DRN-4449314

The complaint

Mrs R's complaint is about the advice she received from Key Mortgage Advice Limited in 2022. She has said she was given incorrect information about the interest rate that would be applied to further drawdowns and had she not been, she would have taken a larger initial advance at the initial interest rate offered.

What happened

At the time of the sale of the mortgage in February 2022 Mrs R was retired on a pension income of approximately £1,300 net each month. She told Key that she wanted to remain in her home until at least her 80s and leaving the value of her property to her beneficiaries was very important. Mrs R said that she didn't want the debt against the property to increase and wanted to make voluntary interest payments to prevent that happening - the budget for this was £325 per month. She had around £4,400 of savings and just over £8,500 of unsecured debts which were costing her approximately £385 each month. The loans had remaining terms of between 24 and 32 months. Mrs R's other basic outgoings amounted to over £1,000, which meant her income was less than her basic outgoings by approximately £70 each month.

Mrs R confirmed in the conversation she had with the adviser that she had looked into taking a lifetime mortgage four years earlier, but she hadn't then needed to as she had inherited some money. This had been being used to supplement her income ever since and at that time she was having to take at least £300 each month out of those funds. However, the funds were running down, and she needed to look at what she could do to maintain her lifestyle because her income wasn't sufficient and that inhibited her spending and enjoyment of her retirement. Mrs R also confirmed that two of the outstanding loans had come about from credit card debt that she'd been unable to repay.

Both retirement and lifetime mortgages were considered. The former was discounted as an option as Mrs R's income was unlikely to be sufficient to support one. In relation to the lifetime mortgage option Mrs R said that she was worried about interest roll-up meaning that she wouldn't be able to leave anything to her children. She confirmed she wanted to pay the interest each month, so it didn't increase the debt. In addition, Mrs R raised the concept of drawdown which she had become aware of when she'd looked into a mortgage previously. The adviser explained how this worked and also suggested that it was a good idea for Mrs R as she would only pay interest on the money she was using. There was a brief conversation about the possibility of Mrs R replacing her car, but it was confirmed that this was something to happen in the future and could be done by drawing down further funds when necessary.

Mrs R initially wanted £25,000, but later increased it to £30,000 in total. This was made up of £20,000 for home improvements/repaying a family member, and the remaining funds would be used to pay the costs of arranging the mortgage and support her lifestyle.

Key recommended a lifetime mortgage with a drawdown facility, which would enable Mrs R to request further funds as and when she needed them. A fixed interest rate was chosen because Mrs R felt interest rates would increase over the coming months and years, and she would prefer to avoid that affecting her borrowing. The key features issued to Mrs R at that time detailed the below about the drawdown facility:

'*You may be able to borrow up to the amount of your Drawdown Facility of £76,275.00 at any time, in minimum amounts of £2,000.00, on 15 days' notice. Your Drawdown Facility is not guaranteed and can be withdrawn in certain circumstances, as described below.*

You do not pay any interest or charges on the Drawdown Facility you have not used. Any additional borrowing will be based on the terms available from us at the time you apply.

If you take additional borrowing, you may be able to pay some, or all, of the monthly interest on the additional borrowing. You may be able to pay any amount up to the full monthly interest each month on the additional borrowing. You must tell us how much you wish to pay each time you apply for additional borrowing.

…

Remember also, that the interest rate charged on any additional borrowing will be a fixed interest rate for the life of the lifetime mortgage and could be higher or lower than the interest rate shown above. We will tell you what that interest rate is each time you apply for additional borrowing and it will be confirmed in each additional borrowing Offer of Loan, together with the APR.'

After receiving the recommendation, Mrs R called the adviser to clarify some things. One of these being what the interest rate would be on future drawdowns. She was told they would be at the same rate as the first advance.

Lender L accepted Mrs R's application and sent her a mortgage offer dated 3 March 2022. This offered an initial advance of £30,000 and a drawdown facility of potentially slightly over £76,000. The interest rate for the amount being granted was 3.66% fixed for the entire time the borrowing was in place. It was documented that Mrs R had chosen to pay the interest that accrued on the debt each month, which for the £30,000 being borrowed at that time was £91.50. The offer included exactly the same wording about the drawdown facility as the key facts document had.

Before accepting the offer Mrs R again contacted Key to ask about the interest rate that would be charged on any future drawdowns. She was again incorrectly told it would be 3.66%, rather than the prevailing interest rate as was the case. The mortgage was subsequently advanced. Mrs R received slightly less than the £30,000 initial advance as the legal and broker fees, which she has confirmed amounted to £1,465, were deducted first.

Mrs R made a request direct to Lender L to drawdown a further £15,000 in the autumn of 2022. At this point she was told the interest rate that would be charged on the additional funds was 8% and the total monthly interest payable would be £191.50. She complained to Key about having been misled about the interest rate that would be charged on future drawdowns. She said she thought she would have borrowed more initially had she known the interest rate charged in the future might be higher.

