

The complaint

Ms W has instructed a professional representative who complains on her behalf that the advice she received from Key Retirement Solutions Limited trading as Key in 2019 to take out a lifetime mortgage with a third-party lender (L1) was unsuitable given her age and circumstances at the time.

What happened

In May 2019, Ms W sought advice from Key about releasing equity from her home, which she solely owned outright.

In June 2019, an adviser at Key completed a fact-finding exercise with Ms W to ascertain her needs, circumstances and preferences. The adviser noted in the fact find document that she had three priorities. Her main priority was to achieve borrowing as set out below:

• Home Improvements/Maintenance	£20,000
• Renew the Car	£5,000
• Cash Reserve Shortfall	£2,251
• Estimated Costs/Set up Fees	£3,349
<u>Total</u>	<u>£30,600</u>

Ms W's second priority was to receive a free valuation, and her third priority was to achieve enhanced terms if available.

Key established that Ms W had a disposable income of £300, but she didn't want to make regular payments on any borrowing because she wanted to keep her disposable income at its current level to maintain her standard of living.

The fact find also details that Ms W didn't want to involve her partner in the application, who was living with her at the property.

Key initially recommended a lifetime mortgage with a different lender, and it was only able to secure a reduced amount of borrowing at £25,200. It is detailed in the recommendation letter dated June 2019 that Ms W still wished to proceed on this basis as it would allow her to do home improvements and would provide her with a contingency fund. However, the lender later declined Ms W's application due to her property being located too close to a commercial premises.

Shortly after, Key recommended a lifetime mortgage at the reduced amount of £25,200 with L1. A valuation was carried out which valued Ms W's property at £120,000. L1 issued a mortgage offer, solicitors were instructed, and the mortgage completed in September 2019.

The mortgage offer set out that the interest rate on the initial lump sum would be charged at a fixed rate of 4.92% for the life of the mortgage.

More recently, Key's adviser got in touch with Ms W and asked whether she was interested in releasing more equity from her property. I understand that Ms W had considered doing this, but she decided to shop around. After speaking to a different adviser, Ms W felt she'd been given unsuitable advice to take out the lifetime mortgage in 2019.

In May 2023, Ms W's representative complained to Key. In summary, he said:

- Key should have advised Ms W to obtain whole of market advice. Ms W was not fully informed of all her borrowing options, especially considering that she was only 55, and working with an expected retirement age of 67.
- Ms W would have been able to afford a traditional capital repayment mortgage. A repayment mortgage for £25,200 over 12 years (up to the age of 67), with an interest rate of 2% would have cost around £196 per month.
- With no personal pension, Ms W would probably want to consider equity release when she retires in order to maintain any form of standard of living, but this option has been hindered as a result of her releasing £25,200 of equity at the age of 55.

Ms W's partner was living with her at the time of advice, and he was earning a yearly salary. In 2019 he was too young for equity release. An equity release application in the sole name of Ms W resulted in the risk of her partner being homeless if Ms W were to pass away first.

Key issued its final response in June 2023, which didn't uphold Ms W's complaint. In summary, it said:

- It was satisfied that the recommendation for a lifetime mortgage with L1 was appropriate given Ms W's objectives and needs at the time of advice.
- It didn't agree the mortgage had been sold without any regard for Ms W's personal or financial circumstances.
- The documentation given to Ms W clearly explained the risks and implications, including how the lifetime mortgage worked.
- The mortgage and its terms and conditions were discussed with Ms W by both its adviser and her own solicitor before the mortgage completed. Further, Ms W's partner was present at these discussions. It was also satisfied the documentation from the sale clearly reflects that Ms W was financially aware and she understood the implications of taking out a lifetime mortgage.

Because of this, Key didn't think it had acted incorrectly.

Unhappy with Key's response, Ms W's representative referred her complaint to this Service.

