prevent them taking further borrowing. They said their mortgage agreement said they could borrow more at any time.

They said they were now trapped with more 2 life because it wouldn't lend them any more money, and if they went to another lender there would be a substantial early repayment charge (ERC). And interest rates have increased in the meantime, so any new borrowing would now be more expensive. Mr and Mrs S said they had paid a valuation fee for no reason and while more 2 life had said it would be refunded, they still hadn't had it back. They didn't think it was fair that more 2 life had changed its lending criteria even though nothing about their circumstances had changed.

more 2 life said it was not obliged to lend. It was entitled to consider the application in line with its lending criteria and it acted fairly in declining the application for further lending. But it said it would refund the valuation fee of £2,550.

Our investigator recommended upholding the complaint. He said that if Mr S's disqualification was a matter of concern to more 2 life, that should have been picked up at the time of their first application in 2020. As a result, Mr and Mrs S were now stuck with more 2 life and unable to access further borrowing. He said it should pay them £250 compensation and, if they were able to move their mortgage elsewhere, waive any early repayment charge.

more 2 life accepted that. It also said it would consider another application from Mr and Mrs S, now that Mr S's disqualification has expired, and would not charge a further valuation fee. Mr and Mrs S did not agree. They didn't think it was fair that their application had been declined in 2022, and said that if they applied again now, or moved their mortgage to another lender, they would have to pay a higher interest rate. They wanted more 2 life to honour the 4.7% interest rate that was available in 2022.

I issued a provisional decision setting out my thoughts on the complaint. Although I largely agreed with our investigator about the outcome, I took a different view of the appropriate redress.

My provisional decision

I said:

“Mr and Mrs S’s mortgage offer says that their loan is subject to an ERC for the first 10 years– the ERC is 5% of the loan balance for the first five years, and 3% between years six and ten.

The offer also says:

You may apply for additional funds against your home at any time by application to more 2 life Limited. The amount available will depend on the current value of your home, your age, the condition of the property at the time of application and the outstanding balance. Additional funds are not guaranteed at any time during the life of the loan.

This means that further borrowing is not guaranteed – it’s subject to application. And more 2 life is entitled to refuse an application if its lending criteria aren’t met.

more 2 life has explained to us that it hasn’t changed its lending criteria between 2020 and 2022. What has changed is the checks it carries out – so in 2020 its underwriting checks wouldn’t have picked up director disqualifications, but in 2022 they did. But if it had been aware of Mr S’s disqualification in 2020, that would have caused it the same concern it had in 2022.

This means that more 2 life shouldn’t have lent to Mr and Mrs S in 2020. Mr S’s disqualification means that it wasn’t prepared to accept them as customers. Nothing had changed about that between 2020 and 2022; all that had changed was that more 2 life was more likely to find out about it in 2022.

There is no suggestion this is information Mr and Mrs S concealed in 2020. I’ve looked at the application form they completed, and while it asks about matters such as bankruptcy, it doesn’t ask about director disqualification.

If this is a matter that does concern more 2 life, and leads it to refuse lending when it is aware of it, then I think it ought to have either asked, or carried out its own checks, in 2020. It’s a matter for more 2 life to decide where its lending risk appetite lies. It’s not unreasonable for it to take the view that it doesn’t want to lend to applicants during a period of disqualification as a director.

However, that has – in the particular circumstances of this case – resulted in unfairness to Mr and Mrs S. It’s not unusual for lifetime mortgage borrowers to take further advances over the years as their needs change – but Mr and Mrs S were unable to do that. Had more 2 life carried out the more detailed checks it now carries out in 2020, I think it’s likely it wouldn’t have lent to them at all.

But more 2 life did lend, and then applied its more rigorous checks to their 2022 application, leading to it being declined. This meant that when Mr and Mrs S wanted to borrow more money in 2022 they couldn’t do so with more 2 life, and they couldn’t move to another lender either without paying a 5% ERC. They wouldn’t have been in that position if more 2 life had carried out checks in line with its risk appetite and declined their original application in 2020.

Putting things right

more 2 life has now said it will consider a further application from Mr and Mrs S, without charging them a valuation fee. Mr S's director disqualification has expired since the 2022 application, so it doesn't anticipate that will be a barrier to a further application. I think that's fair.

Mr and Mrs S have said that more 2 life should also honour the 4.7% interest rate that was available in 2022. I've thought carefully about this. Declining their 2022 application wouldn't have been unfair had they been new customers. But they weren't new customers, because it hadn't declined their 2020 application.

