

The complaint

Ms F's complaint is about a lifetime mortgage she has with Pure Retirement Limited. She is unhappy that Pure wants an adult relative who has moved in with her to sign an occupier's consent form (OCF), waiving any rights they may have to the property as a resident. Ms F understands the OCF requires him to leave the property immediately upon her death, but she had understood that her family would have up to a year to sell the property. She believes that Pure has tried to change the terms of the mortgage, or that she was misled when it was sold. As such, she has stopped her relative from signing the OCF.

Ms F has told us that she felt harassed and threatened by Pure constantly contacting her. She also said that she has been made to feel as if her house doesn't belong to her, unsafe and that the relative who lives with her will be unsafe when she dies.

In settlement of the complaint, Ms F has asked that the mortgage contract is formally voided, all fees charged for setting up the contract and all interest paid as agreed in the contract be wiped off the account. In addition, she has asked that Pure compensates her for misleading her in order for it to gain financially, and for it harassing and threatening her. She considers that this compensation should take the form of Pure wiping out the remainder of the mortgage debt.

What happened

In 2019 Ms F took advice from an independent mortgage broker. It recommended a lifetime mortgage with Pure for £22,600. A copy of a guide produced by Pure would have been given to Ms F as part of this process. It included some frequently asked questions:

'How long does my estate have to sell the property to repay the mortgage?

The usual period we allow is up to 12 months, as long as we can see evidence that the property is being marketed at a realistic asking price and we are kept informed of progress with monthly updates.

I have a family member/friend living with me, would they have to move out straight away if I move into long term care or pass away?

No, we don't require any additional occupiers to move out immediately but we do recommend they start to look for alternative accommodation as soon as possible. ...'

Pure accepted the application and issued a mortgage offer to Ms F, which she accepted. The offer stated:

'4. Pure Retirement Limited... has the right to take legal action to repossess your home for the following reasons:

- *The property not being sold within 12 months of your death ... or entering long-term care ... or otherwise vacating the property.*
- *You becoming bankrupt.*

- *You ceasing to occupy the property as your main residence for 3 months or more without our permission.*
- *Any failure to notify and co-operate with Pure Retirement Limited in relation to an environmental notice issued ... relating to your property or a neighbouring property.*
- *You gave us false, incomplete or misleading information when you applied for the lifetime mortgage including fraud or money laundering and we reasonably believe this made a significant difference to our decision to lend to you.*
- *If the property is subject to a Compulsory Purchase Order or requisition.*
- *You are in breach of the mortgage conditions or loan conditions.*

...

13. If you want someone else to move into your home to live with you, for example upon marriage/formation of civil partnership, or where someone acts as your carer, you must first get us to agree before they move in. Otherwise this will breach the terms of your mortgage. Any persons that are currently residing in the property and are not party to the lifetime mortgage may have to sign an acknowledgement, waiving any rights they may have in the property, in order to continue living in the property.'

Each year after the mortgage was advanced Pure sent Ms F a letter checking that she was still living in the property. In 2024 she confirmed that a relative had moved in with her.

Pure wrote to Ms F on 7 March 2024 and asked her to arrange for the relative to sign an OCF. It was documented that a solicitor needed to witness the signature. The form detailed that:

*'4. you agree immediately to vacate the **Property** and give up possession of it to the **Lender** if the **Lender** should exercise its rights to possession under the **Mortgage**;*

Ms F was not happy with this statement in the OCF and has told us that she prevented her relative from signing the OCF because of it.

Pure chased Ms F for the return of the form a month later. It confirmed at that time, that the form didn't have to be witnessed by a solicitor. Ms F called Pure to discuss the letters she'd received. In that call Pure reassured Ms F that her understanding about the time her estate had to deal with the property was correct and that her relative would not have to leave the property immediately upon her death. Ms F said she didn't think the form was clear and wanted it amended to state that her relative would have 12 months to sell the property before having to vacate it. Ms F confirmed that she would not allow her relative to sign the OCF in its existing format. The call handler said that she would record that fact and it was confirmed that Ms F would be considered to be in breach of the mortgage conditions. Ms F was offended at being told this and the call handler offered to transfer her to a manager.

