

The complaint

This complaint is about two further advances on an equity release lifetime mortgage that Mr and Mrs G took out through Responsible Life Limited.

The mortgage was originally held jointly. Mr G passed away in January 2019 at which point the mortgage transferred into being held in Mrs G's sole name. Upon her passing in August 2019 the right to complain vested with her estate.

The estate of Mrs G has complained that the two further advances taken out in 2014 and 2018 were mis-sold.

What happened

I issued a provisional decision in December 2021, the findings of which said:

"I trust the parties 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.

If the available evidence is incomplete and/or contradictory, we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

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. However, these were further advances on an already existing lifetime mortgage, so independent advice from a solicitor wasn't required.

It's impossible for us now to establish everything that was discussed between Mr and Mrs G and the adviser at the time. I'm aware that over 7 years have passed since the first further advance was sold, and as Mr and Mrs G have both passed away they're unable to give us their recollections of the sales.

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 the estate 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 Responsible Life mis-sold the further advances to Mr and Mrs G and if they were clearly unsuitable for their 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 Mr and Mrs G – didn't understand the consequences of the interest roll up and weren't happy to agree to it.

This was Mr and Mrs G's house and their equity. If they wanted to use the equity in their home to pay for some home improvements, or other things, then it would be highly inappropriate for me to say that they shouldn't have been allowed to do so.

In 2014 it was recorded that Mr and Mrs G wanted to borrow £60,000 to undertake some home improvements and pay some medical costs. It was recorded that they didn't want to use their savings, and didn't want to make any monthly payments. They didn't want to move house or ask their family for help, and so it seems a further advance on their lifetime mortgage seemed the most appropriate option for them.

The fact find indicates the adviser asked Mr and Mrs G about their health and it is recorded "[Mr G] takes medication for blood pressure and has had a heart bypass. [Mrs G] has also been in hospital but not for any serious operations."

An illustration was issued to them, and the adviser set out the reasons for his recommendations in a suitability letter to Mr and Mrs G.

I've listened to the call that the lender transferred to Responsible Life on 1 September 2014. The lender said that Mr G had called on 21 August to request some further funds and the details had been passed to Responsible Life to give Mr and Mrs G a call, but that he'd not heard anything. In that call Responsible Life went through some basic information, asking Mr G why he wanted the further advance. He said he wanted to decorate the whole house and upgrade the kitchen. He said all the money was lying there and otherwise tax would be taking most of it as they owned two flats as well. The call ended with Responsible Life arranging with Mr G that an adviser would give him and Mrs G a call that afternoon.

Having listened to that call, considered all the paperwork from the time, and the information provided by the estate about Mr and Mrs G's health there's nothing I've seen here that should have put Responsible Life on notice that Mr and Mrs G didn't have the capacity to enter into this further advance, or that it was inappropriate for their needs.

At the time a much larger sum was available to be drawn down, but instead a set amount was released which fits in with Mr and Mrs G's stated needs.

Having considered everything, I don't think the 2014 further advance was mis-sold.

I now turn to the 2018 further advance, and I do have some serious concerns about this sale.

The Equity Release Council has some rules and guidance on the standards expected with the sale of lifetime mortgages. Part of this is to ensure customers that are vulnerable are identified and treated accordingly. It states

"There are many high-level circumstances and events that could lead to a customer being vulnerable. Vulnerability is not static and can evolve or change over time. Vulnerability triggers can include:

- age, physical or mental health”

It also sets out that advisers should “pay due regard to customers’ best interests at all times...” and that it should be demonstrated that “The customer’s(s’) physical and mental health has been considered in relation to the suitability of the plan. If there is any doubt regarding the customer’s capacity an independent opinion from a suitably qualified medical practitioner may be required”.

The information about Mr and Mrs G’s health has just been copied and pasted from the 2014 fact find. Whilst that could be because the adviser asked Mr and Mrs G and they said there was no change, I’m not persuaded by that. Even if that were to be the case I would have expected the comment to say so, rather than just being a copy and paste without any extra information.

In any event I very much doubt Mr and Mrs G would have said that about their health if the question was asked correctly as the medical information provided by the estate shows a very different picture. There were some very significant changes in Mr and Mrs G’s health between the 2014 and the 2018 sales, and it would seem odd that they’d choose not to disclose any of that if they were asked. Both Mr G and Mrs G were undergoing serious medical checks at the time, with Mrs G receiving a terminal diagnosis due to those checks a few weeks later. Mr G had heart failure, and shortly after the sale was admitted to hospital, with the discharge paperwork showing he was being referred to the memory clinic. Mr G passed away within months of the 2018 further advance being taken out, and Mrs G passed away seven months later.

Having considered everything I’m not persuaded the adviser asked about Mr and Mrs G’s health as he should have done in 2018, as I don’t think Mr and Mrs G would have answered as the fact find recorded.

In addition the 2018 further advance was for the maximum amount allowed - £136,358 – which doesn’t indicate it was worked out for a specific need.

It was noted they wanted to undertake some more home improvements “The home improvements will include substantial refurbishment, new bathroom, kitchen, new roof and general maintenance/decorating. If there are funds left over these will go towards buying a second/holiday home.” But when they died the money was untouched in their account.

Mr and Mrs G were 85 and 83 years old respectively, and they were both in poor health. Whilst this was a relatively high valued property, that was due to the location rather than the size of it (it was a five bedroom semi-detached house), so it is difficult to see why Mr and Mrs G would have actively requested £136,358 to spend on it. The valuation at the time noted that the condition was consistent with its age, and that some works of repair and maintenance were required. If a five bedroom semi-detached property required over £100,000 of work I would expect that to be reflected in the valuation report from the time.

