

The complaint

This complaint is about an equity release mortgage that was sold to Mrs L by an appointed representative of Personal Touch Financial Services Ltd.

Mrs L sadly died in August 2020 and the complaint has been brought by her estate. Mrs L's daughter – who I'll refer to in this decision as Ms M – is Executor of the estate and is representing it in this matter. To that end, any reference to Ms M in this decision should be taken to mean her acting in her capacity as Executor of the estate.

Ms M's said that her sister - who I'll refer to as Ms C - was vulnerable due to her health concerns (which I won't detail here to protect her privacy), and so lived in the property with their mother. Ms M also feels her mother was vulnerable at the time.

What happened

Mrs L applied for this equity release mortgage in October 2008. A fact find was completed on 9 October, and illustration was produced on 20 October and Mrs L signed the paperwork to apply for the mortgage on 24 October. The adviser then sent Mrs L a letter setting out the details of his recommendation on 4 November, which Mrs L signed on 19 December.

The fact find recorded that Mrs L had an existing mortgage of around £14,000, a second charge loan secured on her property of around £31,000 and that she owed around £44,500 in unsecured debts that were in a payment plan. It also showed that her total monthly outgoings were about £150 more than her net monthly income. The payments to the mortgage, secured loan and unsecured debts totalled about £650 a month.

It was recorded on the application form that was submitted to the lender that Ms C lived in the property, that she had the mental capacity to sign an Occupants Deed and was willing to do so. It was also recorded that Mrs L wanted to borrow just under £45,000 to repay the debts that were secured on the property, £41,000 to reduce the unsecured debts and £2,000 for the fees to apply for the mortgage. That took Mrs L to the maximum loan allowed based on her declared value of the property.

When the property was valued the surveyor said it was worth slightly more than Mrs L thought, so the loan amount increased from £88,000 to £99,000 which was enough to fully repay all the debts, with a bit left over. The mortgage completed in January 2009.

I understand Ms M has held Power of Attorney over Mrs L's affairs since around 2013, and she then complained to Personal Touch after Mrs L died in 2020. Ms M also complained to the lender, and about the solicitor involved in the transaction.

The complaint about the lender had also been passed to me to decide, and I dealt with that as a separate matter to this decision about the broker, Personal Touch. Ms M has provided us with a copy of a letter from the Legal Ombudsman about the solicitor in which it says it can't take things forward as too long has passed since so there would no longer be a file about the matter, and the solicitor is no longer trading so there was no reasonable prospect of any award being paid even if the complaint was investigated and upheld.

Our investigator said he didn't think the equity release mortgage was mis-sold. He also said the checks about the understanding of the contract (and that Ms C would need to leave the property when Mrs L died) were down to the solicitor, and that the mortgage took Mrs L from a situation where her outgoings were higher than her income, to one where she had some money available to spend each month.

Ms M didn't agree and so it has been passed to me to decide.

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 trust Ms M won't take it as a discourtesy that I've condensed this complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Although I've read and considered the whole file I'll keep my comments to what I think is relevant.

As our investigator has explained, the only issue I'm able to consider here is that relating to Mrs L as she was Personal Touch's customer. I have no power to consider things from Ms C's point of view.

When these products were first offered to the market from the late 1980s onwards, it was envisaged that there was the potential for family members to be unhappy once they learned that their relatives had taken out an equity release mortgage, or for borrowers to regret the erosion of the equity in their properties.

Precisely because of this, even before mortgage regulation came into effect on 31 October 2004, the sales process for these products has always been very robust, with borrowers required to take advice from a solicitor, as well as a financial advisor.

In this decision I've looked at the sale of the mortgage (in terms of what was regarded as good industry practice at the relevant time) and considered generally whether Personal Touch did anything wrong when the mortgage was taken out. In doing that, I can give no regard to the regulatory standards in place now, or to any hindsight that the intervening years might have brought.

It's impossible for us now to establish everything that was discussed between Mrs L and the adviser at the time. I'm aware that over 10 years have passed since the lifetime mortgage was sold. Due to the passage of time, it can be difficult in such complaints to be certain of exactly what was discussed and agreed at the time.

In such instances we typically look at the records from the time to try to get the best impression possible of what was discussed. However, that's not the end of the matter. We also look at the wider transactions and the specific circumstances of the consumer(s) at the time of the sales to try to establish if a product was mis-sold.

I'd like to reassure Ms M that I've carefully reviewed the documents available from the time of the sale to try to build up a picture of what happened. And I've used all this evidence to determine whether Personal Touch mis-sold the equity release mortgage to Mrs L and if it was clearly unsuitable for her needs at the time.