Ms F was transferred to speak to a manager. It was highlighted that Ms F had signed to say that she would ask permission of Pure before moving someone into the property, and without that having occurred, it was a breach of the mortgage conditions. The previous call handler had not meant to be rude, as Ms F believed she was in telling her that, but simply stating a fact. Ms F was again reassured that Pure allowed up to 12 months for a property to be sold after the death of the borrower or their move to residential care. In relation to the change in messaging about the need to have the OCF witnessed by a solicitor, Pure explained that it depended on who was living in the property as to whether it needed to be witnessed by a solicitor. This was meant to be confirmed in the covering letter.

Pure followed up this conversation with a letter, enclosing some documentation from the time of the sale. It also confirmed that as long as it had regular contact after her death, it would be happy for the relative to continue to live in the property until it was sold.

Ms F spoke to Pure again later that month. Following that conversation Pure confirmed on 3 May 2024 that it would not alter the content of the OCF. However, it again confirmed that it would not require the relative who was living with her to immediately vacate the property following her death as long as he kept in touch with it.

Ms F remained dissatisfied and complained.

Pure responded to the complaint in a letter of 17 May 2024. It explained that when someone moved into a property that is subject to a lifetime mortgage, it required them to sign the OCF to ensure they understood that in the event of the borrower's death or move to long-term care, they will have to vacate the property and could not continue to live there in the borrower's absence. As such, when Ms F informed Pure that a relative had moved in, it required an OCF to be signed by that relative. Pure, however, acknowledged that the letters it had been sending Ms F about the OCF were generic templates and lacked a personal touch. It went on to confirm that if after three attempts direct with the borrower to get the OCF signed, Pure's process is to send a field agent to the property to determine what the situation was. Pure was happy it had followed its process correctly.

Pure chased Ms F again on 12 June 2024 for the OCF to be signed and returned. This letter was followed by another on 20 June 2024 in which Pure explained that as Ms F's relative was unwilling to sign the form, it was a breach of the mortgage conditions as Pure had not consented to the relative permanently residing in the property.

Ms F was dissatisfied with Pure's position and asked us to consider the complaint. When she did Ms F told us that she had been assured repeatedly that her adult children could come home and live in the property for up to one year after her death. She required this to be the case so that they could care for the property while preparing and selling it, and also to say goodbye to their former family home. She highlighted that she was not given a copy of the consent before she signed up for the mortgage, and explained she considered that it changed the agreed terms and conditions, and so rendered the mortgage contract invalid.

One of our Investigators considered Ms F's complaint, but she didn't recommend that it be upheld. She didn't think the OCF meant what Ms F had interpreted as meaning and that Pure was not trying to change the mortgage terms and conditions by asking for it to be signed. The Investigator was satisfied that the information given to Ms F up until the May 2024 complaint response set out the situation as being in line with the mortgage terms and conditions. However, the Investigator considered the complaint response of May 2024 could have been clearer and she understood why Ms F had said it contradicted the terms of the mortgage. As such, she recommended that Pure write to Ms F and confirm that if her relative was living in the property when she died, he could remain in the property for up to 12 months while the estate sold the property. In addition, she asked Pure to pay Ms F £500 for the distress and inconvenience the lack of clarity had caused.

Ms F didn't accept the Investigator's conclusions. She said she didn't accept that she had ever been in breach of the mortgage terms because in order to be so, she would have had to have been shown the OCF before she signed the contract. She again said that she believed that her beneficiaries were entitled to live in the property and so they didn't need to sign an OCF or waiver. Ms F reiterated that had she seen the OCF before she accepted the mortgage offer, she would not have done so. She also said that £500 was not sufficient compensation for what Pure had done. Ms F mentioned that Pure misled her about the

requirement for a solicitor to witness the OCF and this added to the mistrust that the form created. Ms F asked that the complaint be referred to an Ombudsman.

Pure also didn't agree with the Investigator's conclusions. It said that its complaint response was written on the basis that Ms F was in breach of the mortgage contract as she had refused to ask her relative to sign and return the OCF. It said that while the letter said the occupier could not remain living in the property after Ms F's death, it did not set out a timescale for them to leave the property and had not said it had to be immediate.

I issued a provisional decision on 6 February 2025 in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'I would firstly respond to Ms F's comments that she was repeatedly told before she accepted the mortgage offer that following her death her children could return to the property to live in it for up to 12 months while they sold it. As I have mentioned above, the mortgage was sold to Ms F by an independent mortgage broker. As such, the broker would be responsible for what it told Ms F about the mortgage, rather than Pure. That said, Pure is responsible for the guide it produced, and which would likely have been given to Ms F when she applied for the mortgage.

