

The complaint

Mr and Mrs R's complaint is about a lifetime equity release mortgage they took out with Legal & General Home Finance Limited (L&G) in March 2024. Mr and Mrs R are represented in the complaint by their daughter, Mrs D, who holds Power of Attorney for them.

Mrs D says that the mortgage terms and conditions only allow lump sum payments – known as Optional Partial Repayments (OPRs) of up to 10% of the outstanding capital balance each year. Mrs D doesn't think this is fair and wants to be allowed throughout the lifetime of the mortgage to pay 10% of the original loan amount, plus interest, without incurring an early repayment charge (ERC).

What happened

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs R or Mrs D being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision.

In March 2024, after taking advice from their own mortgage broker, Mr and Mrs R took out an equity release lifetime mortgage with L&G. They borrowed £158,400 at a fixed interest rate of 6.25%. In common with this type of mortgage, no monthly repayments are due; instead interest rolls up into the balance. The mortgage is repayable when the last borrower has died, or if the property is sold or the borrower moves into long-term care.

The mortgage is also subject to an ERC, which will be waived in certain circumstances, which are listed in the mortgage offer. One of those states that there will be no ERC charged *"On any Optional Partial Repayments you make within the permitted limits as described in Section 14"*.

Section 14 explains the terms and conditions relation to OPRs. It begins by saying:

*"In any 12 month period starting on the completion of this lifetime mortgage and thereafter on each anniversary of the completion, you can repay up to 10% of the total amount(s) you have borrowed, which includes the cash lump sum, plus any additional borrowing you have received, for example a drawdown. **We do not include any interest accrued in this calculation.**"*. [my emphasis]

Section 14 also says:

"Partial repayments in excess of the Optional Partial Repayment limits (as described above) can be made after the initial 12 months after your lifetime mortgage completes and will be treated in the same way, except that you may have to pay an Early Repayment Charge, as described in Section 13."

After the mortgage completed in March 2024, lump sum payments were made in July 2024 (£12,250) and October 2024 (£7,400). As this was in excess of the 10% threshold of £15,840, an ERC of £163.51 was charged by L&G.

Mrs D complained, saying she had not been made aware of how the OPR feature worked. Mrs D wanted to repay 10% of the amount borrowed each year, as well as the accrued interest. Mrs D thought the wording of the loan agreement was ambiguous, and that by law she should be entitled to repay the capital and interest separately.

L&G didn't uphold the complaint, explaining that the terms and conditions allow OPRs of up to 10% of the amount borrowed within a 12-month period. L&G also clarified that payments in excess of this can be made, albeit subject to an ERC.

L&G said that, prior to taking out the mortgage, the OPR provision should have been explained to Mr and Mrs R by their financial adviser. L&G provided the adviser's contact details to Mrs D.

Dissatisfied with L&G's response, Mrs D referred the complaint to our service. An Investigator looked at what had happened but didn't think the complaint should be upheld. He was satisfied the terms and conditions only allowed 10% of the amount borrowed to be repaid without incurring an ERC. The Investigator also explained that no advice had been given by L&G and that if Mr and Mrs R were unhappy about the advice they were given, they should contact their financial adviser and/or solicitor.

Mrs D disagreed with the Investigator's findings and asked for an Ombudsman to review the complaint. Mrs D is dismayed that the accrual of interest over the mortgage term will erode the equity in the property.

In addition, Mrs D says that the terms and conditions are ambiguous, and therefore the *contra proferentem* rule should apply, which means that the term relating to OPRs should be construed in Mr and Mrs R's favour, allowing them to repay interest as well as 10% of the amount borrowed without incurring an ERC. Mrs D says that the remedy she wants is "*specific performance*", with L&G agreeing that Mr and Mrs R can repay 10% of the total sum outstanding, including interest, without any ERC.

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 will explain that the Financial Ombudsman Service is not a court, and, whilst we take account of the law, our overarching remit as set out in the Financial Services and Markets Act 2000 is to decide what is fair and reasonable in all the circumstances.

Given this, I've noted all the points Mrs D has made on behalf of Mr and Mrs R in relation to her interpretation of contract law, the *contra proferentem* rule and her requirement that there is "*specific performance*" by L&G of the contract. Those are all issues for a court to determine. I have no power to decide on the correct legal interpretation of contract terms, or whether such contract terms are, or are not, enforceable, as it is outside my remit to do so.

L&G didn't provide Mr and Mrs R with any advice about this mortgage. Before taking out the mortgage, Mr and Mrs R were given advice from their own mortgage adviser, who would (or

should) have provided them with an illustration of the mortgage, setting out all the details that were later contained in the mortgage offer in relation to the OPRs and ERCs.

It was the role of the adviser, not L&G, to explain to Mr and Mrs R how, when and on what terms they could make overpayments, and the implications of making payments in excess of 10% of the amount borrowed. I'm satisfied that the mortgage offer is quite clear that OPRs do not include accrued interest. In addition, this information is also contained in the brochure about the mortgage that Mr and Mrs R would have received. If the way OPRs and ERCs operated was not explained to Mr and Mrs R, they'll need to take this up with their adviser.

In the circumstances, there was no error by L&G when it charged an ERC after OPRs in excess of 10% of the amount borrowed were made in 2024. There is therefore no basis on which it would be fair or reasonable to order L&G to reimburse this, or to allow future OPRs in excess of the permitted amount without charging an ERC.

I appreciate this isn't the outcome Mrs D was hoping for. As I said above, her concerns about the interpretation of contractual terms are issues that only a court can determine. If Mr and Mrs R decide not to accept my decision, they will be free to pursue their grievances against L&G in court, should they wish to do so. If Mr and Mrs R decide to take legal action, I would suggest they take legal advice from a qualified solicitor before doing so.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 8 July 2025.

Jan O'Leary
Ombudsman