

The complaint

The estate of Mrs M complains that M G Norman & Co Ltd mis-sold her an equity release mortgage.

What happened

In 2016 a mortgage broker introduced Mrs M to M G Norman for advice on equity release and debt consolidation. The subsequent fact find document completed by Mrs M and M G Norman suggests that she had credit card and car finance debt that were a significant monthly expense.

M G Norman recommended an equity release mortgage with Aviva with an initial loan amount of £35,005 and a cash reserve of £12,995. Mrs M applied for the mortgage and Aviva produced a mortgage offer letter on 14 October 2016 confirming the details of the mortgage. The mortgage offer confirmed an interest rate of 4.06% applied to the initial loan. It explained that no regular payments needed to be made – instead interest would roll-up to be repaid, usually on the sale of the property after the death of the borrower, but also in the event the property is sold should the borrower go into long term care. The mortgage offer also included a table showing the effect of the rolled-up interest on the amount owed each year, for a period of 29 years.

Further applications through M G Norman show that Mrs M successfully applied to drawdown several amounts in the years that followed:

- 27 July 2018 - £13,000 for car purchase (*"to help with"*), credit cards, home improvements.
- 17 September 2019 - £12,000 for loans/bills.
- 1 October 2021 – £15,000 for the purchase of a *"quality used car – existing car on lease."*
- 22 March 2022 - £5,000 to repay credit card balance.

Sadly, in 2023, Mrs M died. The estate, represented by Mrs M's son – Mr H – has shared the tragic circumstances of her death with us, but I'll not go into the details of those here to protect her and his anonymity.

Mr H says Mrs M never cleared her debt and that her situation *"spiralled out of control"* in the time leading up to her death. He says the estate is now clearing debt amassed as a result of poor financial advice.

Mr H complained to M G Norman. M G Norman wrote to Mr H explaining its advice process and then confirmed in its final response letter of 6 June 2024 that it doesn't think it acted unreasonably or unfairly. M G Norman says Mrs M was referred to it because her regular financial adviser was unable to secure her an ordinary mortgage and didn't advise on equity release which was more viable because a successful application didn't rely on the affordability of a contractual monthly payment. It says it assessed other options – asking family or friends for financial help, selling her home and downsizing, or releasing equity from the property. Of those three options, Mrs M chose equity release, and an application was

made to Aviva as that was the only provider at the time which would consider an applicant who was under 60 years of age.

M G Norman said Mrs M contacted it four further times to apply for borrowing, as was allowed under the mortgage contract. It said she continued to live in her home, appeared to have been able to maintain her lifestyle and appeared happy. It didn't get any sense of vulnerability from its contact with her.

Dissatisfied with M G Norman's response, Mr H asked us to consider the complaint. Our investigator didn't uphold the complaint. She said, based on all that she's seen, she thought M G Norman recommended a suitable product. With regard to the further borrowing applications, she said the applications show that M G Norman did consider Mrs M's reasons as they were documented on the application forms and it wasn't the responsibility of the broker to carry out credit checks.

Mr H didn't agree with our investigator's opinion. He said Mrs M was in deep distress as a result of her debt and she shouldn't have been allowed to keep adding to that debt. As Mr H didn't agree with our investigator, the complaint has been passed to me for a final 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.

To decide this complaint, I've thought about whether M G Norman's recommendation for an equity release mortgage – including further borrowing – was suitable for Mrs M, given all the circumstances it was reasonable for it to have known about.

I think it may help to outline what I perceive to be M G Norman's role here. From the evidence available, I think Mrs M approached a financial advisor who was predominantly a mortgage advisor, to try to obtain a mortgage so that she could make her current outgoings – credit card payments and car finance – more affordable. It appears that, because of her disposable income – the difference between her income and her commitments – she was unable to obtain an ordinary mortgage. Her disposable income would have been an important factor because an ordinary mortgage would have committed her to contractual monthly payments. If those payments appeared to a prospective lender to be unaffordable, a standard mortgage application would have been declined.

So, assuming Mrs M still wanted to obtain a mortgage to reduce the monthly cost of her debts – or clear the debt balance completely – the financial advisor established that an equity release mortgage may be the solution. That's because an equity release mortgage doesn't commit the borrower to a contractual monthly payment, so isn't the subject of an affordability check in the same way. Instead, a valuation is carried out by the prospective lender to ensure a sustainable level of equity exists in the property. I say sustainable in the sense that there are no foreseeable factors that are likely to detrimentally affect the value of the property, albeit that when an equity release mortgage is in place the equity is instantly reduced by the level of the loan and then diminishes as interest is rolled-up.

M G Norman was then asked to give equity release mortgage advice. That means to explore suitability, to explain to Mrs M how it would work, and to source a product. Other mortgage types had already been considered so I don't think M G Norman ought to have done that. And M G Norman wasn't the lender, so it wasn't its role to consider the risk of non-repayment. The lender may have done that, partly by considering Mrs M's credit file. But as the ability to make a contractual monthly payment was not a consideration, the lender is likely to have been more concerned with the value of the property. Incidentally, the equity

release product carried a negative equity guarantee. That meant if the amount owed on the equity release mortgage was greater than the value of the property at the time of repayment, the lender would not ask the estate to repay the balance.