Our Investigator didn't uphold the complaint. In summary, she said she was satisfied Key had established Ms W's circumstances and needs at the time and she felt the recommendation to take out a lifetime mortgage with L1 was suitable given Ms W's needs and circumstances. In particular, she noted that Ms W had said she didn't want to make repayments and wanted to maintain her current level of disposable income.

Ms W's representative didn't accept the Investigator's findings. Amongst other things, he said:

- It would have been better for Ms W to make repayments towards a traditional capital and repayment mortgage in order to enjoy her income in retirement.
- Ms W was not made aware of all of her borrowing options.

As agreement couldn't be reached, the complaint was passed to me for a final decision.

Ms W's representative also informed us that in November 2023 Ms W had ended the lifetime mortgage early and secured a repayment mortgage for the amount of £57,467 with a different lender, who I will refer to as L2. This was for a term of 12 years with an initial fixed rate of 5.51% until January 2029.

Ms W's representative said that had Ms W been given correct advice in 2019 she would have opted for a repayment mortgage, and he indicated this would have been for a term 12 years with an initial five-year fixed rate product. He also referred to publicly available information which indicates the average five-year fixed interest rate product available in 2019 was at the rate of 1.7%.

Having considered the relevant information about this complaint, I reached a different conclusion to the Investigator. I issued provisional decision to give the parties the opportunity to make any further submissions they wanted me to consider before making a final decision.

My provisional decision

In my provisional decision, I said the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Key was required to take reasonable steps to find out what Ms W's needs and circumstances were and only recommend a lifetime mortgage if it was suitable for her. It should also have given Ms W clear, fair and not misleading information so that she could make an informed choice whether to go ahead or not.

Taking into account Ms W's needs and circumstances at the time, I don't consider the recommendation for a lifetime mortgage was suitable for Ms W. I'll explain why.

I accept that Ms W approached Key with a desire to release equity from her property. I also accept that the point-of-sale documentation says that Ms W didn't want to make regular repayments, because she wanted to keep her current level of disposal income to maintain her standard of living. However, it does not necessarily follow that a lifetime mortgage is suitable for someone just because it is what they wanted. The Key adviser should only have recommended a lifetime mortgage if it was suitable for Ms W.

The nature of a lifetime mortgage is such that, while they may be appropriate for many people, they are a very expensive form of borrowing because of the way interest compounds. And in Ms W's case, in her mid-fifties, it was likely that interest would compound for a very long time.

Having carefully reviewed the information available to me - and taking into consideration the cost of the lifetime mortgage in relation to the benefit that Ms W received from making some improvements to her home - I don't consider that a lifetime mortgage was suitable for Ms W in the circumstances. I think she could have met her needs and objectives by taking out a standard repayment mortgage or even a personal loan instead, which would likely have been much cheaper.

I appreciate that Ms W said at the time that she didn't want to have to make repayments, and that was why she was considering a lifetime mortgage. But I don't think Key should have simply proceeded on that basis, without discussing all the alternatives with Ms W first. Ms W may have expressed that preference because she thought a standard mortgage would have been more expensive than was actually the case, for example – and with a fuller understanding of her options, her preferences would have been different.

I'm satisfied that is in fact the case. I think it's more likely than not that a standard mortgage would have been obtainable and affordable for Ms W in her circumstances as they were at the time. Had that been discussed with her, and had the payments she would have to make on a standard mortgage been compared to the ongoing costs of a lifetime mortgage, as well as the implications for her finances in future, on retirement – I think it's more likely than not that Ms W would then have opted for a standard mortgage. Even if Key didn't advise on or arrange standard mortgages, I think that, acting fairly, it ought to have ensured that Ms W fully understood all her options.

With that in mind, I'm satisfied that a standard mortgage would have been more suitable for Ms W's needs and circumstances at the time, and I'm also satisfied that if the matters I've set out above had been explained to her, she would have accepted that advice – and I don't think Ms W would have taken the lifetime mortgage.