Key responded to the complaint in its letter of 29 November 2022. It acknowledged the mistake in that Mrs R had been told any drawdowns would be charged at the same rate as the initial advance. In relation to the possibility that Mrs R would have taken more in the initial advance, it didn't think that would have been likely. It highlighted that at the time of the advice it hadn't been known that interest rates would rise as they had. It said that it would only ever have recommended Mrs R to have drawn the amount she needed for the following six to twelve months. Key didn't think if it had given Mrs R the right information, she would have taken more in the initial advance than she did. As such, it didn't consider there had been any financial loss. However, it paid her a goodwill gesture of £500 because it had given her the wrong information.

Mrs R wasn't satisfied with Key's response, rejected its offer, and asked the Financial Ombudsman Service to look into her complaint. We asked Mrs R about how much she believed she would have taken from the available funds had she known the interest rate could be different to the original advance. She told us she thought she would have taken an initial advance of £85,000 to cover her additional costs going forward. She confirmed she was arranging a further drawdown of £40,000.

We asked Lender L to confirm the term it had calculated the mortgage arrangements over. It confirmed that it used average age expectancy for this assessment, but where that figure was less than 15 years, it was required by the Regulator to use 15 years in its illustrations.

One of our Investigators looked into Mrs R's complaint and concluded that had Key not provided her with incorrect information about interest rates, she would likely have applied for a larger advance in March 2022. Having discussed Mrs R's needs with her, he concluded she would likely have taken an initial advance of £85,000. The Investigator recommended Mrs R should be compensated for the additional interest she would pay on the £15,000 drawdown she had taken and the £40,000 drawdown she was at that time arranging, over the 15 years the illustration the first drawdown assumed.

Mrs R accepted the Investigator's conclusions, but Key did not. It asked that the complaint be referred to an Ombudsman. It commented that it was being required to pay interest on a £40,000 drawdown that was being arranged, but this borrowing could be repaid immediately, and Mrs R could then 'pocket' the interest payment, which it had calculated as £24,000. Key also said there was no need for any further borrowing at the time of the first advance. As such, Mrs R would not have wanted to, and it would not have been appropriate for her to pay interest on more borrowing than was needed. In relation to the interest rates, it could not have been known that rates would rise as they have, so Key thought she would have been more concerned about paying interest on money she didn't yet need, rather than the potential for more interest being charged on that money by the time she did need it. As such, Key considered Mrs R would have proceeded with the same initial drawdown.

Our Investigator considered Key's comments, but he wasn't persuaded to change his conclusions. As such, Key repeated its request that the complaint be referred to an Ombudsman. Mrs R joined this request when she was told Key had not accepted the Investigator's conclusions.

I issued a provisional decision on 29 September 2023 in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'*Key has accepted that it orally provided Mrs R with incorrect information about the interest rate that would be attached to any future drawdowns. When determining redress for cases where a financial business made a mistake, we have to consider what a consumer would most likely have done, had the mistake not happened.*

Mrs R was concerned about maintaining the equity in her property, and so chose to pay the interest on a monthly basis. It is also clear that she was concerned about what interest rate would be charged on any future drawdowns, as she asked the question twice. Given the documentation uses different terms – further borrowing and drawdowns – I think it plausible that Mrs R was unclear as to whether the information that the interest rate on further borrowing could be higher or lower, related to drawdowns. A key factor in my consideration of this issue is the fact that Mrs R had chosen to pay the monthly interest, which meant that *increasing interest rates would impact her income and the funds she had to spend on her lifestyle. In the circumstances, I am inclined to accept Mrs R's submission that had she understood the interest rate could be higher on further drawdowns she would have taken a larger drawdown in the spring of 2022. Mrs R has said she thinks she would have taken an initial advance of £85,000, leaving £21,000 to be potentially drawn at a later date. Again, I see no reason to question this estimate.*

If this had happened, Mrs R would have paid interest at 3.66% on a balance of £85,000 throughout the time the mortgage was in place. As such, the redress should be a calculation that places Mrs R in the financial position she would have been in, had that been the case.

Key has not disputed the concept that Mrs R will now pay higher interest on the additional drawdowns, than if she had taken more money in the initial advance. However, it has disputed the term of the redress recommended by our investigator; that being the term over which Lender L illustrated the mortgage. I have considered this issue and I think the term of the redress calculation should be different from that which our Investigator recommended.

When considering the term the borrowing is likely to be in place I have looked at how long the portion of it that Mrs R intended to use to support her lifestyle is likely to last, given her spending between the first and second advance. As I detailed above, £20,000 of the initial £30,000 advance was to be used for debt repayment and home improvements. If the costs of the borrowing are then deducted from the remaining advance, it means that Mrs R had approximately £8,500 to support her lifestyle requirements. Mrs R applied for a further drawdown approximately six months after the initial advance was made. This would indicate that she was again running out of accessible funds.

It isn't going to be possible to determine exactly how long the £86,000 of the amount Mrs R was told she could borrow would last to support her lifestyle, as presumably differing amounts would be spent at different times. It is also plausible that as time progressed and the amount Mrs R had available to her reduced, her spending might have also reduced slightly. However, based on how much she appears to have spent in the first six months, I think its reasonable to conclude the £86,000 available to support Mrs R's lifestyle would last only around six years.