I note that Ms F is unhappy that she was told by Pure that if the OCF was not returned she would be considered to be in breach of the mortgage terms and conditions. The mortgage offer that Ms F signed said that if she wanted anyone to live with her, she had to ask Pure for permission. In addition, any adult already living in the property might be required to sign a waiver of their rights to the property.

It is normal that a lender will require such a document to be signed by all adults who live in a property, other than the borrower(s). This is standard across the mortgage industry; whether that person is living in the property when the application is made, or if they move into the property after the mortgage is granted. When an adult lives in a property, it is possible that, despite them not being named on the title deeds as the owner, they might obtain some legal rights in relation to the property. In the event a property needs to be sold, a mortgage lender does not want a resident's rights to interfere with its rights to the proceeds of a sale, or to complicate that sale happening. As such, a waiver of any potential rights in favour of the lender is required so that the lender's rights are protected. This is not unreasonable or unfair.

I note that Ms F has said that the requirement for permission to move in did not apply to her children as they already had permission to be in the property. I have seen no corroborating evidence that Ms F was given permission by Pure for her children to move into the property at any point. If they were the representatives of her estate after her death, they would have right to access the property to clear and sell it. Of course, the representative of the estate would have authority to allow others to access the property too. However, access to the property to facilitate its sale is very different from the representative of the estate having permission to live in the property or to grant that right to anyone else, be they a relative or otherwise.

However, I think this complaint comes about due to a misunderstanding about what the OCF requires of the relative who has moved in with Ms F. It does say that the individual agrees to move out immediately, but not in the normal circumstances of Ms F's death or move into residential care, as she has interpreted it. Rather it requires that the relative move out immediately if the property is repossessed. Repossession being a legal process whereby a court awards the mortgage lender possession of the property so that it can sell it. The statement that Ms F is unhappy about does not mean that in the event of Ms F's death, her estate would not have time to sell the property – up to 12 months – or that her relative could not continue to live in the property during that process. Nor does it mean that the

representatives of her estate would not have access to the property to sort her personal possessions and arrange the sale.

While the guide does not reference the situation for other people living in the property in the event of a court giving Pure possession of it, that is because repossession is not something that would be anticipated at the point of sale. If repossession was thought likely by the selling broker, that would call into question the suitability of the advice being given. As such, setting out the situation if a property was repossessed is not something we would expect a lender to include in the product literature provided at the time of the sale of a mortgage, especially a lifetime mortgage where repossession is very unusual.

While Ms F has said that in asking her relative to sign the OCF Pure is attempting to change the mortgage terms and conditions, I don't agree. The terms and conditions allow exactly what Ms F believes they do, and the OCF does not change them. The terms and conditions have always allowed Pure to take action to repossess the property, which was detailed in the mortgage offer Ms F accepted, and that has not changed. All the statement that Ms F is unhappy about means in practice is that if Pure did take legal action to repossess the property, it would simplify the process of the relative being evicted, which would always happen as part of a repossession. Furthermore, given that the declaration is an arrangement between the relative and Pure, its content could not change the contract between Ms F and Pure.

Ms F's requirement for the representatives of her estate, and anyone else they allow, to access the property would not, in normal circumstances, be affected by her relative signing the OCF. Even if the property was repossessed for some reason, if it happened when Ms F was alive, she or her attorneys would be given the opportunity to remove her possessions from the property, and the same courtesy would be given to the representatives of her estate if the repossession happened after her death.

Ms F has said that she feels Pure was harassing her by repeatedly asking her to have her relative sign and return the OCF. Such matters are always a matter of perception and I don't consider it is my role to make judgements on someone's perception. I don't disregard or make light of how Ms F felt, but I have to decide if the general tone and content of the correspondence and conversations were inappropriate in some way. I am not persuaded that they were. Pure set out its requirements and it provided Ms F with confirmation that her understanding of how the mortgage worked was correct. It was not unreasonable for it to request the return of the form during that period, especially after it had provided her with reassurances that the mortgage worked in the way she thought it did. In relation to informing Ms F that she had breached the mortgage conditions, again, it was simply stating a fact; one that was unwelcome, but a fact all the same.