As a starting point, if we believe a product was mis-sold to a customer and they have lost out financially, then we aim to put them back in the position they would have been in as far as possible, if the business hadn't got things wrong.

Here, Ms W's representative has told us that if Ms W had been given the correct advice and information, she would have opted for a repayment mortgage instead.

I accept that a repayment mortgage would have been a more favourable option for Ms W. This is because it would have been a much cheaper way for Ms W to achieve her objectives. Given this, and the fact that Ms W went on to secure a repayment mortgage in November 2023, after receiving further advice about her options – I'm persuaded that she would have opted for a repayment mortgage had she received correct advice and information from Key in 2019.

Further, given that Ms W was employed with a disposable income of £300, had an unencumbered property, the low loan to value she was seeking – together with the lending environment at the time, I'm satisfied Ms W wouldn't have had any difficulty securing a standard mortgage on these terms.

Given that Ms W is likely to have lost out financially as a result of Key's error, it follows that I provisionally consider that it should take steps to restore Ms W to the position she would have been in but for its error by calculating and paying Ms W redress as I've set out below.

Ms W redeemed her lifetime mortgage in November 2023 and this crystallised some of Ms W's loss. I think a fair way to calculate this loss is for Key to determine the position Ms W would have been in November 2023 (when she ended the lifetime mortgage), had she taken out a repayment mortgage instead. This is the balance remaining after the monthly payments she would have made have been deducted. Key should then deduct this amount from the amount that Ms W actually paid to redeem the lifetime mortgage in November 2023. The amount remaining is the loss Ms W has incurred and should be paid to Ms W.

Ms W's representative has indicated Ms W would have opted for a standard repayment mortgage for a term of 12 years with an initial five-year fixed interest rate product. Based on the information available to me, and the fact that this is essentially what Ms W ended up agreeing to with L2 in 2023 (although this was for a larger loan amount), I think it is likely that this is what Ms W would have opted for in 2019.

Ms W's representative has provided us with information indicating the average five-year fixed interest rate product in 2019 was 1.7%. However, he hasn't indicated which lender Ms W would have likely approached or any evidence to show Ms W would have met that lender's criteria at that time. It follows that I think the most appropriate reference point here is what was on offer with L2 in 2019. I say this because Ms W met L2's lending and eligibility criteria in 2023, and I think it's likely that she would have met this in 2019, given that her circumstances hadn't materially changed in the meantime. Publicly available information shows that in July 2019, L2 offered a five-year fixed rate product at 1.84%. It follows that I think this interest rate should be applied when completing the redress calculation.

So, Key should calculate the repayments on the basis that Ms W would have taken out a standard repayment mortgage for a term of 12 years with an initial five-year fixed rate of 1.84%. It should then pay her the difference between what the balance on what that mortgage would have been in November 2023, and the amount she paid to redeem the lifetime mortgage she took.

Ms W should also be provided with financial loss compensation on that sum because this is additional money that Ms W had to borrow when she took out her new mortgage in November 2023. So Key should also pay interest on that sum, compounded at the rate of 5.51% (the rate on her new mortgage).

If Ms W chooses to use the redress to reduce the balance of her new mortgage, Key should also pay any Early Repayment Charge (ERC) L2 charges on a balance reduction. If Ms W chooses not to do that, Key will not be liable for any increased interest Ms W pays in the future on this part of her new mortgage balance.

I don't think it would be fair to require Key to pay the difference between 1.84% and 5.51% on the additional amount Ms W borrowed, over and above the cost of redeeming her lifetime mortgage, in 2023. That's because she wasn't contemplating borrowing this amount in 2019, and so even if she had taken a repayment mortgage at that time further borrowing in 2023 would still have been at the rates available in 2023.

Ms W should also be refunded any up-front fees or costs incurred when setting up the lifetime mortgage in 2019 (that weren't added to the balance) plus interest on this amount from the time it was paid, up to the time it is reimbursed. The relevant rate is 8% per annum.

