DRN-6272868

Financial Ombudsman Service

The complaint

This complaint is about an equity release mortgage and is brought by the estate of the late Mr S. The mortgage was taken out in 2005 by Mr S and his wife, who died before he did, on the advice and recommendation of a third-party intermediary, a broker firm I'll refer to as G. The original lender was a firm I'll call M, but the mortgage, along with responsibility for complaints about it, was transferred to PRL Retirement Limited (PRL) in 2020.

There are several strands to the complaint, the majority of which relate to the origination of the mortgage in 2005, although one element of the complaint arises from action taken by PRL after Mr S died. The estate of Mr S is represented by the executor, Ms S, who in turn has instructed a firm of solicitors I'll refer to as C.

What happened

By way of a provisional decision dated 10 March 2026, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

> "I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the FCA. We deal with individual disputes between businesses and their customers.
>
> 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. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.
>
> I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
>
> First of all, I need to explain that under our rules, we can consider a complaint from a consumer. Mr and Mrs S were consumers, so they both met the definition of an "eligible complainant" set out in our rules. That eligibility passed to Mr S alone when to Mrs S died; since his death, eligibility now vests in his estate. Our rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant or authorised by law. In this respect, C is bringing the complaint on behalf of the estate, having been instructed to do so by Ms S in her capacity as executor.
>
> But I must explain that, although Ms S represents the estate of Mr S, the complainant (and C's client) here remains the estate. Ms S, via C, brings the complaint on the estate's behalf. However, this does not entitle Ms S to consider it her complaint or to air her own grievances about PRL, because she is not its customer. This is the estate of Mr S's complaint, and Ms S's role (and C's) is limited to putting it forward for the estate. Whilst not unsympathetic to the situation she is dealing with, it also means that I can't consider how Ms S might have been affected by events under scrutiny.

No complaint was ever raised about M's lending decision by Mr and/or Mrs S during their lifetimes. Meanwhile, the complaint raised on behalf of the estate of Mr S doesn't appear to raise any material questions about the fairness or otherwise of M's lending decision per se. Rather, the complaint as raised sought (mistakenly) to conflate the lending decision made by M with the sale of the mortgage by G, and hold PRL jointly responsible for the conduct of G.

So, with no specific allegations of wrongdoing to address, all I can do is consider M's lending decision in general terms, and decide if it was made responsibly, and was a reasonable reflection of the lender's policy. In doing so, I'll have regard for the regulatory framework and what was considered good industry practice *at the time the decision was made,* not as they are now.

Equity release lifetime mortgages are very different in the way they operate from standard mortgages, and the risk assessment lenders make when underwriting them reflects that.

Lenders don't have to concern themselves with applicants' capacity to afford monthly repayments because there aren't any. Nor is there a defined date by which the lending must be repaid, although FCA regulations required that point-of-sale documentation referenced an assumed term (19 years in this case) purely for illustrative purposes to inform potential borrowers of how the addition of accrued interest will affect the account balance. The interest charged on the money borrowed accrues onto the balance on an open-ended basis until the loan is repaid, typically when the property is sold after the last surviving borrower either dies or moves into residential care. That may happen sooner or later than the 19-year illustrative period in the offer has been reached.

Essentially, the underwriting decision for a lender to make is predominantly around the suitability of the property as proposed security for the mortgage, and what the maximum loan-to-value (LTV) ratio should be at the outset. This has to bear in mind the future increase in the outstanding balance (which can be forecast with some confidence) and future changes in the property's value (which are more open to uncertainty and therefore much harder to forecast).

As part of that process, M obtained an independent valuation on the mortgaged property, which assessed its value at £350,000. In reliance on that, M agreed to lend a little over £116,000, including fees. That represented an initial LTV of around 33%, which would have been quite consistent with normal lending practice on lifetime mortgages in 2005. It was also well within M's maximum permitted initial LTV of 55%. The mortgage offer stated the amount of the loan, the property valuation, the interest rate that would be applied and an illustration of how much the balance would increase over 19 years. The interest rate – 6.64% fixed for the duration of the mortgage – might seem high in the modern context, but was consistent with rates typically charged on equity release lending at the time.

All of this information was set out in the mortgage offer in a format consistent with FCA requirements at the time. Overall, the available evidence is persuasive that M's lending decision was not irresponsible and that M met its regulatory obligations, and Mr and Mrs S' information needs, in the point-of-sale documentation.

It's also important to note that, prior to taking out the mortgage, it was standard practice for equity release borrowers like Mr and Mrs S to be required to take legal advice about the mortgage from their own solicitor, wholly independent of both lender and broker. It's reasonable to conclude, therefore, that Mr and Mrs S would have had

the opportunity to raise any queries about the mortgage with their solicitor, and decide for themselves whether or not they wanted to go ahead with it.