However, I think Pure missed an opportunity to resolve this matter at an early stage. I am satisfied that it is clear from the conversations and correspondence that Ms F didn't understand in what circumstances her relative would be required to immediately vacate the property. Had Pure explained that this requirement would only apply if it, at some point in the future, had felt the need to take legal action to repossess the property and the court had agreed, I don't think this complaint would have occurred. Pure could have very easily explained this to Ms F at an early stage, but it didn't do so. I can only find this was a failing on Pure's part.

Ms F has said that the misleading information provided in the first two letters about the OCF also led her to distrust Pure. This relates to the form requiring it to be witnessed by a solicitor, but the second covering letter confirming that was not required. Again, if it was not a requirement, I would have expected Pure to set that out in the first of the covering letters, along with an explanation of why. In this case it was due to the type of relationship between

the occupant and Ms F – that it only required a spouse to have their signature witnessed by a solicitor. I can only find that Pure’s communication in this regard could have been better.

Our Investigator highlighted that the explanation about the purpose of the OCF contained in the complaint response letter was not consistent with the previous information Pure had given Ms F. I have noted Pure’s explanation for why it used the language it did. I can understand why it wanted to do what it did, but the message was inconsistent with the previous messages and Pure didn’t take the opportunity to explain why that was to Ms F. So it left her in a position where she thought Pure had changed its position. Given this entire situation arose because of a misunderstanding, that ambiguity did not help the situation.

While I don’t consider that Pure was wrong to ask for Ms F’s relative to sign the OCF, I do think that it could have communicated better and, had it done so, much of the upset and worry Ms F experienced would not have been. As such, I consider that Pure should pay her £250 compensation in this regard.

Ms F has said that she believes that by telling her she is in breach of the mortgage terms and conditions, Pure is planning to repossess her home upon her death, and it will then immediately evict her relative. Ms F is entitled to speculate about what might or might not happen in the future at the point the property needs to be sold. However, that speculation is not something I can join her in or comment on.

Ms F has also suggested Pure’s requirements and comments about her relative would fall to be described as discrimination. While Ms F has suggested detriment to that third party, as that party is not an eligible complainant in relation to the complaint I am considering, I cannot comment further on this matter.’

Ms F didn’t accept my provisional decision. She said that her complaint was not just about poor communication and so, had not been considered properly, as I failed to address:

- Key procedural fairness.
- Misrepresentation.
- Pure’s deliberate deception.

All of which Ms F said directly impacted the validity of Pure’s claims and the enforceability of the contract. Ms F reiterated her previous comments about these matters.

Pure put forward that Ms F’s complaint did not arise out of unclear communications or a misunderstanding about the OCF, but rather from the fact of the very existence of that form, as Ms F had decided it altered the mortgage contract. Pure said that in order to resolve the complaint it had decided to stop asking Ms F’s relative to sign the OCF, but it did not resolve the situation. Pure was of the opinion that nothing it did would have made a difference. However, it confirmed that it was happy to pay the £250 compensation to draw a line under the matter.

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 would initially comment on Ms F’s belief regarding the call recordings she recently provided – that I had not listened to them or considered their content before I reached my provisional decision. Pure provided the same recordings in January and so they were included in the file I received. I can confirm that I listened to the recordings and their contents formed part of the evidence I relied on when reaching the conclusions I set out in my provisional decision.

I would also confirm that I was entirely aware of what Ms F's complaint was when I reviewed it before I issued my provisional decision. While I only found that Pure had made errors in its communications, that was not because I did not consider or address the issues she complained to us about, but rather because I did not uphold them.

I would also explain that it is for the courts to make findings on matters of law, and it wouldn't be appropriate for me to make a finding about whether the mortgage contract was enforceable in law. My role requires that I make my decision on what I believe to be fair and reasonable in all the circumstances. So whilst the law is a relevant consideration, our Service doesn't automatically approach a complaint in the same way that a court might.

Nor do we have the authority to determine whether or not a business has breached legislation, broken the law, or is in breach of contract, and we don't award damages – all of those matters fall within the remit of the courts.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture. Our enabling legislation, the Financial Services and Markets Act 2000, provides at section 225 that we are required to resolve complaints "*quickly and with minimum formality*". We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.

