

The complaint

Mrs S complains that OneFamily Lifetime Mortgages Limited, trading as OneFamily Lifetime Mortgages ("OF") changed its lending criteria without notifying her.

What happened

In July 2017 Mrs S took out a lifetime mortgage with OF with the help of an intermediary. The mortgage was for £155,000 on a fixed rate, interest roll up basis. Mrs S was provided with a mortgage offer and the terms and conditions of the mortgage before she entered into it.

Mrs S said the mortgage allowed for Downsizing Protection. That was set out in Mrs S' mortgage. It said:

"Downsizing Protection

If, after 5 years, you repay your mortgage as a result of selling your property and move to a different property, OneFamily will waive any early repayment charge".

OF said the Downsizing Protection feature was applicable in certain cases where the property the customer wanted to move to fell within its current lending criteria.

In 2019, OF changed its lending criteria. As a result of those changes it no longer accepted leasehold/share of freehold properties with a lease as security for a mortgage. That meant that if Mrs S wanted to downsize and port her mortgage, she had to move to a property that met OF's current lending criteria. She says her current property is a share of freehold with a lease. So, she thought she could move to similar, more affordable property. Mrs S says she can't afford to move to another type of property in her area - so she's effectively trapped in her current property/unable to move to a more affordable property. She wants to stay in the area as she has been there for many years and her family live nearby.

Mrs S thinks OF's changes are unfair. She says she should have been told about the changes sooner and warned about the risk of them from the beginning.

Mrs S says she phoned OF in May 2021 to ask about the porting process. She told it she wanted to downsize and repay part of her mortgage. She says she wasn't given any information about the change to OF's lending criteria at the time. She was simply told that once she knew where she wanted to move to, she should let OF know so it could check the property against its lending criteria.

Mrs S phoned OF again a few months later. At this point she was ready to put her property on the market. It was only on this phone call that she was told that OF no longer lent on leasehold properties. She told us she was stunned by the news – that it affected her health, and she was left feeling confused, stressed and that she didn't know what to do. She has described herself as elderly and vulnerable and says the impact of what happened has been devastating.

In its final response OF said it didn't do anything wrong as it was able to change its lending criteria. It said consumers can only buy the relevant mortgage product after getting advice from a registered intermediary/broker, so it let registered brokers know about the change in November 2019, shortly before the changes were brought into effect.

Mrs S complained to OF. Dissatisfied with its response she complained to the Financial Ombudsman Service.

Our investigation so far

Our investigator empathised with Mrs S about what had happened. However, he said that a lender is entitled to change its lending criteria, and decide what type of properties are acceptable to it for security purposes. He said that was a commercial decision for the lender, and that the Financial Ombudsman Service can't interfere with a lender's commercial decisions. He didn't think OF had done anything it wasn't allowed to do under the terms and conditions of the mortgage. He didn't think that a change to lending criteria was a variation of the mortgage contract that could only be done if Mrs S was given prior notice of the change.

Mrs S didn't agree with our investigator's findings. She asked for an ombudsman to review her complaint. So, this complaint has been passed on to me to decide. Mrs S made a number of points I've considered below.

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'll begin by explaining what is meant by 'porting' a mortgage. A mortgage loan and a mortgage product are two different things. A loan is the underlying transaction in which money is lent; the product is the initial terms that sit on top, including the interest rate.

In this case, Mrs S had borrowed £155,000 at a fixed interest rate of 5.37%.

When Mrs S wanted to move/downsize she didn't want to borrow any more money. Instead, she wanted to port the mortgage interest rate product. In moving properties, the borrower pays off the old mortgage from the proceeds of sale. They also, separately, apply for a new mortgage to be secured on the new property, and if the application to port is successful, the interest rate product they wanted to port will be applied to the new mortgage. In other words, porting a mortgage doesn't mean moving the mortgage itself from one property to another; mortgages are not transferable in this way. It means ending one mortgage and taking another and moving the interest rate product across.

To do this Mrs S would have needed to make a mortgage application to OF. But in 2021 Mrs S was told she would only be able to do that if the new property met its current lending criteria.

The mortgage contract Mrs S agreed to in 2017 supports what Mrs S was told. I say that because Mrs S' 2017 mortgage offer said:

"If you buy a new home you **may** be able to transfer your lifetime mortgage to your new home." (my emphasis)

In section 7 of the mortgage offer (under the title "Risks – Important things you must consider") it said:

“If you move to a new property **that is suitable to OneFamily**, you can move your mortgage.” (my emphasis)

I think it's important to say here that, when she decided to take out the mortgage Mrs S had her own financial adviser advising her about the OF mortgage product. OF didn't give her any advice to take out the lifetime mortgage. It was the financial adviser's role to advise Mrs S about the mortgage, or the circumstances in which the mortgage could be ported – including the fact that this would be subject to meeting OF's lending criteria at the time of the application.

OF changed its lending criteria in 2019. Amongst other things, it would no longer lend on leasehold properties. I'm satisfied this is a decision OF was entitled to make, as part of its overall commercial operations.

OF has told us that this information was disseminated to brokers who sold OF products in 2019. It points out that this mortgage product cannot be sold direct to consumers. I can see that its lending policy is currently set out on its website.

