DRN-4830425

The complaint

Miss B, through a representative, brings this complaint on behalf of the estate of her late mother Mrs B. Miss B complains that her late mother was mis-sold a lifetime mortgage with Just Retirement Limited ("Just").

What happened

In 2011 Mrs B was sold a lifetime mortgage with Just through an intermediary, who I'll refer to as A. Information and advice about the lifetime mortgage were given by A. It was also A's responsibility to check the suitability of the lifetime mortgage before recommending it to Mrs B.

A carried out a fact find to obtain information about Mrs B's circumstances. Mrs B told A that she wanted to raise £22,000, largely for home improvements.

Mrs B was advised to take a lifetime mortgage for £22,000 with an additional cash drawdown facility of £23,400. The lending was sought from Just and agreed on a fixed interest rate of 6.59% for the lifetime of the mortgage.

Sadly, Mrs B passed away in September 2023. The estate says that it's only upon Mrs B's death that it discovered the sale of the lifetime mortgage. The estate subsequently raised a complaint with Just. Since then, the property has been sold and the outstanding lifetime mortgage balance of around £49,000 has been repaid to Just. This consisted of the repayment of the initial advance plus added interest. Just has said that the cash drawdown facility wasn't utilised by Mrs B.

The estate gives several reasons why it thinks the lifetime mortgage was unsuitable for Mrs B, but it ultimately thinks it was mis-sold on the basis that Mrs B was vulnerable and shouldn't have been sold a lifetime mortgage due to her poor mental health and financial circumstances at the time. The estate says the product was sold to Mrs B without suitable independent financial advice or input from her family and friends. The estate is not convinced that the exponential effect of the compound interest was explained to Mrs B.

Just didn't uphold the complaint. It said that it wasn't responsible for selling Mrs B the lifetime mortgage. It relies on regulated independent financial intermediaries to sell its products. All advice and information about its products are given by the financial intermediary and in addition, Just requires its customers to take independent legal advice before agreeing to any lending. Just said that if the estate remains unhappy with the advice Mrs B received, it may want to raise a complaint with A.

Unhappy with Just's response, the estate brought this complaint to our service.

Just has consented to our service considering this complaint despite it being brought more than six years after the event complained of. An investigator at our service looked into things. She considered all the main reasons why the estate feels that Mrs B was mis-sold the lifetime mortgage and she didn't recommend that the complaint be upheld.

The estate didn't agree and asked for the case to be decided by an ombudsman. The estate still feels that Just lent money irresponsibly to Mrs B.

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 hope Miss B will accept my condolences for her loss. I've a great deal of sympathy for the position she is in, losing her mother and then dealing with the estate can't have been easy for her.

I've given careful consideration to all the submissions made by both parties, but I won't address each and every point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome – in keeping with the informal nature of our service.

Having done all that, I don't think this complaint should be upheld. I realise this will be disappointing for the estate. But I hope the reasons I have set out below will help it to understand why I have come to this conclusion.

This lifetime mortgage was sold to Mrs B through an independent intermediary "A". Information and advice about the lifetime mortgage were given by A as the intermediary that sold Mrs B the mortgage. It was also A's responsibility to check the suitability of the lifetime mortgage before recommending it to Mrs B. Therefore, any complaint about how the lifetime mortgage was sold to Mrs B should be directed to A. Just had no involvement in the sales process and so it is not responsible for the information and advice given to Mrs B to take this product.

I understand the estate has given several reasons why it feels it was poor advice to recommend a lifetime mortgage to Mrs B in the circumstances – but as I've explained those are matters for A, as the intermediary that sold the product to Mrs B – not Just.

In my decision I will only be commenting on the actions of Just as the respondent to this complaint. I make no finding in this decision on the actions of A and its role as the intermediary who sold the mortgage.

Lifetime mortgages are intended to be long-term products which are meant to run for the lifetime of the borrower(s). No monthly repayments are required, because of which the pricing and structure of this type of loan reflects that Just has lent money on which it may not receive any repayment for a substantial time.

A lifetime mortgage means the borrower doesn't have to make any repayments during the life of the mortgage. Instead, the mortgage is repaid from the sale of the property either upon death (or the death of the last borrower) or when the last borrower has left the home to move permanently into a care home or to be cared for by relatives.