Ms F has repeated that she was not shown the OCF before she entered into the mortgage, and so it cannot form part of the contract. I acknowledge that Ms F would not have been shown the OCF before she signed for her mortgage with Pure. This is because she entered into the mortgage on the basis that she was the sole resident of the property. On that basis, she didn't need to see the OCF. However, as I mentioned in my provisional decision Ms F was made aware before she entered into the mortgage that if she wanted someone to move in with her, she would have to ask Pure for permission. I am satisfied that if she had asked Pure's permission before her relative moved in, signing the OCF would have been a requirement for permission being given.

Ms F has again stated that her relative is not just 'someone', as he is a beneficiary of her estate and so is pre-approved to move in with her. Again, I addressed this point in my provisional decision. Ms F appears to have incorrectly conflated two things in reaching this belief. The first of these being the right of the representatives of her estate to have access to the property following her death so that it can be cleared and sold, with up to 12 months to do so. The second thing is the right of anyone approved by Pure to live in the property to continue to do so after her death and until it was sold. If Pure had agreed to Ms F's relative living in the property that relative would have the right to continue living in the property following her death for up to 12 months and until it was sold. However, this would only be if Pure had given its permission in the first place and it would also be subject to the agreement of the representatives of Ms F's estate. As I said in my provisional decision, the fact that someone is a beneficiary in Ms F's will does not mean that they have any right to live in the property at any time. The mortgage does not provide for pre-approval of anyone moving into the property.

Ms F was meant to ask permission before her relative moved in. Pure would have agreed for that to happen, conditionally. As Ms F didn't ask for permission and moved the relative into the property anyway, she did not comply with the mortgage terms she agreed to when she signed the mortgage deed. Pure was willing to overlook this non-compliance, if Ms F's relative signed the OCF, which would have been a requirement of it giving permission. As he has not done so, he is residing in the property without permission. This means that Ms F has

not complied with the mortgage terms and conditions and so it was not wrong for Pure to point this out to Ms F, expressing it as her having breached the contract.

Ms F has said the notification of her having breached the mortgage terms was not good enough – it was not in the format it should have been. Had Pure been intending to take immediate action due to her decision, I would agree with her, but that was not its intention as is demonstrated by the fact that it is many months later and it has done nothing. However, if Pure does at some point decide to take some form of action in relation to Ms F allowing someone to move into the property without Pure's permission, I would expect it to set out the situation and the action it is intending to take. Furthermore, Pure has confirmed it has no intention at present to take any action.

I note that Ms F has said that she considers that Pure conspired to mislead her so that it could take possession of her home early. While Ms F is entitled to her interpretation of what has happened and been said, I have to take an objective view of the evidence. I don't agree that is the case. Furthermore, I am not persuaded that there is any evidence that Pure intends to evict Ms F's relative either now or following her death, other than when the property is sold.

I have noted Pure's interpretation of the complaint and while I would agree that the very existence of the OCF became the central issue for Ms F, I remain satisfied that this is not where her concerns started. She was concerned that the OCF meant Pure could evict her relative immediately after her death. While the complaint evolved over time and became entrenched, I think that had the right explanation been given to Ms F initially, it is entirely plausible that the matter could have been resolved.

I would also confirm again that the requirement for her relative to move out of the property immediately as detailed in the OCF, does not relate to what Pure requires upon Ms F's death. It relates only to the specific situation where Pure has taken legal action to repossess Ms F's property, and the courts have given it possession. In that situation, anyone living in the property would be required to leave it, including Ms F herself if repossession took place before her death.

In summary, I would again confirm that I do not consider the requirement for anyone (whether a relative that will benefit from Ms F's estate or not) moving into the property to sign an OCF changes the terms and conditions of the mortgage Ms F entered into with Pure. In addition, while Ms F considers that Pure set out to mislead and deliberately deceive her, I am not persuaded that is the case. Rather I consider that it was simply a case of Pure not listening to what Ms F was saying initially and it failing to address her concern about the OCF effectively. I remain satisfied that Pure could have done more to allay Ms F's concerns and that it should pay her £250 for the upset and worry she experienced because of that failing.

My final decision

My decision is that I uphold this complaint in part. I order Pure Retirement Limited to pay Ms F £250 compensation for the upset and worry she experienced due to the poor communications.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 9 April 2025.

Derry Baxter
Ombudsman