

## **The complaint**

Mr C complains that Key Retirement Solutions Limited failed to arrange a lifetime mortgage for him.

## **What happened**

In 2019 Mr C approached Key to discuss taking out an equity release lifetime mortgage on his property. After considering his circumstances Key recommended a mortgage and an application was submitted in early 2020.

The lender requested a valuation of Mr C's property. A valuer visited in March 2020 but said that the property was unsuitable for lending because it was cluttered and couldn't be inspected properly – in particular, there was evidence of damp that needed further investigation. The valuation also said the remaining lease was too short.

Mr C said that the property was temporarily cluttered because he was storing items belonging to his parents. He removed the items and also instructed a contractor to address the damp problem. Mr C borrowed money to fund the works which he hoped to repay from the mortgage funds. A further valuation was carried out which valued Mr C's property at £140,000.

The lender issued a mortgage offer and solicitors were instructed. Key recommended a firm I'll call G. It then came to light that Mr C's property, which was leasehold, had a clause allowing ground rent to be increased over time. This wasn't acceptable to the lender, so to proceed Mr C would need to agree an amendment to the lease capping the ground rent with his freeholder. He also only had 49 years left on his lease at this point, so the lease would need to be extended too. G said that it didn't deal with leasehold extensions and couldn't proceed with the legal work for Mr C.

Key then referred Mr C to another solicitors' firm I'll call E. On E's advice Mr C contacted his freeholders and received an offer to extend and amend the lease. By then, however, the lifetime mortgage offer had expired. As it was now more than six months since the last valuation, the lender required another valuation to be carried out before it would consider issuing another offer.

A revised lifetime mortgage offer was issued in October 2020. This valuation valued Mr C's flat at £40,000 less than the earlier valuation – and this in turn meant the lender would only offer Mr C borrowing of £27,000 rather than the £37,000 which was in the original offer. Mr C appealed the valuation, pointing out that he'd agreed a lease extension, and the valuer revised their opinion. The lender then increased the mortgage offer back to £37,000.

Unfortunately by this time the freeholder's offer to extend the lease had expired. So Mr C had to apply again. The freeholder made a further offer, but this time for a longer lease at a higher price. Mr C instructed E to go ahead, with both transactions completing on the same day so he could use part of the mortgage funds to extend the lease.

There were then some delays in the lender's solicitors reviewing the draft lease. In January

2021, the lender's solicitor replied pointing out some unusual features of Mr C's lease which it was concerned meant that it might not be appropriate security for the lending. Mr C's property is a flat in a small block divided into two separate freehold titles with no clarity over who was responsible for maintenance and repair of the building, as well as access rights. So further questions were raised with the freeholder's solicitor.

In the meantime, the lender's offer expired again, and it issued a new offer in February 2021. The freeholder's solicitors replied confirming that they didn't consider there to be a problem with the lease and no amendments would be made. On that basis the lender was unwilling to go ahead, and the offer was withdrawn.

In March 2021 Key approached other lenders. Before making a formal application, it asked whether the lenders would accept Mr C's property and leasehold. In April a new lender said that it did accept leases of this type, and so Key submitted an application to that lender. It didn't respond, so in June an application was made to a third lender.

In July 2021 a further valuation was carried out. In August and September 2021 legal work was carried out. The new lender's solicitors asked for some amendments to the lease as part of the extension, which the freeholder's solicitors wouldn't agree to. Eventually agreement was reached and in October 2021 Mr C signed the lease extension documentation.

There was then further delay, as the freeholder's solicitors didn't return the lease extension documents. In January 2022, the freeholder's solicitors told Mr C's solicitors that they weren't prepared to agree to the lender's requirements. Eventually agreement was reached by the end of the month, but by then the mortgage offer had expired again and a new mortgage application had to be submitted.

A new valuation was carried out in February 2022. A new mortgage offer was issued, but for a slightly lower amount than the previous offer, and with a special condition requiring a timber and damp report. Mr C had a report carried out in March 2022, which was acceptable to the lender.

In April 2022, the freeholder's solicitor said that the lease extension offer had expired and a fresh valuation (for the freeholder, not the lender) would be required before a new offer could be issued. Mr C was required to pay for the valuation. In May 2022 the freeholder issued a new lease extension offer, at an increased price.

In June 2022, the freeholder's solicitors said that leasehold law was changing and as the leasehold extension had not been completed, the offer would be withdrawn, and new terms would need to be agreed.