I've considered copies of the documentation completed at the time of the initial sale of the mortgage for evidence to indicate that M G Norman considered Mrs M's needs and goals reasonably. The 'fact-find' document completed before the sale indicates that Mrs M's disposable income was relatively low and that she paid £462 per month for car finance and was committed to maintaining a £27,000 credit card debt. I think that supports the third-party advisor's assessment that an ordinary mortgage was unaffordable. The fact-find states that the reason for the review was the "*production of a lump sum*," and that Mrs M required advice on "*releasing equity*" and "debt consolidation."

M G Norman says that it established that Mrs M had three choices to achieve her goals:

- Ask friends and family for financial assistance.
- Sell her home and downsize.
- Take an equity release mortgage.

It says Mrs M did not want to approach friends and family for money as that wasn't viable and Mrs M wanted to stay in her home as she also lived there with her son. The fact-find also says she hadn't discussed her plans with family, and she may want to move home in the future.

From the evidence available it appears that other options were considered, but for one reason or another were not possible. But, if Mrs M wanted to proceed with raising a lump sum for debt consolidation, an equity release mortgage was a suitable way of doing so. I can't claim to know Mrs M's thought processes at the time of agreeing to M G Norman's recommendation. But I think it would have been clear to her that an amount of 'wealth' had accrued due to the growth in value of her home and the equity release mortgage allowed her to access that to repay debts and, in doing so, increase her monthly disposable income.

It's worth noting here that the fact find does also say Mrs M was interested in retaining some equity in the property so that the beneficiaries of her will could inherit. And it also says she wasn't interested in borrowing more than she needed. I've seen that, as time went on, Mrs M did increase her borrowing against the equity in her home – as outlined above – and, in doing that, she further diminished the chances of their being equity remaining in the property for inheritance. That said, we haven't received information confirming the actual amount of equity remaining in the property at the time of Mrs M's death, if any.

Actions subsequently taken that contradicted the original fact find do not suggest that M G Norman's original recommendation wasn't suitable – only that Mrs M's needs and/or priorities changed. And M G Norman cannot be held responsible for the actions taken by Mrs M that led to the changing of her needs or priorities. By that I mean if Mrs M chose not to repay her debts following the initial release of equity or she acquired new ones, M G Norman could have had no control over that.

I know Mr H has concerns about the further equity release borrowing which M G Norman advised on. I would expect to see a documented fact find for each instance of further borrowing – I think M G Norman ought to have gone through that process and ought to be able to provide documentary evidence of it. However, the absence of such evidence doesn't mean that the advice to take subsequent equity release borrowing was unsuitable. Instead, it means I only have the copies of the applications to form an understanding of Mrs M's goals and needs at that time. So, I've used those to help me consider whether a documented fact

find process would have led to a different outcome or would have shown that a recommendation for further equity release borrowing was unsuitable.

Firstly, I've not seen any evidence that Mrs M was coerced in any way to contact M G Norman for advice on further borrowing, be that from M G Norman or a third party. I've seen no evidence of letters or phone calls encouraging her to do so. And I don't think Mr H has alleged that. So, it appears that approaches after the initial advice were made because Mrs M chose to do so, either based on need or want.

On each of the applications, the purpose of the loan was noted. Again, I've outlined those above. While there were repeated mentions of clearing car finance and other debt, there were no stated purposes for the loan that I think ought to have led M G Norman to refuse to help her or give different advice. To be clear, there are few restrictions on the purposes for which an equity release mortgage would be granted. For example, should Mrs M have wanted money for a holiday, she could have requested that.

I understand that Mr H may be concerned that Mrs M repeatedly acquired debt and M G Norman was in some way facilitating that. But, again, I don't think M G Norman could be expected to have had any control over that. Instead, its role was to give advice to 'resolve' Mrs M's immediate need or want. It had already been established that Mrs M couldn't or didn't want to raise money by other means. So, each time, a further equity release mortgage was a way for her to clear debts and free-up disposable income. I haven't seen that M G Norman would have had genuine grounds to refuse her requests, as long as her circumstances, including the equity remaining in her property, met the requirements of the lender.

So, given that Mrs M appears to have chosen to ask M G Norman for further advice in the knowledge it advises on equity release mortgages, and that she'd acquired a need for further borrowing before each further application, I don't think a different recommendation would have been made if a full fact-find had been completed. Nor do I think a copy of such a document would show me that the advice was unsuitable.

I understand that the wider circumstances of this complaint are likely to have been devastating for Mrs M's family and I'm sorry they've had to go through that. But the evidence available doesn't indicate that M G Norman's advice to Mrs M was unsuitable in all the circumstances known to it at the time of each sale. That means I don't uphold this complaint.

My final decision

My final decision is I don't uphold the estate of Mrs M's complaint about M G Norman & Co Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs M to accept or reject my decision before 22 August 2024.

Gavin Cook
Ombudsman