I understand that Ms W wasn't charged an ERC for ending the lifetime mortgage early as the gilt yield was the same or higher than the gilt yield on the completion date, so this doesn't need to be factored into the calculation.

I'm not satisfied that all of Ms W's loss crystallised upon her redeeming the lifetime mortgage in November 2023. I say this because if Ms W had secured a five-year fixed rate product in July 2019, the mortgage would still be running at that rate, which would have been cheaper than the interest rate she is currently paying (5.51%). Had Ms W taken out a five-year fixed rate with L2, this would have run until 31 October 2024. So, I think Key should also calculate the difference in interest each month between 5.51% and 1.84% from November 2023 to October 2024 (on the amount that should have been remaining in November 2023 if Ms W had a repayment mortgage) and the difference should be paid to Ms W.

I don't intend to require Key to pay interest on the extra interest Ms W has paid on the higher rate to date, since the payment of a lump sum now to compensate Ms W for future losses will offset any interest I might have awarded for loss of use of that money.

The end date of this part of the calculation should be 31 October 2024. This is the end date of the five-year fixed rate that had been available with L2. I have not extended this to the end date of Ms W's current fixed rate as I'm unable to say with any certainty what rates of interest would be available to Ms W after 31 October 2024, so I'm unable to conclude that any loss will continue after this date.

Putting things right – my provisional decision

To settle this complaint, I proposed to require Key Retirement Solutions Limited trading as Key to calculate redress as follows:

- From inception (September 2019) to the date of redemption (November 2023), calculate the balance that would have been remaining had Ms W taken out a repayment mortgage with L2 for a term of 12 years with a fixed interest rate of 1.84%.
- Deduct this from the amount Ms W paid at redemption.
- The balance calculated should be paid to Ms W plus interest compounded at the rate of 5.51% from November 2023 to the date of settlement.
- If Ms W chooses to use the redress to reduce the balance of her new mortgage, Key should also pay any ERC L2 charges on a balance reduction.
- Refund any up-front fees and charges incurred in connection with taking out the lifetime mortgage (that weren't added to the balance) plus 8% interest, running from the date of payment to the date of settlement.

And:

- From the inception of the mortgage with L2 (November 2023) until the end of the term of the fixed rate of 1.84% with L2 (31 October 2024), calculate the difference in interest each month between 5.51% and 1.84% on the amount that should have been remaining in November 2023 if Ms W had a repayment mortgage with L2
- The balance calculated should be paid to Ms W.

Responses to my provisional decision

Both parties responded to my provisional decision.

Ms W's representative confirmed that Ms W had no further points to add.

Key didn't agree with my provisional decision. In summary, it said my provisional decision had not set out the legal or regulatory basis for any failing by Key. It also said that it was satisfied the available evidence shows:

- Ms W was given sufficient information about her options.
- There is no evidence to suggest that the other options (a repayment mortgage or personal loan), would have been available to Ms W.
- Those other options did not, in any case, meet Ms W's objectives as well as the lifetime mortgage did.
- As such, the product Ms W was recommended was suitable for her needs.
- Ms W would have taken out a lifetime mortgage in any event, in particular (but without limitation) because it avoided her having to make monthly repayments. It felt this was supported by the fact Ms W had not made any repayments towards the lifetime mortgage, despite having the option of doing so.

As such, it felt my decision should be reversed and Ms W's complaint should not be upheld.

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 taken into account everything that Key has said in its response to my provisional decision. Having done so, I still don't think the recommendation for a lifetime mortgage was suitable for Ms W given her needs and circumstances at the time.

Key has asked me to refer to the relevant legal and regulatory requirements. Here, the rules of mortgage regulation, specifically MCOB 8.5A, required Key to take reasonable care to ensure the lifetime mortgage was suitable for Ms W and appropriate for her needs. MCOB 8.5A.6 goes on to list a number of factors that must be considered when assessing whether a lifetime mortgage is appropriate to the needs and circumstances of a customer. This includes, amongst other things, any alternative methods of raising the required funds.