Responsible Life had a duty, under the regulator’s high-level principles, to act in Mr and Mrs G’s best interests and treat them fairly, and in 2018, I find that Responsible Life failed to meet that duty. I’m not persuaded that the sale was carried out diligently, or that the fact finding was carried out thoroughly and carefully to ensure this sale was suitable.

I don’t find that the core debt arising from the 2018 further advance should be waived as the estate has told us that money was still there when Mr G and then later Mrs G passed away. But I don’t think it is appropriate that interest was paid on that sum.

I understand the property was sold in February 2021 and the lifetime mortgage and further advances were redeemed. To that end I'm provisionally minded to order Responsible Life to pay to the estate of Mrs G:

- *A sum equivalent to the interest that was charged on the 2018 further advance up until it was redeemed in February 2021. Responsible Life should add simple annual interest of 8%* to that sum, running from the date the mortgage was redeemed to the date of settlement.*
- *A refund of the fees it cost to set up the 2018 further advance as those sums wouldn't have been incurred if the further advance hadn't been sold. I understand these to be a valuation fee of £867 and an application fee of £75. Responsible Life should add simple annual interest of 8%* to that sums, running from the date the payments were made (in the case of the application fee, that would be the date the further advance completed) to the date of settlement.*

** If Responsible Life considers it should deduct income tax from the 8% interest element of my award it may do so but it should give the estate the necessary paperwork, if it asks for it, so it can reclaim any tax from HMRC if it's entitled to do so."*

The estate accepted my provisional findings, albeit asked if we can recommend that in future Responsible Life records all interactions with consumers.

Responsible Life responded saying, in summary:

- It recognised my concerns about the health data and said it had instituted improvements in 2021 in the depth and quality of recording customer responses, and in 2022 it would be piloting voice recording for all adviser interactions.
- The adviser remained convinced that Mr and Mrs G presented very clearly in their intent, understanding and their need for that level of funds.
- It had found some new information – an email trail from 2018 - which showed one of Mr and Mrs G's sons was involved in the return of the paperwork at that time. Mr and Mrs G had completed the first set of paperwork incorrectly, so they had to complete a second set which was checked and returned by the son. It said this showed the son was aware – and supportive – of the equity release and had the opportunity to raise any concerns about Mr and Mrs G's vulnerability with the adviser.

Our investigator put the email evidence to the estate for its comments, and the son in question responded to say he was simply carrying out the instructions of his parents – one of which was in hospital at the time. He said he didn't look at the paperwork and had no part in any conversations or decision making.

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 carefully considered everything Responsible Life and the estate said about the emails that were found and having done so I'm satisfied this doesn't alter the outcome of this complaint.

Whilst the emails show Mr and Mrs G's son was aware of an application, that doesn't mean he was aware how much they were borrowing and the reasons that had been given for that.

It also doesn't show he was supportive of the application (in the full knowledge of exactly what it was), rather than simply assisting his parents in something they had chosen to do. One of Mr and Mrs G's children being aware of an application doesn't mean it was suitable for Mr and Mrs G's needs – and it is that suitability that is the relevant factor here, not the level of knowledge of the children.

I find it unlikely Mr and Mrs G told Responsible Life they had a need for such an exact – and large – sum as was borrowed; that is £136,358. In 2014 Mr G had said some of the first £60,000 further advance was to be used to upgrade their kitchen, then in 2018 it was again recorded that the kitchen was to be replaced using some of the funds, but no questions were recorded as being asked about that discrepancy. The valuation made no note of such extensive works needing to be done, and none of the money was spent.

It seems unlikely Mr and Mrs G were asked a clear, open and non-leading question about their health situation in 2018, as had they been asked an open question about their health then I think it is more likely than not that they would have disclosed their serious health issues at that time.

Having considered the information recorded I don't think Responsible Life undertook the 2018 sale with due diligence, or that the fact-finding process was carried out as thoroughly as it should have been. Putting everything together, I'm not satisfied it is more likely than not that Responsible Life – in 2018 - met its duty to act in Mr and Mrs G's best interests and treat them fairly.

I'm pleased to see that Responsible Life has acknowledged my concerns about the information recorded, and that aside from this had had already put measures in place to improve the depth and quality of the information it records. I hope the pilot whereby there will be voice recordings is successful and can be rolled out fully as that could offer security to both parties if there is later a dispute about what was said. All that said, these aren't things I would (or could) order Responsible Life to do going forward as the estate has asked, as that goes beyond my remit. I can only consider individual complaints, not anything on a wider scale.

I've considered the full case afresh and taken into account everything Responsible Life has said in response to my provisional decision. Having done so I'm satisfied the findings I reached in my provisional decision are fair and reasonable and as such I'm not departing from those.

Putting things right

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- A refund of the fees it cost to set up the 2018 further advance as those sums wouldn't have been incurred if the further advance hadn't been sold. I understand these to be a valuation fee of £867 and an application fee of £75. Responsible Life should add simple annual interest of 8%* to that sums, running from the date the payments were made (in the case of the application fee, that would be the date the further advance completed) to the date of settlement.

** If Responsible Life considers it should deduct income tax from the 8% interest element of my award it may do so but it should give the estate the necessary paperwork, if it asks for it, so it can reclaim any tax from HMRC if it's entitled to do so.*

My final decision

I uphold this complaint in respect of the 2018 sale, and order redress as I've laid out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs G to accept or reject my decision before 20 May 2022.

Julia Meadows

Ombudsman