Once the mortgage began and the funds were released, M (and subsequently PRL) sent annual statements to Mr and Mrs S, showing the actual accrual of interest and growth in the outstanding balance. This would have allowed Mr and Mrs S (or any third party they might have consulted, such as their original advisor G or perhaps Ms S) to cross-reference the statements with the mortgage offer to check how the forecast and actual growth in the debt compared with each other.

Putting all of the above together, I don't find that M did anything wrong for which PRL could now be held liable, when it agreed to lend the equity release lifetime mortgage to Mr and Mrs S in 2005.

I make one last observation. C has told us that the estate of Mr S suffered a substantial financial loss when the mortgage was repaid in late 2024. It's my understanding that the net value of a deceased's estate is its total assets less its total liabilities. That being the case, whilst selling the mortgaged property would have reduced the value of the estate's assets, repaying the mortgage from the sale proceeds also reduced the estate's liabilities. Any residual sale proceeds after settlement of the debt would have remained an asset of the estate, so overall it's not clear to me why the net value of the estate would have been affected by repaying the debt owed to PRL."

The parties were given two weeks to respond to the provisional decision. PRL raised no objections. C asked for more time to seek instructions from Ms S, which was granted. We've now heard from C. It believes that I have taken an over-restrictive view of the lender's duty at the time of the sale. C has cited section 4.8.2(2) of the Mortgage and Home Finance Conduct of Business Sourcebook (MCOB) as evidence that M (and now by extension PRL) had a wider responsibility to ensure the proposed mortgage was in its customers' best interests, and failing to do so was a breach of the regulator's high level principles.

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.

Before I address the case itself, I'll respond to a comment from C about the provision of evidence. In its closing submission of 1 April 2026, C describes me as having said, in the provisional decision, that the lender had met its obligations in that it *'……had provided Mr and Mrs* [S] *with the relevant key documentation (none of which has been provided to us……..'*. What I actually said was: *'All of this information was set out in the* ***mortgage offer*** [my emphasis] *in a format consistent with FCA* (sic) *requirements at the time'*.

There are two points to make there. First of all, I wrongly referred in that sentence to the Financial Conduct Authority (FCA) as the regulator. In fact, it was still the Financial Services Authority (FSA). Although nothing turns on that, I apologise nonetheless. The second point is that C must have been provided with the mortgage offer at some stage before the complaint started because it references the offer's content in its letter to PRL dated 11 July 2025.

I've considered afresh everything that both parties have said and provided. Having done so, I'm not persuaded I should depart from my provisional decision. I'll explain why.

The high level principles put in place by the regulator - then the Financial Services Authority (FSA) and now the Financial Conduct Authority (FCA) – that C has cited are, specifically:

Principle 1: a firm must conduct its business with integrity;
Principle 2: a firm must conduct its business with due skill, care and diligence;
Principle 3: a firm must pay due regard to the interests of its customers and treat them fairly.

The high-level principles are just that; high level. They set out what is required of a financial business in a generic sense, but don't specify the actions a business must take to meet them. For that, one must look to relevant law, regulations and what is generally considered good industry practice at the time of the events complained about. Whilst the principles remain static, relevant law, regulation and good practice evolve over time.

As I explained in the provisional decision, when we consider a complaint about historic events we judge it by reference to the law, regulations and good practice *at the time of the events complained about*. We don't apply the standards that are in place today. Bearing in mind this mortgage was taken out in 2005, I've considered what C has said about what M should have done, and seemingly didn't do.

A lender in receipt of an application for a regulated mortgage from a regulated intermediary in 2005 would not have been routinely expected, whether by law, regulation or good industry practice, to require sight of the recommendation letter and/or fact-find. Nor would it be routinely expected or required to assess whether the mortgage type was appropriate. That would have amounted to second-guessing the suitability assessment that had already been made by the intermediary. A lender *would*, generally speaking, be expected to assess the amount being requested as that goes to affordability and hence responsible lending. But I've already explained why that assessment is not made for equity release applications in the same way it is for standard mortgages.

As far as section 4.8.2(2) of MCOB is concerned, that provision relates to non-advised mortgages. This was not a non-advised mortgaged; rather, it was an advised mortgage where the advice was given by a party other than the lender. Section 4.8.2(2) ends by saying that where a lender is **selling** [again my emphasis] what it considers to be an inappropriate product - and by extension acting in breach of Principle 6 - the FSA's opinion is that it should tell the customer to seek advice. But here, M wasn't selling the mortgage; G was. As for seeking advice, Mr and Mrs S had already sought advice, from G. As I've already set out, in 2005, a lender was not required by law, regulation or good practice, to countermand or second-guess that advice.

My final decision

For the reasons set out above, I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 5 May 2026.
Jeff Parrington
Ombudsman