

## The complaint

Mr R and Mrs W's complaint is about a lifetime mortgage application they made through Key Retirement Solutions Limited (trading as The Equity Release Experts). They are unhappy that they were told no upfront fees would be payable for the advice or the application, but they were then required to pay some before the application could progress. As they couldn't afford the fees, they couldn't proceed with the application. They are also unhappy that the adviser from Key suggested that they put the fee on a credit card or ask a relative to pay it.

## What happened

In the spring 2022 Mr R and Mrs W sought mortgage advice from Key. Key explained to Mr R and Mrs W that due to the length of time remaining on the lease on their home, it wouldn't be able to help them release equity from it. As such, they added the cost of purchasing the freehold for their property to their lists of requirements for the equity release to cover. It was detailed that in addition to this requirement, they wanted to release equity to complete some home improvements, pay for a holiday and provide them with an emergency fund. They also wanted to add the fees and costs associated with the advice and application to the mortgage.

The recommendation report set out what Mr R and Mrs W wanted to borrow money to cover. This included the home improvements they wanted to complete, the costs associated with buying the freehold (including legal fees) and the legal fees associated with arranging the mortgage. It was highlighted that *'purchasing the freehold can result in additional legal expenses and delays to your equity release completing.'*

The fees and charges relating to the mortgage were detailed at various points throughout the documentation, and it was confirmed that they would be deducted from the advance before the money was sent to Mr R and Mrs W's solicitors. In addition, the recommendation report confirmed that the Mr R and Mrs W *'should not repay any existing commitments or commit to any new expenditure until the scheme has been completed and you have received the funds.'*

Mr R and Mrs W applied for the recommended loan. The lender agreed to lend, but was only willing to offer Mr R and Mrs W just under £40,000, which was less than they had applied for. It was also a condition of the mortgage that the freehold was purchased either before or simultaneously with the mortgage advance.

As Mr R and Mrs W were purchasing the freehold for their property, which was a separate transaction from the legal requirements linked to the mortgage application, they had two firms of solicitors – one for each activity. The solicitor dealing with the matter of the freehold on Mr R and Mrs W's behalf agreed to wait for the mortgage to be advanced to be paid for its work. However, the solicitors acting for the freeholder, the initial fees of which Mr R and Mrs W were liable for, were not willing to wait to be paid until the mortgage was advanced. As such, Mr R and Mrs W were told that they needed to pay those fees, approximately £1,400, in advance of the freehold purchase progressing.

Mr R and Mrs W looked for alternative legal representation, but eventually, as they couldn't pay the upfront legal fees, they withdrew their mortgage application. They complained to Key. It responded by setting out what had happened and confirming that it could not have foreseen the freeholder's solicitors insisting on the payment being made in advance. In addition, Key said that its recommendation report told Mr R and Mrs W that they shouldn't commit to any expenditure until the mortgage had completed. As such, it didn't consider it was responsible for the deposit Mr R and Mrs W said they'd lost because they had to cancel the home improvement works.

Mr R and Mrs W weren't satisfied with Key's response and so referred their complaint to this service. One of our investigators considered the evidence and confirmed that he was satisfied that Mr R and Mrs W were told that the costs associated with the mortgage wouldn't be chargeable until the advance was granted. However, he noted that the fees they had been asked to pay weren't to do with that transaction, but rather their purchase of the freehold. The investigator was satisfied that Key had made it clear to Mr R and Mrs W that there would be separate legal fees to do with purchasing the freehold. In addition, he was satisfied that Key had advised Mr R and Mrs W not to commit to spending money until the mortgage advance came through, and so he didn't think that it could be held responsible for the loss of the deposit.

Mr R and Mrs W didn't accept the investigator's conclusions. They suggested that the adviser they had spoken to was lying to this service and that they had suffered a loss because of the advice they received. They also said that the stress of the failed application had caused both of their health situations to deteriorate and put forward that they might lose their home because of Key's poor advice. They asked that the complaint be referred to an ombudsman.

The investigator considered Mr R and Mrs W's further comments, but he was not persuaded to change his conclusions. As such, the complaint was referred to an ombudsman for consideration.

I reviewed the complaint and invited Mr R and Mrs W to provide further evidence regarding the deterioration in their health and its link to the service they had received from Key. They didn't do so.

