

The complaint

This complaint is about an equity release lifetime mortgage that Mrs W took out in 2012 on the advice and recommendation of Just Retirement Limited (JRL). The essence of Mrs W's complaint is that she believes the mortgage was mis-sold, because she was in poor health and unable to understand what she was committing herself too, and that JRL failed to explain that the interest rate of over 7% was fixed for the life of the mortgage.

What happened

The details of this complaint are well known to both parties so I won't repeat them again in detail here. Instead I'll give a brief summary (in my own words and rounding the figures involved) and then focus on giving the reasons for my decision.

The mortgage began in 2012, for a sum of just over £90,000; the interest rate was 7.29%, fixed for the duration of the mortgage. In 2021, Mrs W contacted us with details of a complaint she wanted to make against the lender, a business I'll refer to as M. However, some aspects of her complaint (those I've summarised above) related to the sale of the mortgage by JRL, rather than its operation by M.

JRL looked into those aspects of the complaint for which it was responsible, but didn't uphold them. Our investigator wasn't persuaded JRL had done anything wrong. Mrs W asked for the complaint to be reviewed by an ombudsman. Sadly, her letters requesting this went unactioned for about two years and the case was only reactivated recently.

One of our managers has apologised to Mrs W for the failure of service on our part, and I add my own apology to that already conveyed. My role, however, is to review and determine the underlying complaint against JRL.

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.

If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts. We're impartial, and we don't take either side's instructions on how we investigate a complaint, or when we have enough information on file to decide it.

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.

In this decision I have looked at the advice to take out the mortgage (in terms of regulatory requirements and what was regarded as good industry practice *at the relevant time*) and considered whether JRL did anything wrong when recommending Mrs W take the mortgage out. In doing that, I can give no regard to the regulatory standards as they are *today*, or to any hindsight that the intervening years might have brought.

I've considered all of this, including Mrs W's most recent letter, very carefully; it's for us to assess the reliability of evidence and decide how much weight should be attached to it. When doing that, we don't just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture.

The starting point here is the point of sale documentation from 2012. 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; there's always the possibility of information being recorded incorrectly. But they're typically more reliable than people's individual recollections at a distance of time which, although given in good faith, can sometimes be degraded by the passage of time or more generally influenced by hindsight. So unless there's a compelling reason to believe the information is inaccurate, or incapable of being relied on for some other reason, we'll generally attach some weight to it. I'm satisfied I can do that here.

The advice to take out the mortgage, and the advisor's reasons for his recommendations were set out in a letter dated 23 April 2012, following two separate meetings with Mrs W, one of which was also attended by Mrs W's daughter. As a result of information captured during those meetings, and recorded in a separate document called a fact-find (which I've also seen) the letter recorded that Mrs W had a defined need for funds for a divorce settlement and to repay a family loan.

Mrs W is recorded as having no savings at that time, and no other obvious source of funds to meet her financial needs and objectives. Mrs W was recently retired due to ill-health and reliant on a pension income, which realistically ruled out the possibility of her being granted a traditional mortgage that required monthly payments. The letter also records that Mrs W's health conditions were recorded and taken into account.

The 23 April 2012 letter sets out that interest will be charged on the mortgage annually at a fixed rate of 7.29%. More detailed information about the interest rate, and how the compounding effect would impact on the loan balance over time was set out in a Key Facts Illustration (KFI) issued by JRL on 13 April 2012 and again in the mortgage offer that M issued on 17 May 2012.

I can't be sure how much of the information Mrs W assimilated at the time. But I've kept in mind that it was standard practice that, in addition to the financial advice from intermediaries such as JRL, applicants for lifetime mortgage should receive independent legal advice from a solicitor to ensure they understood the nature of the commitment they were entering into by taking on the mortgage. JRL's records indicate that happened in Mrs W's case.

It was standard practice for the solicitor giving the advice to issue a certificate to confirm they were satisfied that the applicant understood the terms of the mortgage and were happy to proceed. I've not been provided with a copy of that certificate in Mrs W's case, but JRL has named the solicitor and legal practice its records show as having given Mrs W the relevant legal advice. My own research indicates that the solicitor named was a director of the legal practice at the time Mrs W took the mortgage out. On the balance of probabilities, I find it more likely than not that Mrs W did receive independent legal advice from a solicitor (who certified Mrs W's understanding of it) before she took out the mortgage recommended by JRL.

Whether the rate itself was or is excessively high is ultimately a matter for the lender M to address. As to JRL's recommendation that Mrs W take out a mortgage that attracted interest at that rate, it's important to keep in mind that lifetime mortgages represent a different type of lending risk from traditional mortgages for the businesses that provide them. At the time the mortgage is granted, the lender has a good expectation that the money will be repaid, but almost no expectation at all about *when* that will happen. The rate being offered by M, which JRL recommended to Mrs W, was generally competitive for this type of mortgage at the time it started, and was reflective of that differing risk profile I have described above.

To summarise, Mrs W clearly needed the money, and an equity release mortgage was in all probability the only means of obtaining it that was open to her. In all the circumstances, based on the available evidence and without the aid of hindsight, I find that JRL acted reasonably and fairly when recommending this mortgage to Mrs W. I'm also satisfied it met her information needs regarding the interest rate that M would apply to the mortgage.

My final decision

I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 29 November 2023.

Jeff Parrington

Ombudsman