

## The complaint

Mr and Mrs M have complained that an equity release mortgage was mis-sold to them by Sixty Plus Ltd. Mr M, who has dealt with the complaint throughout, says that Sixty Plus never explained to them how the early repayment charge (ERC) worked. Mr and Mrs M are asking Sixty Plus to compensate them for the cost of the ERC charged by the lender when they repaid the equity release mortgage..

(In this regard, I note that Mr M refers to both the ERC and the Benchmark, when he's talking about the amount charged by the lender, but it is in fact an ERC; the Benchmark is part of the way in which the ERC is calculated.)

## What happened

In January 2016 Mr and Mrs M took advice from Sixty Plus about an equity release mortgage. Mr M was aged 73 and Mrs M was aged 66. They were accompanied at the meeting by their own independent IFA, Mr H.

At that time Mr and Mrs M had an interest-only mortgage of £49,000 and which was repayable in full in 2018. The fact-find records that Mr and Mrs M also had loans connected with commercial properties, as well as unsecured debts of £16,000. It was noted that Mr M wanted to retire and wanted to clear his debts. In total Mr and Mrs M wanted to borrow £107,500, which included an additional £2,500 for their own use.

Mr and Mrs M wanted a mortgage that allowed them to make repayments. In a report dated 1 February 2016 Sixty Plus recommended an equity release mortgage with one of the major providers. This allowed repayment of up to 10% of the initial loan amount each year without any ERC. Up to four payments could be made each year, with a minimum payment of £500. The adviser suggested Mr and Mrs M set up a standing order to a savings account and then make a lump sum payment each year.

Page ten of the report sets out, in bold type, risk warnings. One of these is about the ERC. It says:

*This loan carries Early Repayment Charges for 22 years. The charge is guaranteed never to be greater than 25% of the initial advance, and is based upon the UK FTSE 15 Year Gilt Index. The charge will greater if there is a fall in the index before you repay all or part of the loan. Based upon the advance the maximum penalty would be £27,000, plus a closing administration fee of £125. Please see Section 13 of the Key Facts Illustration (KFI) for various examples.*

Section 13 of the KFI has a detailed explanation of how the ERC will operate. This includes the following:

*The Early Repayment Charge will reflect any change in the interest rates on government borrowing or gilts. This will be measured using the FTSE UK Gilts 15 Year Yield Index (the "Index") which is published daily in the Financial Times.*

*If the Index is lower than the Benchmark Rate for your loan then an Early Repayment Charge will be payable. The lower the Index falls the higher the repayment costs will be.*

*No Early Repayment Charge will be payable if the Index is higher than the Benchmark Rate.*

*The Benchmark Rate for your loan will be shown in your lifetime mortgage offer. It will be 0.3% higher than the Index is currently to cover mortgage set up costs and transaction costs incurred in reinvesting the money.*

*At the time you decide to repay this lifetime mortgage in part or in full, an Early Repayment Charge will be calculated by multiplying (A) x (B) x (C) below:*

- A. The amount that you repay including all interest and charges.*
- B. The number of years remaining until you or the younger of you reaches age 88.*
- C. The difference between the Benchmark Rate for your mortgage and the Index at the date of repayment.*

The KFI also sets out various examples of when an ERC will not be payable, one of which is:

*when the Index is higher than or equal to the Benchmark Rate detailed in your lifetime mortgage offer.*

The mortgage offer showed the fixed rate applicable to the advance of £107,500 to be 5.07% and the Benchmark Rate to be 2.44%.

The mortgage completed on 23 February 2016.

In August 2019 Mr M raised a complaint with the mortgage provider. He said that the reason he took out more than his existing mortgage was because he owed his bank £49,000 for some commercial premises he owned. He decided to pay off his bank borrowings as well as his mortgage, and then use the rents from his commercial premises to pay the interest on the mortgage, through the annual lump sum payment provision.