It's for these reasons that to be eligible for a lifetime mortgage, applicants are not required to undergo an affordability assessment.

Mrs B's lifetime mortgage was a regulated product, so Just was required to comply with the regulator's rules and guidance when it agreed to the borrowing. I've considered whether that's what happened here in relation to the complaint the estate has made.

In addition, the Equity Release Council sets the standards and safeguards that it considers should be practised by lenders and advisors alike for the protection of lifetime mortgage consumers. Just is a member of the Council and has agreed to be bound by them. While the Council's rules and guidance are not regulatory requirements, I think they represent good industry practice. So, I've taken them into account alongside the rules of mortgage regulation in deciding what I think is fair and reasonable in this case.

The estate says that Mrs B was in a vulnerable position at the time of taking the lifetime mortgage and that she lacked sufficient capacity to make sound financial decisions. I can see from what the estate has said that Mrs B went through a difficult time. I do truly empathise with her circumstances.

It's important to note that as this mortgage was sold to Mrs B by an intermediary – it was the intermediary that had direct contact with Mrs B through the sales process. So it would have been for A's advisor to be alert to any unusual behaviour or demeanour.

That said, I have considered whether Just ought reasonably to have known of anything concerning that meant it should not have agreed to lend to Mrs B.

A submitted an application to Just on Mrs B's behalf on 1 June 2011. Mrs B signed a declaration to confirm that the information included in the application was accurate. I've seen a copy of the application form. It detailed that Mrs B was widowed, living alone at her property and retired. She thought her home was worth around £130,000 and she wanted to release some funds for home improvements and for an emergency fund. Specifically, she said she wanted to renovate her loft – to move her furniture (including antiques) out of storage – to avoid the high storage fees she was currently paying. I've seen nothing concerning in the information submitted to Just by A that ought to have alerted it to question the integrity of the application.

The application explains that the next stage of the process was for Mrs B's property to be valued before lending could be agreed. Just instructed an independent surveyor to carry out the valuation – in this case the surveyor was suitably qualified as a Fellow of the Royal Institution of Chartered Surveyors (RICS). In turn, Just was entitled to rely on the expert opinion of the surveyor that valued the property. I've seen a copy of the valuation. The surveyor valued the property at £85,000 (not £130,000 as stated in the application). The surveyor confirmed that the property was suitable security for lending – as the loan to value was still only around 53% and the property met all other physical and structural requirements. So it wasn't unreasonable for Just to proceed with the lending following the valuation of the property.

The Equity Release Council also requires all its members to expect borrowers to get independent legal advice before taking out the loan. The solicitor does not advise on the suitability or amount of the mortgage – they do not offer financial advice. But they do ensure that the borrower understands the nature of what they are agreeing to and the terms they will be bound by. I can see that one of the terms of the application was that before the mortgage could complete Mrs B needed to seek Independent legal advice.

Following the meeting, the solicitor is required to issue a certificate to the lender to confirm that it is reasonably satisfied that the applicant is of sufficient mental capacity and not under duress or undue influence to enter into the mortgage. Just says that Mrs B did receive independent legal advice and that the solicitor provided it with a certificate to confirm the above. However, due to the time that's passed since this mortgage was agreed, Just says that it no longer has a copy of the relevant certificate. I don't think that's unreasonable in the circumstances given it's been over 11 years since the mortgage was sold.

On balance, I think it's more likely that Mrs B did receive independent legal advice and that a certificate was obtained by Just before the mortgage could complete – as in line with the Equity Release Council's standards and safeguards., the application could not proceed without it.

This reinforces my conclusion that there was nothing in the application presented to Just or other factors that ought reasonably to have led it to conclude that Mrs B didn't understand the mortgage, didn't agree to it or want it.

I appreciate that my decision will be disappointing for the estate, but as I've explained a large part of the complaint is about how the mortgage was sold – which was not the responsibility of Just. Based on what I can consider against Just, overall, taking everything into account I don't think Just acted unfairly or unreasonably when it agreed to give Mrs B a lifetime mortgage.

My final decision

My final decision is that I don't uphold this complaint brought on behalf of the estate of Mrs B against Just Retirement Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs B to accept or reject my decision before 6 January 2025.

Arazu Eid
Ombudsman