

## **The complaint**

A complaint has been brought by the estate of the late Mrs C about poor communication and unclear documentation in relation to her lifetime equity release mortgage, originally taken out with Northern Rock but which is now owned by Pearl Group Management Services Limited (trading as Phoenix Group and referred to here as Phoenix). The estate is represented by the executor of Mrs C's estate. As they have the same initial for their surnames, I will refer to the executor as Ms C.

## **What happened**

In August 1999 Mrs C and her husband, Mr C took out an equity release mortgage, borrowing £29,950. In December 2003 they took out a further advance of £20,800.

The mortgage was subsequently transferred to Papilio UK Equity Release Mortgages Limited, but on 31 January 2018 the mortgage was transferred to Phoenix, which has been responsible for administering the account in line with the original terms and conditions since that date.

In common with this type of mortgage, no monthly repayments are required; instead interest rolls up into the account balance. The total debt is repayable on the death of the last surviving borrower, or if they go into long-term nursing care or on voluntary sale of the property.

I am sorry to note that Mr C passed away in May 2019, and after that the mortgage was held in the sole name of Mrs C.

In February 2020 Mrs C contacted Phoenix with a complaint about the mortgage. Mrs C was unhappy that she'd not been properly informed of her choices over the years since she took out the mortgage, specifically in relation to transferring the mortgage onto another property, or advising her when the early repayment charge (ERC) period had expired. Mrs C thought the tariff was unclear, with no explanation of the scenarios in which fees would be applied. As a result of all this, Mrs C thought she was paying a higher rate of interest than she needed.

Phoenix didn't uphold the complaint, explaining in its final response letter that it wasn't qualified to provide financial advice. Phoenix explained that the original mortgage offer and terms and conditions set out the details of the ERC and about transferring the mortgage.

Dissatisfied with Phoenix's response, Ms C, on behalf of Mrs C, complained to the Financial Ombudsman Service about the lack of information given to her since the mortgage had been taken out. Mrs C was also unhappy about the information requested by Phoenix after Mr C had passed away.

Mrs C said that she thought the mortgage hadn't been properly explained to her and Mr C at the time they took it out and that the lending was irresponsible. She confirmed she wanted us to consider all the issues she'd raised with Phoenix. Mrs C believed this lack of clarity would deter customers from daring to ask questions.

An investigator looked at the complaint but didn't think it should be upheld. He explained that Phoenix wasn't responsible either for the sale of the mortgage or the original lending decision. The investigator was also satisfied that Phoenix wasn't under any obligation to tell customers about other equity release products that might have become available since this mortgage had been taken out. He was also satisfied that the tariff of charges was clear in that it explained the charges Phoenix could make and the circumstances in which they would apply.

In relation to the documentation requested after Mr C had died, the investigator thought it was reasonable for Phoenix to confirm that Mrs C was still living in the property, as this affected whether or not the mortgage would need to be repaid. Phoenix hadn't receiving the documents requested. Although Ms C had said that her mother had been asked to provide proof of income, the investigator found no evidence Phoenix had requested this.

Overall, the investigator didn't think Phoenix had done anything wrong.

Mrs C asked for an ombudsman to issue a final decision.

Before a decision could be issued, sadly Mrs C passed away, in February 2021. Ms C, as Executor of Mrs C's estate, has now take over the complaint. I understand Mrs C's house has now been sold and the mortgage has been repaid in full.

Ms C has also raised some further concerns relating to the way Phoenix has dealt with her in her role as Executor, and is unhappy about the correspondence Phoenix sent to her about dealing with the mortgage following Mrs C's death.

### **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 am very sorry to note that Mrs C has passed away, and I would like to offer my sincere condolences to Ms C.

I've taken careful note of everything Ms C has said about the complaint. I'll start by explaining the scope of my powers and what I am able to consider in this final decision.

Phoenix wasn't the original lender, nor did it arrange or sell the mortgage in 1999. I can only consider a complaint against Phoenix in relation to its own actions since it took over the mortgage on 31 January 2018, and not the actions of other businesses that were involved in the sale and lending in 1999 or the administration of the mortgage account before Phoenix took it over.

So although I've read what's been said about the sale of the mortgage, and about the original lending decision, those aren't issues I can consider here. If Ms C is unhappy about the sale of the mortgage in 1999, she will need to raise a complaint on behalf of the estate to the broker responsible for this. Any complaints about the lending decision or administration of the mortgage prior to 31 January 2018 will need to be referred to the relevant businesses.

Ms C has also complained about the way Phoenix has dealt with her as Executor since Mrs C passed away, and the distress and inconvenience its correspondence has caused her. But I'm afraid I can't look at those issues either.

I've no doubt Ms C has been caused upset by having to deal with Phoenix after Mrs C passed away. However, under our rules, I can't consider Ms C's complaint about this. Our rules state that we can consider a complaint brought by an eligible complainant (generally, the customer of the business concerned). In this case, Phoenix's customer was Mrs C. In the case of a deceased customer, our rules say we can consider the complaint if it is brought by a party "*authorised by law*" to represent the estate, in other words, the executor, Ms C.

Because Ms C is not Phoenix's customer, I can't consider a complaint from her about the impact this matter has had on her. Ms C is not an eligible complainant in her own right in relation to the mortgage with Phoenix. In this case, the eligible complainant is the estate of the late Mrs C, and an estate cannot suffer distress and inconvenience. I appreciate this will be unwelcome news for Ms C, but I am bound by our rules.

Turning now to the issues I can consider, I don't think Phoenix has done anything wrong. I'll explain why.

First of all, I'm satisfied the tariff of charges is clear about the charges that Phoenix is allowed to apply, and the circumstances in which those charges would arise. I don't think the charges are deliberately obtuse in order to deter customers from asking questions about them. I can find no ambiguity in the list of charges, and I'm satisfied the explanations for the charges – including what they are for and when they might be applied – are clear.

An equity release mortgage is a long-term product, intended to last for the lifetime of the borrower – or until the borrower needs long-term care. Phoenix was under no obligation to carry out a regular financial review of the product to ascertain whether or not Mr and Mrs C (and later Mrs C alone) were still happy with it or to suggest alternatives. There is nothing in Phoenix's records to show that Mr C or Mrs C contacted Phoenix to ask about moving their mortgage or refinancing onto a better interest rate. I'm satisfied that if Mr C or Mrs C had asked Phoenix about this, they would have been referred to their own financial adviser.

There was also no requirement for Phoenix to explain the terms and conditions relating to porting the mortgage in the annual statements; those terms were covered in the point of sale documentation from 1999. Regulations require Phoenix to set out in the annual statements any early repayment charge. The annual statements I have seen from the point Phoenix took over the mortgage in 2018 show that there was no early repayment charge.

Ms C says that, after Mr C passed away, Mrs C was asked at least five times by Phoenix to provide proof of identity and proof of income. I've looked at what happened here. There is no evidence to suggest Phoenix ever asked for proof of income.

I'm satisfied that the information Phoenix requested relating to Mrs C's continuing occupation of the property was reasonable. If Mrs C was no longer in occupation, then the property would have to be sold. Phoenix's records show that it had to chase this information several times over a six-month period, and was told by Ms C in December 2019 that Mrs C didn't want to send in any documentation. Overall, I don't think Phoenix did anything wrong here.

Having given careful consideration to everything Ms C has told us, and after reviewing the file in detail, I don't think Phoenix has done anything wrong. I know this wasn't the outcome Ms C was hoping for – and I am truly sorry if my decision adds to her distress.

## **My final decision**

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs C to accept or reject my decision before 8 November 2021.

Jan O'Leary  
**Ombudsman**