If more 2 life had declined their 2020 application, Mr and Mrs S would have needed to apply to another lender instead in 2020. Clearly they didn't do so, and so I don't know for sure whether another lender would have accepted their application. However, on balance, I think it's more likely than not. I say that because their broker has checked with two other major lifetime mortgage lenders, and both have confirmed that they do not decline applications on the basis of a director disqualification – unless there are also issues such as a bankruptcy or criminal matters.

On balance, therefore, I think that had more 2 life declined their application in 2020, Mr and Mrs S would have been able to obtain a mortgage with another lender instead. And, for the same reasons, it's likely they would have been able to obtain a further advance in 2022 on that mortgage. While the further advance might not have been at exactly the same interest rate of 4.7% that more 2 life had available at the time, it would have been broadly similar, and substantially less than the rates Mr and Mrs S could obtain now, either from more 2 life or on the open market. I've not seen anything other than the disqualification which leads me to believe an application was likely to have been refused.

As a result, I don't think merely waiving the ERC goes far enough. It allows Mr and Mrs S to move their mortgage to another lender – but doing so means the entire balance, not just the extra they wanted in 2022, would be at a much higher interest rate. There's no prospect of them being able to replace their 2020 borrowing now at a rate comparable to what they would have got from another lender in 2020. So moving elsewhere will cause them substantial financial loss.

And I don't think a fresh application – based on rates available now – to more 2 life goes far enough either. While it will mean Mr and Mrs S retain the interest rate on their 2020 borrowing, it still means the further advance will be at a higher interest rate than it would have been in 2022 had they been with another lender from the start.

To put things right, more 2 life should consider a further application from Mr and Mrs S now. And if that application is granted – subject to matters such as the security of their property and the loan to value – it should offer them up to £143,627 at 4.7% fixed for the lifetime of their mortgage. This is the sum more 2 life said in 2022 could be available based on the outcome of the valuation. If Mr and Mrs S wish to borrow more than this, any amount above that level will be at the interest rate available now. If more 2 life has now refunded the cost of the 2022 valuation – as it said it would – it does not need to provide a free valuation now, since Mr and Mrs S would always have needed to pay for one valuation to obtain further borrowing.

I think this is a fair outcome. While more 2 life should not have lent in 2020, the fact is that it did. The consequences of that cannot be put right by Mr and Mrs S moving to another lender, since doing so would cause them substantial financial loss in the interest rate they are charged. And while the 4.7% available in 2022 may not exactly

replicate what they would have been able to obtain from another lender at that time, it's not possible to know exactly what they would have got, and I think 4.7% is broadly in line with what was available on the market. So I'm satisfied that this is the fairest way to put Mr and Mrs S as close to being back in the position they would have been in as is possible in the circumstances.

Finally, I agree that more 2 life should pay Mr and Mrs S £250 compensation, which I think fairly reflects the upset caused."

The responses to my provisional decision

Mr and Mrs S accepted my provisional decision. more 2 life said it had nothing further to add to what it had already said.

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 also considered again the conclusions I reached in my provisional decision. Having done so, and having noted that neither party had any further evidence to provide or arguments to make, I see no reasons to depart from those conclusions. For the reasons set out in my provisional decision, quoted above, I uphold this complaint.

Putting things right

To put matters right, more 2 life should:

- Within 28 days of the date we tell it Mr and Mrs S have accepted this decision, contact Mr and Mrs S or their representative to find out how much they wish to borrow.
- It should then consider an application for that amount, disregarding Mr S's disqualification, against the lending criteria in place at the time of the 2022 application. If more 2 life has refunded the 2022 valuation fee, it will be entitled to charge for a new valuation now, but if it has not yet refunded the 2022 valuation fee it should waive the cost of a new valuation instead.

Provided the application otherwise meets its lending criteria, it should offer Mr and Mrs S a further advance on their lifetime mortgage at an interest rate of 4.7% fixed for life, subject to a maximum further advance at this rate of £143,627. If Mr and Mrs S wish to borrow more than this, the amount above £143,627 will be subject to a full fresh application against current lending criteria (disregarding Mr S's disqualification), and will be charged at an interest rate from more 2 life's current range.

Any future applications for further borrowing (whether or not Mr and Mrs S borrow less than £143,627 on this occasion) will be considered as fresh applications subject to the interest rates available in more 2 life's range at the time of the application.

- Pay Mr and Mrs S £250 compensation.

My final decision

My final decision is that I uphold this complaint. more 2 life Limited should put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 18 December 2023.

Simon Pugh
Ombudsman