I must be clear here that OF is entitled to set its own lending policy/criteria. Decisions that OF makes in respect of what those criteria are, its attitude to risk, whether it should lend and, if so, on what terms are clearly discretionary matters for OF's own commercial judgement that I would not interfere with.

Mrs S says that if OF's lending criteria are changed to adversely impact an existing customer it is only right and fair that OF should inform the customer so they are given them reasonable time to make other arrangements. She has referred to sections 21 and 22 of the mortgage terms and conditions.

Section 21 says:

“We may vary these terms and conditions in a manner which is not detrimental to you to reflect a change in the law or any code of practice to which we adhere or the way in which they are applied and will advise you at least 1 month before the change takes effect.”

Section 22 says:

“Where we have a right to approve, agree or consent to anything under these terms and conditions, including where you have to obtain our permission to do something, we will act reasonably in exercising such right or considering any request for approval.”

I appreciate the point Mrs S has made here. However, I'm satisfied that OF's lending criteria are not contractual terms which are subject to negotiation and agreement between Mrs S and OF. So, sections 21 and 22 don't apply to the circumstances Mrs S is complaining about.

The potential for porting is a feature of Mrs S' mortgage, but it is not a contractual term which obliges OF to offer a new mortgage. That's because, for any new mortgage application, OF is required to assess the application against its criteria applicable at the time of the application.

I'm satisfied that the mortgage offer does not give any guarantee that the mortgage can be ported. It says that the mortgage “may” be ported if the customer's new property is suitable to OF. I'm satisfied that the wording (set out above) is clear, and easy to understand. The criteria are published online, so I'm satisfied that they are available to customers (and their advisers) who might want to port their mortgage in order that they can ascertain whether the

application would meet them.

Mrs S says OF wasn't entitled to change its lending criteria without notifying her in advance. However, I'm not persuaded that OF was under any obligation to notify her – or indeed any other customer – individually about changes to its lending criteria that might, or might not, affect them at some point in the future. If OF was required to do this, the logistics would be immense: staff would have to monitor every mortgage account on a daily basis, check if there'd been any changes to lending criteria specific to each customer's particular mortgage that might affect them in the future and contact each individual customer. That's simply not feasible or realistic, and not something I'd expect OF to do.

At the time the mortgage was taken out, OF was covered by Principle 7 of the FCA's Treating Customers Fairly requirements, which stated: "A firm must pay due regard to the information needs of its clients and communicate information to them in a way that is clear, fair and not misleading". I'm satisfied that OF's communication was clear that any application to port wasn't guaranteed. I'm satisfied that, by notifying brokers of the changes to its lending criteria and by publishing those criteria on its website (which is accessible to the public), OF fulfilled its obligation to notify customers of the changes it had made. Mrs S has said that the mortgage offer/terms and conditions should have been clear what properties she'd be able to move to. She says that by not doing that it wasn't possible for her to understand the terms of the contract she was entering into. I don't underestimate her strength of feeling about what has happened, or the impact of the OF's changes on her. But I'm afraid I disagree. OF's lending criteria were always subject to change. That's why the wording in section 7 of the mortgage offer was set out under the title "Risks – Important things you must consider".

Mrs S has said that she thinks the changes OF made to its lending policy were unforeseeable, so I should uphold this complaint. She has referred to a case study on the Financial Ombudsman Service's website. That case was upheld by this service. We said that a company that changed the age limit that was applicable to a mortgage product was unforeseeable. I've considered the case study Mrs S has referred to, but I'm afraid it doesn't change my mind in this complaint. I don't think it was unforeseeable that OF would take the commercial decision to decide that it was no longer going to accept leasehold/share of freehold properties with a lease as security for a mortgage. OF is entitled to determine its exposure to risk and whether or not to lend on certain properties. That is not something I have any power to interfere with, and I can't order OF to change its criteria for Mrs S when no other customer would meet them.

I have sympathy for the position Mrs S finds herself in. I'm in no doubt that the news has hit her hard and thrown off her downsizing plans. Mrs S says she would never have taken out the mortgage product if she'd been advised that she wouldn't be able to downsize to a leasehold/share of leasehold property as those are the types of property she can afford in the area she lives in. But as I said above, OF didn't advise her to get the lifetime mortgage, so it wouldn't be fair and reasonable for me to hold it responsible for that. If Mrs S thinks she was mis-advised about her lifetime mortgage she should think about complaining to the business that advised her, if she hasn't done so already.

Mrs S may be able to use another mortgage provider if she still wants to downsize to another leasehold property. But that will mean she has to pay an Early Repayment Charge ("ERC"). OF has been clear that it wouldn't waive the ERC. I've thought about whether it would be fair and reasonable for me to say that OF should do that if Mrs S were to change provider. I'm sorry to disappoint Mrs S, but I don't think it would be. I could only fairly do that if I thought OF had done something wrong. But I don't think it has for the reasons set out above.

Mrs S has also suggested that she should be compensated for the high rate of interest that she has had to pay when she has been unable to downsize. I'm afraid I don't think that

would be fair and reasonable either. Once again that's because I don't think OF has done anything wrong in this case. Mrs S agreed to pay the interest rate set out in the mortgage offer, and there is no basis on which it would be fair or reasonable to release her from that contractual obligation.

conclusion

I appreciate that Mrs S is likely to be very disappointed by this decision, but I don't think this complaint should be upheld for the reasons set out above.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 3 March 2025.

Laura Forster
Ombudsman