

The complaint

Mr and Mrs R complain that Leeds Building Society unfairly withdrew their mortgage offer which meant they couldn't port their mortgage product. They would like their porting and exit fees to be refunded and compensation for the losses they suffered.

What happened

Mr and Mrs R agreed a five-year fixed mortgage product with Leeds in February 2018. They later wanted to port their mortgage product to another property. The mortgage balance was £83,000 and the new property was valued at £279,500. They sold their property on 30 September 2021 and moved to temporary accommodation paying an early repayment charge ("ERC") of £2,184.00 and an exit fee. Mr and Mrs R experienced difficulties with getting the new mortgage for the new build property but following a complaint and the payment of some compensation, a mortgage offer issued on 2 December. But then Mr and Mrs R say that two complications arose when the builder selling the land offered them a quarter of an acre of land for a nominal fee. These complications were a 20-year overage clause and a six feet strip of land which led alongside their boundary with access to a house on the edge of their land. Mr and Mrs R say that this was redundant, and the builder had already applied for it to be extinguished.

Although Leeds had already issued a mortgage offer, it subsequently withdrew it. Leeds said it did that because of information it received from its valuer that as there was a contiguous land issue it could interfere with the quiet use and enjoyment of the land and frustrate the sale of the property in the event of a repossession. The valuer didn't recommend that this sale proceeded. As the valuer recommended that the application didn't proceed, Leeds accepted the valuer's recommendation.

Our investigator didn't recommend that this complaint should be upheld as Leeds was entitled to rely on the opinion of a suitable qualified professional. Mr and Mrs R disagreed and asked for a review.

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.

This complaint is somewhat unusual arising out of a change in a property that was being bought after the mortgage offer issued and I requested further information from the parties in order to give careful consideration to the outcome.

Mr and Mrs R wanted to sell their property and get another mortgage with Leeds on a new property and port their mortgage product. I recognise that there were some difficulties getting the mortgage offer. That offer issued and as our investigator highlighted it contained a clause that it could be withdrawn if information came to light which impacted the value of the property as security. The issue which is the subject of this complaint arose in relation to Mr and Mrs R wanting to buy an additional parcel of adjoining land at a nominal price. This land which bounded the main parcel of land had a 20-year overage clause and a right of way to

another house. Leeds told Mr and Mrs R that if the solicitor and valuer were happy to proceed with the revised plans they would go along with it.

Leeds went back to the valuer who said:

“Further to your enquiry the proposals here create a contiguous land issue which could potentially interfere with the quiet use and enjoyment of the land and frustrate the sale of the property in the event of a repossession. Consequently, in these circumstances we cannot recommended that this application proceed”

Leeds then told Mr and Mrs R that as the valuer could not approve the application based on the referral, it was unable to proceed with this application. Mr and Mrs R were naturally disappointed and later got a valuation from a local estate agent indicating that the property had increased by £45,000 in value over a few months.

Leeds is a lender, and its loans are based on the security of property. It engages suitably qualified valuers to determine whether the property it lends against is good security. In this case, Leeds was told by the valuers in clear terms that the application cannot proceed. The valuer had been sent the plans drawn up by Mr and Mrs R and their builder and their comments on these and came to a definitive conclusion and recommendation to Leeds not to approve the lending. Leeds made no comments on these plans and didn't seek to influence the valuer.

My role is to investigate this complaint and decide whether Leeds has done anything wrong. I cannot say it has if it has followed the clear direction of its valuer. Mr and Mrs R may disagree with the advice of the valuer and wish it were different and I can see why they might. But Leeds has done nothing wrong in following that advice. Mr and Mrs R have suggested that it was in Leeds interest that the application not proceed, as the ERC would be refunded, and evidenced by the delay in processing the original application.. But I see nothing to suggest that this played a part in Leeds' decision-making process. The application had been accepted until, as Mr and Mrs R say, that two complications were introduced. Leeds said that it would proceed if the solicitor and valuer were happy. In the event the valuer wasn't content with the security offered and it didn't proceed.

Mr and Mrs R say that the valuer's recommendation was based on what would happen in a repossession situation and that is to ignore their financial standing which Leeds was well aware of. But Mr and Mrs R's healthy financial situation at the moment whilst relevant to the affordability of the mortgage doesn't preclude a possibility that their financial situation might change in the future. I don't consider it irrelevant that Leeds should consider what might happen to their security in a repossession situation and try and protect itself. I also note that the response from the estate agent dated 11 January 2022 which states that the additional land could add value doesn't deal with the issues of concern to Leeds' valuer. I see no mention of overage, right of way, contiguous land problem or reference to a repossession situation. For the reasons set out above, I don't believe that Leeds has done anything wrong in following the valuer's recommendation and I can't fairly uphold this complaint.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 6 November 2023.

Gerard McManus

Ombudsman