*Mr M said "... I appreciate we would be locked in for a period of time and that I could pay back between 5% and 10% but not aware that I could not pay back more than that amount without being penalised..."*

Mr M explained that he'd been able to sell his commercial premises for £115,000, and he'd then discovered that a building society was now offering three types of retirement mortgages at a lower interest rate than his current equity release mortgage. Mr M says he was shocked to learn that if he repaid the mortgage, there would be an ERC of just over £18,000. He said *"Now I feel we are locked into something we just can't get out of and that wouldn't happen with a normal mortgage, I just wish I had looked into it further."*

The mortgage provider didn't uphold the complaint, although its final response letter appears to address only the partial repayments that are allowed, rather than the ERC.

In January 2020 Mr M complained to Sixty Plus, saying he had learned that if he repaid the mortgage he'd have to pay an ERC. Mr M says this is *"scandalous"* and that this had never been fully explained. Mr M said it had been made clear what his intentions were when he sold his commercial premises – which was that he intended to repay the mortgage early.

Sixty Plus didn't uphold the complaint. It said that Mr and Mrs M had never mentioned repaying the mortgage in full; instead they'd wanted the facility to make repayments from income to stop excessive roll-up of interest. Sixty Plus also said that the KFI and mortgage offer set out in detail the ERC, and also referred to the suitability report dated 1 February 2016 and the information contained in that about the ERC. Finally, Sixty Plus said that Mr and Mrs M had been given independent legal advice and that the solicitors would have gone through the ERC with Mr and Mrs M, both in writing and in a face-to-face meeting.

Mr M replied to say that there had been no mention at all of the Benchmark by Sixty Plus and that this should have been properly explained. Mr M also said that he'd never met the solicitors as there had been no face-to-face meeting.

Mr M raised his complaint with the Financial Ombudsman Service. An investigator looked at the complaint but didn't think it should be upheld. He was satisfied that the ERC had been fully detailed in the documentation provided to Mr and Mrs M before they applied for the mortgage and in the mortgage offer.

Mr M didn't accept the investigator's findings. He said (and I summarise):

- the equity release mortgage was not fit for purpose and not suitable for their needs as they always had every intention to pay it off early;
- at the initial meeting with Sixty Plus – at which their own IFA was present – they made it quite clear that their intention was not to keep this equity release mortgage but that they always intended to pay it off when their commercial premises were sold. Because the market was poor at the time, there was no time frame for this;
- at no time were they told by Sixty Plus about ERCs;
- they were offered no other mortgage than the one they took out;
- it's not true that they had a face-to-face meeting with their solicitors. They only had a few letters;
- two years after taking the mortgage they were able to sell their commercial premises so asked the mortgage provider about making an early settlement. This was the first time they learned that an ERC would be payable;
- they've been badly advised, as they've had to use all their savings to clear the equity release (over £135,000, including the ERC) and have now taken out a retirement mortgage with a building society.

Because the matter remains unresolved, it falls to me to issue a final decision.

### **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.

Where the evidence is inconclusive or incomplete, I have reached my decision on what I think is likely to have happened, based on the evidence that is available.

The crux of this complaint is that Mr and Mrs M say that at no point did Sixty Plus ever mention to them that if they repaid this mortgage early, they would have to pay an ERC. They also say that they made it clear – in the presence of their own IFA – that their intention was always to repay this mortgage within the near future, once they sold their commercial premises.

I will deal with the issue of the SHIP (Safe Home Income Plan) certificate first. Mr and Mrs M say they never saw the solicitors and only had advice in writing. They say they weren't told about the ERC by the solicitors.

The SHIP certificate was provided to Mr and Mrs M's solicitors by the lender, as it was part of the process of putting the mortgage into place. It was nothing to do with Sixty Plus, who would not have seen the certificate (and didn't need to).

All equity release providers who subscribe to SHIP (now known as the Equity Release Council) require borrowers to have independent legal advice about the mortgage. The mortgage will not be completed by the lender until the solicitors have returned the signed SHIP certificate confirming advice has been given.

Initially Mr and Mrs M instructed their solicitors not to release the SHIP certificate to Sixty Plus when our investigator asked for a copy of it. Mr and Mrs M have now provided it. The certificate says that there had been a face-to-face meeting when the terms and implications of the mortgage were explained. Mr and Mrs M signed this certificate to confirm they'd been advised about the terms and conditions of the mortgage.