I issued a provisional decision on 26 April 2023 in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

*'Before I comment on the merits of this complaint, I would explain to Mr R and Mrs W that while I am aware that they are unhappy with the individual mortgage adviser they spoke to, Key is responsible for that adviser's actions. As such, I will refer to the actions of Key and will not mention the adviser by name, but I would like to assure Mr R and Mrs W that I am considering the advice and service they received from the adviser in question.'*

*Having read the evidence from the time of the sale, I am satisfied that it was clearly documented that there would be separate costs, including legal fees, for the purchase of the freehold. However, these costs are documented along with everything else that Mr R and Mrs W proposed to pay for out of the advance, including the legal costs for the new mortgage. While it is not explicitly stated that the costs associated with purchasing the freehold could be paid after the advance was paid out, for laypersons such as Mr R and Mrs W, I can see how they would have thought that would be the case.'*

*Key has said that it wouldn't have been able to tell Mr R and Mrs W whether the solicitors dealing with the purchase of the freehold would require anything to be paid in advance. I accept that is the case. However, knowing that Mr R and Mrs W had said they needed their*

*costs to be paid from the mortgage advance, I consider that Key should have highlighted to them that it didn't know whether that could happen with the freehold costs.*

*In the circumstances where there is an error or omission on the part of a financial business, I must consider what would likely have happened had the error or omission not happened. In this case it was an omission – that Key didn't tell Mr R and Mrs W that it didn't know if any of the costs associated with the purchase of the freehold would need to be paid upfront. I have considered what would likely have happened had Mr R and Mrs W been told this at an early stage.*

*It is clear that the matter of the term of the freehold was mentioned early on in the discussions Mr R and Mrs W had with Key, and that it would mean that Key couldn't help them. At this point it appears that the cost of the purchase of the freehold was explored and added as one of their requirements. In light of this, I think that it is likely that had Mr R and Mrs W been told that Key didn't know if these costs could be paid from the advance, they would have explored this question. At this point, they would have discovered that it wasn't a possibility and that they couldn't proceed with the mortgage application.*

*So overall, Mr R and Mrs W would have ended up in the same position if Key had not omitted to explain its lack of knowledge about the freehold costs; that they would not be able to progress the application. However, that would have been at an earlier stage and their expectations would not have been raised. I consider that Key should pay Mr R and Mrs W £250 compensation for this loss of expectation.*

*Mr R and Mrs W have asked that Key refund the cost of the deposit they lost on the works they had commissioned, but had to cancel when they discovered the mortgage application couldn't progress. I know that this will disappoint Mr R and Mrs W, but Key advised them against committing to any expenditure before they received the money from the mortgage. As such, I can't find that Key is responsible for any loss that came about because Mr R and Mrs W didn't take on board that advice.'*

Mr R and Mrs W didn't accept my conclusions. They said they didn't think the compensation amount was enough.

Key responded by saying that it was unclear why I had upheld the complaint and awarded a compensation payment. It repeated that the fee subject to this complaint was not something its adviser could be expected to know about. The requirements of the lender in respect to the legal work done was nothing to do with the adviser. It asked that the complaint be reviewed.

### **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 have considered what Key has said in relation to the sale and, as I acknowledged in my provisional decision, it is correct in what it has said about the legal fees. It would not be expected that a mortgage adviser would know what the costs associated with the purchase of a freehold would be and when they would need to be paid. The adviser was aware of this. That is not the issue in this case; it is one of poor service. Despite the adviser knowing that Mr R and Mrs W needed the costs associated with the mortgage arrangements to come out of the advance, it was not explained that the adviser didn't know whether this was possible in relation to the costs of the freehold purchase. The format of the documentation from the time added to this omission in that it included the purchase and legal costs in the list of things that made up the sum being borrowed. In the absence of clarification from the adviser, this would have added to Mr R and Mrs W's expectation that the freehold purchase costs could be paid

from the advance.

Mr R and Mrs W have said that they don't think the compensation amount is enough, but have not explained why. When considering compensation we look at the error or omission made and the impact that had on the individuals involved. In this case the impact was that Mr R and Mrs W had their expectations raised and there was a slight delay in them reaching the conclusion that they couldn't go ahead with the application Key had recommended. I remain satisfied that £250 is a suitable sum to compensate them for a short period of raised expectations and delay.

### **My final decision**

My decision is that I uphold this complaint. I require Key Retirement Solutions Limited to pay Mr R and Mrs W £250 compensation for the upset and inconvenience they suffered due to the poor service they received from it.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R and Mrs W to accept or reject my decision before 15 June 2023.

Derry Baxter  
**Ombudsman**