There are several possibilities for what would happen at this point:

- *Mrs R would attempt to take further funds from the property, while still protecting the equity level she had previously maintained. Any such advance would be determined by whether there had been any increase in the property value and whether Lender L would be willing to lend. Assuming it would allow further funds to be drawn, the amount would depend on any increase in the property value. Given that it would only be around six years from the previous mortgage being arranged, it seems unlikely this would provide Mrs R with much money, and it would not last long, especially following costs being deducted.*

- *Mrs R would take further funds from the property to the detriment of her estate. Thereby allowing her to remain in the property longer and maintain her lifestyle, but likely for a relatively short period.*

- *Mrs R would curtail her lifestyle to live within her monthly income and allow the interest on the mortgage to roll-up. This would over time significantly erode the equity in the property.*

- *Mrs R would move and repay the mortgage, as she accepted at the time of the sale she would likely have to do at some point in the future.*

Mrs R's priorities at the time of the sale of the mortgage were to maintain her lifestyle, but also protect the remaining value of her property for her beneficiaries. At the point the money from the Lender A mortgage ran out, doing both of these things would not have been an option if she remained in her home. Indeed, it is possible she would have been unable to do either. At the least, she would have had to borrow more money and potentially also allow the interest on the mortgage roll-up. Indeed, even if Mrs R had selected the option to reduce her lifestyle to a level she could afford from her income, it is still likely that she would need to allow the interest to roll-up and erode the equity in the property.

I can't say for certain what Mrs R would have done, but I think it likely Mrs R would have moved to a cheaper property and repaid the mortgage. This would have allowed her to protect the equity in the property. Although it may not have also allowed her to maintain her lifestyle, it is something that Mrs R had already acknowledged would need to be done at some point and I think it is more likely than not that when the money from the mortgage ran out, this is the option she would have found herself taking.

As such, while I consider that Key should be responsible for any additional interest Mrs R will have to pay because of the mistake it made, as I have concluded that the mortgage will likely only be in place for around six years, the redress should be calculated over six years.

I have noted Key's concern that Mrs R could take the redress and then repay the mortgage, thereby receiving a windfall of around £24,000 from the redress our Investigator recommended. I can understand Key's concerns, however, the redress I have recommended will result in a considerably lower settlement. I would also highlight to Key that should Mrs R repay all or part of the mortgage during the period of the redress calculation, she would be charged an early repayment charge (ERC). Having reviewed the ERC that would be charged on the first two advances, the total would be of the same order as the redress payment. As such, I don't consider Key's concerns are material and should affect my conclusions.

Putting things right

Key should pay Mrs R redress calculated as B minus A:

A *The interest that would have accrued over six years on borrowing of £85,000 starting at the date of the initial advance. This calculation should be on a simple interest basis, on the assumption Mrs R would have paid the interest each month and so no compounding would occur.*

B *The interest that Mrs R will incur on the £85,000 based on the advance being made in three tranches at different dates, at the interest rates applicable to each tranche. Again, the calculation should be on a simple interest basis, assuming Mrs R will maintain interest payments each month and no compounding will occur.*

Mrs R will be required to provide evidence of the additional drawdowns taken and the interest rates applicable to each one.

Key acknowledged that its mistake had caused Mrs R upset. It is very clear that she was upset when she discovered the future drawdowns would be at different interest rates and that they would affect her planned finances going forward – that it would cost more than anticipated to continue to protect the equity in her home and so reduce the amount she would have available to support her lifestyle. Key has offered £500, but I think the amount should be increased to £750. I say this as the error made has clearly caused Mrs R considerable concern, as it would affect how long she will be able to remain in her home.'

Key acknowledged receipt of the provisional decision and provided provisional figures for the redress calculation.

Mrs R accepted my provisional decision. She also provided evidence of the recent drawdown having been offered and advanced. This information has been forwarded to Key for its use in calculating the redress.

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 reviewed the file again in its entirety and I have revisited my provisional decision. Having done so, and in light of the responses from the parties, I see no reason to alter my conclusions. As such, in full and final settlement of the complaint, Key should:

Pay Mrs R redress calculated as B minus A:

A The interest that would have accrued over six years on borrowing of £85,000 starting at the date of the initial advance. This calculation should be on a simple interest basis, on the assumption Mrs R would have paid the interest each month and so no compounding would occur.

B The interest that Mrs R will incur on the £85,000 based on the advance being made in three tranches at different dates, at the interest rates applicable to each tranche. Again, the calculation should be on a simple interest basis, assuming Mrs R will maintain interest payments each month and no compounding will occur.

Pay Mrs R £750 compensation (including that previously offered) for the upset and concern the error caused.

My final decision

My decision is that I uphold this complaint. In full and final settlement of the complaint, Key Mortgage Advice Limited should pay Mrs R the redress and compensation detailed above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs R to accept or reject my decision before 11 December 2023.
Derry Baxter
Ombudsman