This type of mortgage provides that no repayments are made, and interest rolls up over the years. As a result, the amount the debt has increased to can sometimes come as a shock to

family members. But that doesn't mean the consumers that took out the mortgage – so here that was Mrs L – didn't understand the consequences of the interest roll up and weren't happy to agree to it. This was Mrs L's house and her equity. If she wanted to use the equity in her home to repay her debts and leave herself some money to spend each month, then it would be highly inappropriate for me to say that she shouldn't have been allowed to do so.

I also note that Mrs L had independent advice from her own solicitor before she took out the lifetime mortgage. If the solicitor had thought Mrs L wasn't able to understand the nature of the transaction she was entering into, the solicitor had a duty to inform the lender, under the Safe Home Income Plans rules in place at the time.

The letter from the Legal Ombudsman to Ms M is based on documentation provided by Ms M and that says:

"I note on 26 November 2008 [the appointed solicitors] wrote to your late mother acknowledging the identity documents sent to them. I have also seen a further letter that day advising that the mortgage offer had been received and asking your late mother to call the office for a telephone consultation before returning any signed documents to them.

I have also seen a copy of the invoice from [a firm of solicitors local to Mrs L, who incidentally appear to be the same firm that arranged Mrs L's probate for Ms M] dated 2 January 2009. I have spoken with [the local solicitors] who have confirmed they were asked by [the appointed solicitors] to undertake a home visit to witness your sister's signature on the form and explain the form to her. [The local solicitors] were not involved with providing legal advice about the equity release product to your mother."

If either firm of solicitors had any doubts about Mrs L and/or Ms C's capacity to understand what they were signing, then they were obligated to report that to the lender. The solicitor would have been best placed to make the judgement call as to whether Mrs L had the capacity to enter into this contract, and as they had no concerns then I can't say Personal Touch did anything wrong in also thinking the same.

The starting point here is the point-of-sale documentation from 2008. The value of such documents is that they're contemporaneous so they should reflect what was said and agreed at the relevant time. They're not fool-proof, of course; it's always possible information might be recorded incorrectly. But it's typically more reliable than people's individual recollections at a distance of time which, although given in good faith, can sometimes be inaccurate or contradictory. They are even more important in cases like this where the mortgage holder has died. Unless there's a compelling reason to believe the information is inaccurate, we'll generally attach some weight to it.

It was recorded that Mrs L wanted to pay off her existing mortgage, secured loan and unsecured debts – all of which she had to make monthly payments on. At the time of the sale it was recorded that Mrs L's outgoings were higher than her net income every month, and that's without taking into account any emergency expenditure that might have come up. That clearly wasn't a sustainable situation, as month-on-month things would only have got worse. Mrs L wanted to get rid of those outgoings. That seems like a perfectly valid reason for someone to take out a lifetime mortgage. There's nothing to indicate that Mrs L lacked the capacity to make that decision herself at the time so it would be completely wrong of me to now say, over ten years later, that she shouldn't have been allowed to.

The sale of this lifetime mortgage was drawn out over three months which gave Mrs L plenty of time to reconsider whether this was the right thing for her, to speak to Ms M (or Ms M's brother) if she wanted to do so, or to have sought further advice.

Having considered the paperwork and what it is recorded that Mrs L wanted the money for, I don't think the fact she took the maximum amount available was inappropriate. It was recorded that the adviser had discussed alternative options with Mrs L such as downsizing, taking in a lodger, asking family members for help or arranging an alternative type of borrowing and those options weren't suitable.

It was not for Personal Touch to question whether Mrs L had truly spoken to her other children. There was a question on the fact find *"Are your beneficiaries aware of the likely reduction in their inheritance if you refinance your property?"* which was answered "Yes". She was also asked whether she wanted Personal Touch to send a copy of the recommendation letter to those beneficiaries, or any other independent representative or solicitor, both of which were answered "No". Mrs L signed a form which said not sending the recommendation letter to either the beneficiaries or an independent representative/solicitor went against the adviser's recommendation.

It's not uncommon for parents to want to keep their finances private from their children. I'm sure Ms M can see how many complaints would be made if a broker refused to deal with an adult who is capable of making their own decisions, unless their child was notified; I'm sure most people would see how inappropriate and intrusive that would be. If Mrs L decided not to discuss her plans with all her children, that was entirely her decision to make, it was her house and her equity after all.

