DRN-4614520

The complaint

Mr and Mrs T, with the assistance of their representative, complain that Key Retirement Solutions Limited trading as Key, mis-sold them a lifetime mortgage and they've paid more in interest on their borrowing as a result of this.

What happened

Our investigator set the complaint points out in detail, so I've not repeated these all here as they are well known to both sides. But in summary, Mr and Mrs T feel Key failed to take all of the steps required to ensure the advice provided was suitable when it sold them a lifetime mortgage in 2014.

They've said Mr T was not present during the appointments and information was not considered in relation to his pension incomes as well as the other options Mr and Mrs T might have had available to source the borrowing they wanted. Mr and Mrs T's representative feels a direction should have been given for Mr and Mrs T to seek independent whole of market mortgage advice before making the recommendation which was limited to equity release products. They feel this is important as they had the means to likely be accepted for other borrowing.

Mr and Mrs T also feel Key failed to provide the level of service expected when it failed to respond to requests for a review of their product.

Our investigator looked at this complaint and didn't think Key had done anything wrong when the mortgage was taken out. With reference to the information available from this time, they said:

- They were persuaded Mr T was aware of the mortgage and advice given. And Mr and Mrs T had explained why they didn't think their other family members needed to be aware of their financial decisions.

- Mr and Mrs T had explained they wouldn't have been able to access other products from the whole market as they'd confirmed this was not something available to them. So our investigator didn't think there was a failing when there wasn't a recommendation made to seek whole of market advice ahead of completing the lifetime mortgage application.

- The suitability report highlighted the implications of withdrawing equity from a property and how this might not be cost effective compared to using funds from existing savings or investments. But Mr and Mrs T wanted to proceed with the equity release option and draw down the funds immediately, so our investigator didn't think it was unsuitable to provide a mortgage that met this need.

- When the valuation report valued the property at less than Mr and Mrs T initially expected, our investigator felt Key discussed this with Mr and Mrs T and kept them informed about this and whether they wanted to proceed still.

- The mortgage documents set out any fees and charges that would be applied and she was satisfied Mr and Mrs T would have been aware of these.

- The mortgage could have been repaid early if Mr and Mrs T wanted to do this but an ERC would be charged. But as Mr and Mrs T wanted to prioritise getting the borrowing they needed, our investigator felt the advice on the lifetime mortgage and future options was suitable.

- Overall, the investigator felt the advice provided was suitable. It met the needs of Mr and Mrs T at the time and was made by an adviser with access to equity release products across the whole of the market. She felt Mr and Mrs T were provided with information ahead of accepting the offer and she didn't think Key had done anything wrong when the mortgage was sold.

Our investigator also considered the later events when Mr and Mrs T contacted Key in 2018 to request a mortgage review.

The information provided indicated that Mr and Mrs T had needed to chase Key for a response and assistance with this and our investigator didn't think this was fair. She said the level of service provided was below the level she'd expect and as the mortgage suitability report set out that Mr and Mrs T should contact Key for advice in the future, the lack of response resulted in loss of expectation and avoidable inconvenience. To put this right, she recommended Key pay Mr and Mrs T £150.

Key accepted the recommendation made and agreed to pay the £150 to Mr and Mrs T.

Mr and Mrs T's representative asked for one specific point to be reviewed by an ombudsman. Mr and Mrs T said they had not received independent mortgage advice at the time and had not been advised to seek this either.

The representative highlighted that Mr and Mrs T should have been directed to seek independent mortgage advice as the Key adviser only had access to equity release products and a standard mortgage would have been a more suitable recommendation. They reiterated points made previously about Mr and Mrs T's income, credit status and existing borrowing commitments in 2014 and why they felt it was likely they would have been able to obtain a standard mortgage.

Our investigator responded and explained that the information provided from the sale documents indicated Mr and Mrs T approached Key for a mortgage because they had not been able to get the borrowing they wanted elsewhere. There was no obligation on the adviser to recommend that Mr and Mrs T seek independent whole market mortgage advice and as a starting point, they'd not done anything wrong when this didn't happen. She felt the adviser set out how the lifetime mortgage would work, meeting the objectives of Mr and Mrs T and the recommendation was not unsuitable.

The representative maintained their disagreement on this point, so the complaint has been passed to me for decision.

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 decided to uphold this complaint in part, for much the same reason as our investigator. I know Mr and Mrs T will be disappointed by this, but I'll explain why I've reached this decision.

Mr and Mrs T and their representative have highlighted their overarching concern here still is the lack of recommendation to seek independent mortgage advice on the whole of the market. I understand this concern as a standard mortgage would likely have had a lower interest rate than the lifetime mortgage taken out. But I agree with our investigator, that I don't think Key has done anything wrong here.

It is right that consideration is given to other borrowing options when advice to take out a lifetime mortgage is given. From the information provided, I am satisfied that this consideration was given. The suitability report gives details of what was considered when the recommendation was made and this includes "*Other borrowing*" and this sets out what was said in response to this with the following being said:

"*You stated that you have found it difficult to raise the cash you require through these alternative methods.*"

Due to the time that has passed, telephone recordings of what was said in detail are not available, so I am relying on the sales documents as a likely indication of what was said. With this, I am persuaded other borrowing was considered and whether this was an option for Mr and Mrs T. They explained this was not an option and with this, I don't think it was unsuitable for Key to provide advice on the options it had available which met the borrowing needs of Mr and Mrs T. And there was no obligation on it to go further and make a recommendation for further advice to be sought and it acted on the information provided by Mr and Mrs T detailing other options had been explored.

Overall, I've not seen anything to suggest that Key acted unreasonably when making the recommendation it did. It provided the borrowing Mr and Mrs T said they wanted; in the way they wanted it. Key highlighted why it may not be cost effective to have drawn down the equity and left it sitting in a bank account. But Mr and Mrs T wanted the money available for use immediately and I think they would have been aware of the advice and made a decision to proceed still based on this.

In 2018 when Mr and Mrs T asked for a mortgage review there does appear to be a delay in their requests being dealt with. Mr and Mrs T were directed to speak to Key if they wanted to review their mortgage and when they did this without response, it added inconvenience which was avoidable. And I think it is right the impact of this is recognised and I feel the recommendation made to pay £150 for the avoidable inconvenience and loss of expectation is fair and in line with what I'd expect.

Putting things right

Key Retirement Solutions should pay Mr and Mrs T £150 for its customer service failings when it failed to respond to their requests for a mortgage review promptly in 2018.

My final decision

I uphold Mr and Mrs T's complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 14 March 2024.

Thomas Brissenden
Ombudsman