Mr M emphatically denies there was any meeting and says he was not told about the word "Benchmark". But as I've said above, Mr M is confusing the ERC with the Benchmark (which, as I've already said, is part of the way the ERC is calculated). I'd expect the solicitors to have explained the ERC. But in any event, what the solicitors did or did not do has no bearing on the mortgage advice given by Sixty Plus. If Mr M considers there were irregularities in relation to the advice given to him by his solicitors, he'll need to take that up with the Solicitors' Regulation Authority or the Legal Ombudsman.

Turning now to the part of the complaint which does relate to Sixty Plus, my findings are as follows.

I'm satisfied the documentation provided by Sixty Plus – the KFI and the suitability report – set out in some detail that there may be an ERC to pay, the circumstances in which this could apply and how it would be calculated. Given this, I don't agree with Mr M that this was information that was withheld by Sixty Plus. Mr M says that his IFA, Mr H, who was at the meeting, has confirmed that the ERC was never discussed, but I don't have any statement from Mr H, so this cannot be verified.

Sixty Plus has provided a printout of the various available mortgage options it sourced for Mr and Mrs M and from which the recommended mortgage was selected. Mr M says that he and Mrs M were given no other options to choose from. But Sixty Plus's role was to advise on the *most* suitable mortgage, based on the information provided by Mr and Mrs M, and I'm satisfied this is what happened.

Mr M also says that he made it clear at the initial meeting with Sixty Plus and Mr H that the intention was always to repay this mortgage within the near future when the commercial premises were sold.

There are several reasons why I am not persuaded by what Mr M has said.

First, this isn't recorded anywhere in the fact-find. I think it is unlikely that such important information was omitted, if in fact it is what had been discussed.

At the start the suitability report says: *"You should check carefully that the information is correct and note any revisions which need to be made due to a change in your circumstances before making any decision to proceed. It is important to ensure you have*

*understood the issues and any risks involved, please also check any assumptions I have made are correct.”*

Pages 3-6 set out the details recorded by Sixty Plus of Mr and Mrs M's circumstances, needs and wishes. There is no mention in there of any plan to sell the commercial premises and repay the equity release mortgage in the short-term. Instead the report records that Mr and Mrs M intended to pay off their commercial loan so they could have the full benefit of the rental income.

Here I note that Mr and Mrs M did not contact Sixty Plus after receiving the suitability report to say that the adviser's understanding of their situation was incorrect.

An important point is that Mr and Mrs M were recommended to Sixty Plus by their own IFA, Mr H, who attended the meeting with them. Equity release mortgages can only be sold by accredited advisers, so once Mr H had identified that equity release might be the solution to Mr and Mrs M's need to raise funds, he was correct to recommend them to a specialist adviser. Mr H has not provided any evidence in this case.

But even though Mr H wasn't an equity release adviser, I think it's likely he would probably have been aware that these are long-term products not intended to be repaid within a couple of years of taking them out, because of the potential for ERCs. This is not esoteric information which only equity release advisers would know.

Given this, I think it's unlikely that, if Mr H had known Mr and Mrs M were intending to repay the mortgage within a few years, he'd have recommended they see an equity release adviser. He was present at the meeting when Sixty Plus discussed the mortgage. So if Sixty Plus's understanding of Mr and Mrs M's circumstances had been incorrect, or if they hadn't explained themselves clearly, Mr H would have had the opportunity to clarify any misunderstanding.

Overall, the available evidence doesn't persuade me that Mr and Mrs M told Sixty Plus that they intended to repay the mortgage within a short period of time. I think if they had done so it would have been explained to them that an equity release mortgage wasn't the most suitable option for them.

I appreciate this isn't the outcome Mr and Mrs M were hoping for, and I know they will be disappointed. But after careful consideration of all the evidence, I'm unable to find that Sixty Plus has done anything wrong.

### **My final decision**

My final decision is that I don't uphold this complaint.

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 correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 9 March 2021.

Jan O'Leary  
**Ombudsman**