For the reasons that I've explained in my provisional decision, I remain satisfied that a repayment mortgage was a more suitable option for Ms W given her needs and circumstances at the time. And even if Key didn't advise on or arrange standard mortgages, acting fairly, it ought to have ensured that Ms W fully understood all her options – and I'm still not persuaded that it did this.

Key says it has provided this Service with evidence that shows sufficient information was given to Ms W about her options, which my provisional decision has ignored. However, having reviewed all of the information provided by Key again, I haven't seen anything that indicates Ms W was provided with sufficient information about other borrowing options, such as a repayment mortgage or a loan.

Notably, the relevant part of the suitability report dated June 2019 doesn't reference any discussion about any other specific borrowing options. It simply states;

“Other borrowing: You do not wish to have to make regular payments on any borrowing as you wish to keep your disposable income at its present level so as to maintain your present, everyday standard of living.”

Whilst this indicates other options were disregarded because of Ms W's preference not to make payments, it doesn't show a proper consideration or discussion about other options took place – in particular including any consideration of the fact that because of her age and disposable income, a standard mortgage would likely be affordable for her. And while a lifetime mortgage might have the advantage of not requiring her to make repayments, it is also substantially more expensive overall, and might impact her later options. This is something I'd have expected Key to have discussed with Ms W to ensure that her decision to proceed with a lifetime mortgage and not make payments she could have afforded was made on a fully informed basis.

It remains my finding that a repayment mortgage would have been obtainable and affordable for Ms W in her circumstances as they were at the time. And had this been discussed with Ms W, and had the payments Ms W would make on a standard repayment mortgage been compared to the ongoing costs of a lifetime mortgage, as well as the implications for her finances in future, on retirement – which is what I think should have happened in the circumstances – it is more likely than not that Ms W would have opted for a repayment mortgage.

After reviewing everything, including all of the surrounding circumstances and the responses I received to my provisional decision, I see no reason to depart from my findings in my provisional decision. For the reasons I've explained here and in my provisional decision, I uphold this complaint and require Key Retirement Solutions Limited trading as Key to calculate and pay redress as I've set out below.

Putting things right

To settle this complaint, I require Key Retirement Solutions Limited trading as Key to calculate redress as follows:

- From inception (September 2019) to the date of redemption (November 2023), calculate the balance that would have been remaining had Ms W taken out a repayment mortgage of the same amount with L2 for a term of 12 years with a fixed interest rate of 1.84%.
- Deduct this from the amount Ms W paid to L1 at redemption.
- The difference between those two figures should be paid to Ms W plus interest compounded at the rate of 5.51% from November 2023 to the date of settlement. I include compound interest at the new mortgage rate rather than simple interest of 8% because this extra amount was included in the new mortgage borrowing, and therefore the interest charged on it represents direct financial loss which should be awarded rather than compensatory interest for being out of pocket.
- If Ms W chooses to use the redress to reduce the balance of her new mortgage, Key should also pay any ERC L2 charges on a balance reduction.
- Refund any up-front fees and charges incurred in connection with taking out the lifetime mortgage (that weren't added to the balance) plus 8% interest, running from the date of payment to the date of settlement.

And:

- From the inception of the mortgage with L2 (November 2023) until the end of the term of the fixed rate of 1.84% with L2 (31 October 2024), calculate the difference in interest each month between 5.51% and 1.84% on the amount that should have been remaining in November 2023 if Ms W had a repayment mortgage with L2.

The balance calculated should be paid to Ms W. I don't include compensatory interest of 8% on this amount either, since the benefit of being paid future losses upfront offsets the impact of being out of pocket for past losses.

My final decision

My final decision is that I uphold this complaint and I direct Key Retirement Solutions Limited trading as Key to calculate and pay redress as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 18 July 2024.

Michelle Griffiths
Ombudsman