In August, the freeholder's solicitors said that because of the change in legislation it wouldn't now agree a lease extension and Mr C would need to re-apply using the statutory lease extension process rather than a voluntary arrangement. As a result, E said it couldn't act for Mr C anymore as it couldn't help with this process. Key said that an application could be made to another lender, but Mr C would need to find another solicitor to help with the lease application first as it couldn't recommend another firm to him.

In September 2022 Mr C complained to Key. He said after nearly three years, several mortgage applications, and paying for valuations and solicitors, he still hadn't got a lifetime mortgage. He'd borrowed money on a short term basis to pay for the works needed in 2020 and his bank was now calling in the money. He estimated he was out of pocket by around £6,000.

Key said it was unfortunate Mr C's application hadn't gone through. But it didn't agree it had done anything wrong. It said it had provided good customer service throughout, and tried to help Mr C through the various problems with his property and lease arrangements. It said that it had tried its best, and it wasn't Key's fault that Mr C hadn't been able to obtain the mortgage he wanted.

Our investigator didn't think the complaint should be upheld, so Mr C asked for it to be reviewed by an ombudsman. He said that Key had known about the lease from the start, as funding the extension was his main reason for applying for the mortgage. He said Key shouldn't have recommended G if they couldn't do lease extensions. He said he had paid for numerous valuations and works to his property to satisfy lenders without getting a mortgage. He said he had to do much of the work himself and was only kept up to date by being in touch with solicitors himself rather than receiving updates from Key.

### **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 set out the history of Mr C's mortgage application at some length above because I think it's important to understand what happened when deciding whether Key was at fault.

But regardless of whether Key was at fault or not, that history shows that Mr C had a long and frustrating experience, incurring considerable expense, in trying to obtain a mortgage. He has my sympathy for all the difficulties he experienced.

However, I can't uphold this complaint because the process was difficult or frustrating for Mr C, or because he didn't get a lifetime mortgage at the end of it. I can only uphold this complaint if I'm satisfied that Key did something wrong – and I'm not persuaded it did.

Ultimately the problem here was with Mr C's property, and particularly the relatively unusual nature of the leasehold arrangements. The combination of that and the short remaining lease meant that there were limited options for mortgage lending. At the very least, the term of the lease would need to be extended – as Mr C himself recognised; paying for an extension being one of his main reasons for wanting a mortgage – but there were also concerns about matters such as the ground rent and maintenance obligations.

It seems there were also some difficulties with the freeholder and their solicitors, and on top of that relevant leasehold law changed in the middle of the process.

There were also problems with Mr C's property itself – repair work was needed before the first valuation could go ahead, and a later lender wanted a report to confirm work had been carried out successfully.

I'm afraid this is a case where Mr C was simply very unlucky. He had a property which needed work, and with an unusual lease arrangement. That limited the choice of lenders available to him, and meant that lenders who would lend needed reassurance first. All of this took time.

It's standard for mortgage offers only to be open for a limited period of time. And the same is true of the freeholder's offers to extend the lease. The unusual lease arrangements, and the need to involve multiple firms of solicitors, meant that the mortgage offers and lease extension offers expired at different times. And there wasn't a time when both were available together, because of disagreements between the freeholders' solicitors and the lenders' solicitors about what specific requirements would need to be included in the revised lease.

Key did recommend G, the first solicitors' firm, which wouldn't do lease extensions even though Key knew Mr C needed a lease extension. Key ought to have checked whether G did offer the services Mr C needed. But I don't think this ultimately made any difference. Even when E were instructed in place of G, the mortgage still didn't go ahead because the first lender ultimately wasn't willing to proceed when no agreement could be reached with the freeholder. That wouldn't have changed if Mr C had instructed E any sooner.

Ultimately the problem in this case was that the combination of various factors – Mr C's lease, the unusual terms and the disagreements between the freeholder and the various lenders, the maintenance problems with the property, the change in the law and in the freeholder's willingness to extend the lease – all worked together to frustrate Mr C's mortgage application.

It's very unfortunate, and I do understand Mr C's frustration. I also understand why he's unhappy with Key. He asked Key to arrange him a mortgage and after two years, considerable expense and a lot of work he still didn't have a mortgage. But I've looked at everything that happened, and I don't think I can fairly find that Key is to blame.

### **My final decision**

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 C to accept or reject my decision before 27 November 2023.

Simon Pugh  
**Ombudsman**