

The complaint

Mr and Mrs M's complaint is about a lifetime mortgage application they made to more 2 life Ltd (m2l). They are unhappy that their application was declined because the valuation report identified that the property didn't fall within m2l's lending criteria. Mr and Mrs M disagree with the valuation report. They are unhappy because m2l declined to exercise flexibility in relation to its lending criteria, which they consider was in breach of its obligations to make 'reasonable adjustments' under the Equality Act 2010. They have said that the situation caused them considerable stress and injury to their feelings.

What happened

On 4 November 2022 Mr and Mrs M applied for a mortgage with m2l to purchase a new property for them to live in. The advice to do so was given by an independent mortgage broker. m2l commissioned a valuation of the property, which was completed a week later. This detailed that part of the habitable area of the property was constructed with a single skin wall and so fell outside m2l's lending criteria. It was also mentioned that there was a second issue with the property – the potential for asbestos – which would again mean the property fell outside m2l's lending criteria. m2l declined Mr and Mrs M's application on 10 November 2022.

On 15 November 2022 Mr and Mrs M appealed the decision by m2l. They provided comment from their own surveyor regarding the issues raised in the valuation. This disputed that there was potentially asbestos in the property and highlighted that when the building had been converted it had been subject to building control, so the single skin wall should not be of concern to m2l.

The further comments were passed to the surveyor for comment, which confirmed where it had concerns about asbestos content. In relation to the single skin wall, the surveyor said this was reported in line with the lender's guidance. m2l didn't change its decision and confirmed this to Mr and Mrs M on 1 December 2022.

Mr and Mrs M then asked m2l to reconsider its decision in light of Mrs M's medical situation. They highlighted businesses had a duty to make reasonable adjustments for disabled customers. m2l explained that it considered an application based on the property the mortgage was to be secured against and its suitability for lending purposes, not the applicants themselves, other than where things like bankruptcy were involved. It didn't change its decision.

On 18 December 2022 Mr and Mrs M complained to m2l and it responded in a letter of 13 January 2023. M2l didn't uphold the complaint as it was satisfied it followed its processes correctly and communicated with them in a timely manner.

Mr and Mrs M weren't satisfied with m2l's response and asked the Financial Ombudsman Service to consider their complaint.

One of our Investigators considered the complaint, but she didn't recommend that it be upheld. She explained that m2l was entitled to rely on the valuation it had commissioned,

despite Mr and Mrs M not being happy with its content. As such, she was satisfied m2l hadn't done anything wrong when declining the application.

Mr and Mrs M didn't accept the Investigator's conclusions. They reiterated why they believed the valuation was wrong. They also commented again that they considered that m2l should have made adjustments to its lending criteria in light of Mrs M's medical situation, as a 'reasonable adjustment'.

Our Investigator again reiterated that a lender is entitled to rely on a valuation completed by an appropriately qualified professional. She also confirmed that while a lender would be expected to make reasonable adjustments for a disabled customer, this would not extend to a lender being expected to lend outside its normal lending criteria. She remained satisfied that m2l had not unfairly declined Mr and Mrs M's application.

Mr and Mrs M remained unhappy and asked that the complaint be referred to an Ombudsman. They also commented that as m2l appointed the surveyor that completed the valuation, they believed that it was liable for the content of the valuation.

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 would initially explain that whether to lend is a matter of commercial judgement on the part of the lending business. Generally speaking, it's not my role to interfere with that judgement or second-guess a decision to lend (or not to lend) where that judgment has been exercised fairly, after proper consideration of the application.

What I can do is assess whether a lender has exercised its discretion fairly and took reasonable steps to comply with the obligations placed on it by relevant law, regulation and what is considered good business practice at the time of the events complained of.

A lender will decide what types of property it is willing to provide mortgages for. Different types of properties and construction will represent different risks if repayment of the money owed is dependent on the property being sold. A lender is entitled to decide what types of risk it is willing to take when it lends, and that's again not something this service would normally look to interfere with.

When Mr and Mrs M applied for a mortgage m2l agreed in principle to lend them the money they wanted. As lenders are not property experts, m2l employed a surveyor to assess the property and create a valuation report for it to use. m2l's duty was to ensure a valuation was carried out by a suitably qualified person or business. As the firm of surveyors in this case was Royal Institution of Chartered Surveyors (RICS) registered, I am satisfied that m2l fulfilled its duty in appointing properly qualified persons to value the property.

The valuation identified two issues that potentially conflicted with m2l's lending criteria, and when this information was assessed by m2l, it concluded the property was not suitable security for the mortgage Mr and Mrs M applied for. m2l was entitled to rely on the expert opinion it had commissioned. So I can't find it was unreasonable for m2l to decline Mr and Mrs M's application for a mortgage on the property they wanted to buy.

I note Mr and Mrs M's comment that as m2l appointed the surveyor, it is responsible for the surveyor's conclusions. I know this will disappoint Mr and Mrs M, but that is not the case. I would also confirm surveyors don't fall within the remit of the Financial Ombudsman Service, and so I can't comment on whether or not the surveyor's report was correct or not. That said,

when Mr and Mrs M questioned the report and provided comment from their own surveyor, m2l took their concerns seriously and referred them to the surveyor, in case they would have made a difference to its conclusions. In doing so, m2l did what I would have expected it to do.

Mr and Mrs M have raised the issue of m2l not acting as it should have in light of Mrs M's medical situation. The relevant legislation (the Equality Act 2010) requires m2l to make reasonable adjustments to ensure people with protected characteristics (disability being one such characteristic) have equal access to the services it provides. What it doesn't require m2l to do is to change its lending policy (or apply it differently) such that a person with a protected characteristic receives a more favourable outcome than someone without that characteristic. As such, I can't find that m2l acted inappropriately when it declined to lend on a property that didn't fall within its lending criteria.

My final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 27 October 2023.

Derry Baxter
Ombudsman