

## **The complaint**

Mr and Mrs T complain that Key Retirement Solutions Limited, trading as The Equity Release Experts (TERE), was negligent and misled them. As a result they complain that they have lost the opportunity to apply for a further advance on their lifetime mortgage.

## **What happened**

Mr and Mrs T took advice from TERE in early 2021. They had recently moved house and ported their existing lifetime mortgage with another lender to the new property. They wanted to re-mortgage in order to release money for home improvements and to obtain a lower interest rate than the rate (of just over 5%) they had on their existing mortgage.

TERE recommended a lifetime mortgage with a different lender. It was for an advance of £140,000 at a fixed interest rate of just over 3% for the life of the mortgage, on an interest roll-up basis meaning that no regular payments were required. It had no additional drawdown facility. The lender issued a mortgage offer in August 2021, and the mortgage completed the following month.

In November 2022 Mr and Mrs T got back in touch with TERE to ask about taking a further advance on the mortgage. TERE sent them details of how much they might be able to borrow and what the costs would be. Mr and Mrs T decided not to go ahead with an application because they considered the interest rate (8%) too high at the time.

In March 2023 they contacted TERE again to discuss a further advance. TERE told them that the lender wasn't offering further advances on their mortgage product. Mr and Mrs T hadn't been expecting this and made complaints to both TERE and the lender.

They said they had always planned to take a further advance at some point and, while they understood further advances weren't guaranteed, they also understood the availability of further borrowing would be down to the lender's lending criteria. They expected to meet those criteria and therefore to be able to take further advances. They said they hadn't been told that the option of applying for a further advance could be withdrawn altogether – either when they took out the mortgage in 2021 or when they asked about taking a further advance in 2022.

TERE said it had recommended a suitable mortgage and had made Mr and Mrs T aware that further advances weren't guaranteed. The lender didn't uphold their complaint either. Mr and Mrs T referred their complaint about TERE to the Financial Ombudsman Service.

Our Investigator didn't recommend that the complaint should be upheld. He said TERE had been clear before Mr and Mrs T took out the mortgage in 2021 that further borrowing wasn't guaranteed. He also said it had given them the right information in 2022 and 2023 when they asked about further borrowing.

Mr and Mrs T didn't accept that conclusion and asked for a review. They still considered that TERE had misled them and they had lost out as a result.

## 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.

Having done so, I've come to the same overall conclusion as the Investigator. I don't consider that TERE misled Mr and Mrs T.

I'm satisfied that it was clear in the mortgage documents that further borrowing wasn't guaranteed, and I don't find that TERE told Mr and Mrs T anything different. TERE's recommendation report of 14 April 2021 said:

For any future capital requirements, you are looking to release further funds from the provider. You are fully aware that [lender] does not guarantee further advances. You can apply to them for a further advance after the completion of your initial release but any additional loan will be subject to their lending criteria at that time. If [lender] accepts an application for a further advance, the interest rate charged on the new loan could be higher or lower than the current interest rate. [...] I did not recommend relying on further advances because they are not guaranteed.

[...]

the recommended plan does not guarantee further drawdowns.

The lifetime mortgage offer dated 16 August 2021 said:

### 5. Description of this mortgage

[...]

If you require additional funds you may apply for further secured borrowing at any time subject to availability – see Section 14 for details.

[...]

### 7. Risks – important things you must consider

[...]

We may be willing to lend you more in the future, but we have no obligation to do so. Any further borrowing will be based on the prevailing lending criteria.

[...]

### 14. Additional features

#### Additional Secured Borrowing

You may apply for additional funds against your home at any time by application to [lender]. The amount available will depend upon the current value of your home, your age, the condition of the property at time of application and the outstanding loan balance. Additional funds are not guaranteed at any time during the life of the loan.

Mr and Mrs T say that all of this means they should have been able to apply for a further advance, and since there's nothing to say the lender could withdraw the option of further borrowing altogether, they were misled.

I understand their point, but I don't agree. Lending criteria and the availability of lending change over time. The important point is that TERE made clear to Mr and Mrs T, and it was clear in the mortgage documents they agreed to before the mortgage completed, that there was no guarantee they would be able to borrow more money on the mortgage.

The recommendation report shows that TERE knew Mr and Mrs T would want to apply for further borrowing later, after receiving the initial advance. It also shows that TERE took account of that in making its recommendation, but that the amount of initial borrowing available and the interest rate were priorities for Mr and Mrs T. I note that Mr and Mrs T have said they have no complaint about the recommendation that they take the mortgage they did.

In November 2022 Mr and Mrs T asked TERE about taking a further advance on the mortgage. TERE says it has no record of this – but I don't accept that, given the e-mails Mr T has provided of his contact with its adviser at that time. Mr and Mrs T say that TERE should have told them that the lender had recently withdrawn their mortgage product for new customers. They say it should have known then that the lender would soon also withdraw the option of further borrowing for existing customers as well and, had it warned them about this, they would have applied for and got the additional borrowing they wanted.

The lender has confirmed that the product was still open for further advance applications at that time – until it was withdrawn for existing borrowers in February 2023. While the product had been withdrawn for new borrowers, that didn't affect Mr and Mrs T as existing borrowers. So I don't think that TERE did anything wrong in not telling Mr and Mrs T about the withdrawal for new customers. That didn't affect them. And I don't agree with their argument that TERE should have known and told them that this meant the product would also soon be withdrawn for further advances as well. It was after all around another four months before that happened.

The lender has also said that the withdrawals of the product for new borrowers in November 2022 and for existing borrowers in February 2023 took place with immediate effect, those decisions were made by its funders, and it received no advance notice. Against this background, I don't think I can reasonably conclude that the advice firm should have been in a position to warn Mr and Mrs T about forthcoming changes.

### **My final decision**

For these reasons, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 3 October 2024.

Janet Millington  
**Ombudsman**