The illustration from the time set out the nature of the product and how the interest would roll up over the years:

- *"A lifetime mortgage is a special type of loan which is usually designed to run for the rest of your life, and which means that you borrow money that is secured on your home to give you a lump sum and/or a regular income. The amount you owe to the lender is usually paid back from the proceeds of the sale of your home after your death."*
- *"This lifetime mortgage will provide you with a cash lump sum. You will not make any monthly repayments during the life of this lifetime mortgage. The total amount you owe including the interest and charges must be repaid when you have left your home because you have died or need long-term care."*
- *"If you leave your home because you need long-term care you must repay this lifetime mortgage."*
- *"[Lender] has the right to take action to repossess your home for the following reasons:

- if the lifetime mortgage has not been repaid within 12 months of you leaving your home because you have died or need long-term care."*
- *"Check that this mortgage will meet your needs if you want your family or others to inherit your home. If you are in doubt, seek independent legal and financial advice."*

Section 8 is entitled *"What you will owe and when"* and said *"This shows how the amount paid to you and the interest and any fees that we charge mount up over 15 years. It has been calculated using the current interest rate of 6.80%. Interest is added to the amount you owe annually. Remember that the mortgage could run for a longer or shorter time than 15 years, and if it runs for longer, the amount you owe will carry on increasing."*

There was then a table to show the amount that was likely to be owed at the end of each year. This showed – based on the original lower lending amount of £88,000 – that after:

- Five years Mrs L would owe £122,275.36
- Ten years Mrs L would owe £169,900.71
- Fifteen years Mrs L would owe £236,375.80.

The reason for recommendation letter that Mrs L signed to accept, stated:

- *“You are prepared to accept the risk of faster erosion or eroding all of the equity within your property for the benefit of maximising the amount of capital available for your immediate needs.”*
- *“The Lifetime Mortgage that I am recommending will be repaid from your estate in the event of your death, or must be repaid earlier if you leave your property to move into residential care or sheltered accommodation, or on abandonment of the property. “*
- *“There is no interest payable on this mortgage whilst you continue to live at the property. The lender will require a repayment of the mortgage amount plus the interest that has accrued over the term of the mortgage either when you move or on your death. The key facts illustration gives you a guide of what you will owe and when, with a projection of roll up of interest.”*
- *“Your daughter, [Ms C], still lives with you, and you have confirmed that she is prepared to sign a standard document confirming she will vacate your property on your death, or moving into Long Term Care.”*
- *“The value of your residual estate will be substantially reduced and in some cases there may not be a residual estate to transfer to your beneficiaries as an inheritance.”*

Having considered everything, I’m satisfied Personal Touch made it clear that the interest would roll-up on this mortgage and what the potential amounts would be that would be owed at the end of each year. It also made it clear the debt would need to be repaid when Mrs L died, or if she went into long term care. So it should have been clear to Mrs L that Ms C wouldn’t be able to continue to live in the property after her death (or if she went into long term care) unless she was able to find a way to repay the total debt by other means.

Ms M has asked various questions about the guidelines for vulnerable customers, and the steps Personal Touch did – and should have – taken. But there’s nothing in the information we have available that would have raised any concerns that Mrs L was vulnerable. The fact Mrs L had debts and was taking out the mortgage to repay them wasn’t a sign of vulnerability, otherwise most equity release customers would have to be classed as such. Nor was her age, as equity release mortgages were only available to customers over a certain age, so again that would encompass most equity release customers. Ms M didn’t hold Power of Attorney over her mother’s affairs for another 4 or 5 years, so it seems Ms M trusted her mother could look after her own affairs at the time of the sale.

It was marked on the application form that Ms C had the capacity to sign an occupier’s form and that she was willing to do so. And from the information we have from the Legal Ombudsman it seems a local solicitor has confirmed that it visited Ms C to explain the form and witness her signature on it.

Personal Touch had no responsibility to look after Ms C’s interests here as she wasn’t its customer. It had the right to take the information it was given by Mrs L at face value, and that

is shown on the fact find and in the recommendation letter – both of which Mrs L signed – to be that whilst Ms C lived in the property, she wasn't financially dependent and she had capacity, and was willing, to sign the occupier's form to say she would vacate the property on Mrs L's death (or if she went into long term care).

There was simply nothing in this application that would have raised any concerns with Personal Touch such that I would have expected it to ask further questions or refused to arrange the equity release mortgage that Mrs L wanted.

It may be Mrs L was vulnerable but there's nothing to indicate Personal Touch should have been aware of that. It gave the advice in good faith, and I'm assuming Mrs L used the funds to repay her debts, thus relieving herself of the strain of trying to meet monthly debt payments out of her pension income and finding herself each month with her outgoings being higher than her income.

Mrs L had a clear aim and this equity release mortgage achieved that. There's nothing to show she was vulnerable at the time, or unable to understand the contract she was entering into. The advice given doesn't seem inappropriate and the paperwork set-out the nature of the contract she was entering into.

In the circumstances, the options available to Mrs L were very limited. She was clear that she didn't want to sell her property, ask her family for help or take in a lodger. Having very carefully considered this matter I don't consider Personal Touch did anything wrong when it gave the advice to Mrs L about this equity release mortgage as I'm not persuaded the product was unsuitable for her.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs L to accept or reject my decision before 9 November 2021.

Julia Meadows

Ombudsman