

## **complaint**

Mrs B on behalf of the estate of the late Mr H complains that Just Retirement Limited shouldn't have provided Mr H with a lifetime mortgage in 2015. Mrs B wants Just to return her father's estate to where it would have been without the lifetime mortgage.

## **background**

Mrs B says that her father was a vulnerable adult living in hoarded, unsanitary conditions. Mrs B says that Mr H had been a hoarder and self-neglecting since the 1990s. Mrs B says that her father had alcohol and gambling addictions and that as a vulnerable person Just shouldn't have provided him with a lifetime mortgage in 2015.

In 2015 Mr H was aged 80. An equity release adviser met with Mr H and recommended an equity release product with the provider Just. Just arranged a valuer to value the property to confirm that it was suitable security for the mortgage. Just then offered Mr H a mortgage which he accepted. Mr H appointed a solicitor who signed what is known as a SHIP certificate to confirm that Mr H understood the terms of the mortgage.

Mrs B says that Mr H was a vulnerable person, the property was in very poor condition with evidence of hoarding, human waste on floors, and walls, rotting bags of food, and rot, damp, mould and ivy growing inside the house. Mrs B says that when Mr H became ill he had no money left, he couldn't afford a care package that would have benefited him in his illness. Mr H died in March 2018. Our adjudicator didn't recommend that this complaint should be upheld as he felt that Just had done nothing wrong. Mrs B disagreed and asked for a review.

## **my findings**

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

Mr H applied for an equity mortgage through an adviser and the loan was provided by Just. Mrs B has made a separate complaint against the equity release adviser which I have dealt with in another Decision. The provider didn't advise Mr H to take out the loan. It provided the loan and would have done its own enquiries to confirm the property was suitable security for the loan. It says that it conducts its business through qualified financial intermediaries. Just says if the financial intermediaries or Mr H's solicitor had raised an issue about a potential vulnerability that it would have requested written evidence from both Mr H's solicitor and the financial intermediary to confirm that Mr H was fully aware of the action that he was taking at that time. In this case it says that it wasn't alerted to any potential vulnerability.

Mrs B says that the condition of the property should have alerted Just to Mr H's vulnerability and that the valuer that Just appointed ignored the obvious signs-the ivy growing through the wall, the hoarding and the human waste and instead approved the property as suitable for a mortgage.

The difficulty with finding fault with Just's valuer is that the property had already been approved by another valuer as suitable for a mortgage subject to some further reports at about the same value. Neither valuer had brought the lender's attention to the matters that Mrs B believes should have been obvious and that they ignored. I also note that neither the previous broker nor the broker for Just had brought the lender's attention to those matters.

There is an issue as to whether the situation at Mr H's property was as Mrs B describes it in 2015 and I note that she feels that the photos taken by the valuer provide an incorrect picture. Mrs B has produced many photos of the condition of the house. Some of the photos relate to the physical structural condition of the house and others to the human waste and the rotting food. The physical condition of the property isn't good and would indicate that basic maintenance issues weren't attended to. I noted that part of the money Mr H asked for was to rewire the house. This priority may have followed on from the first valuer drawing his attention to that issue.

Mrs B points to evidence that her father was a hoarder, had some addictions and didn't maintain the property in good condition. Mrs B's photos also draw my attention to the human waste in the property. Sometime after Mr H took out the loan he began to suffer from a terminal illness. I'm not clear when these photos, showing the condition of the house, were taken but I presume the majority were taken after he sadly died and when Mrs B had the task of cleaning the property. But I can't be certain that this was how the property was in 2015. Neither of the two brokers who advised Mr H mention it, nor do the two valuers and nor does Mr H's solicitor who visited the property. I also note that I have not seen any medical evidence of any physical or mental illness that could have caused this before Mr H's terminal illness.

Mrs B believes that Mr H was a vulnerable person and Just shouldn't have been sold this product to him. It's recognised that some people are vulnerable through say mental incapacity or language problems or are under pressure from other persons to borrow money. They may feel they have to take out the loan by high pressure sales techniques to take out equity mortgages.

But, whatever the physical condition of the property he lived in I believe it's clear that Mr H knew what he was doing when he took out this loan. Before he took out the loan he tried a bank and another equity release provider. There is no evidence of high pressure sales techniques being applied to him to take out the loan by Just. There is no letter from a GP or any medical professional which would support a finding that Mr H lacked mental capacity to independently make a financial decision such as this. There is no evidence that he was under pressure from someone else to take out the loan.

Two advisers from different companies visited Mr H and took his instructions and recorded them. The instructions he gave are similar to both advisers which indicates that he was consistent in his requirements and doesn't suggest a confused state of mind.

One of the safeguards that the equity release provider puts in place is that Mr H appoints a solicitor and the solicitor attended on Mr H to confirm he understood what he is signing up to. I've looked at the certificate dated 2 November 2015 and note that the solicitor certifies:

- We confirm that there were no obvious indicators that the client lacked mental or physical capacity to understand the transaction
- The client did not appear to be acting under any undue influence or external pressure from any third party

So, the solicitor confirms that Mr H had the mental capacity to proceed with the application. I have no medical evidence that would contradict that and indeed the evidence is that in 2015 Mr H was making a rational decision to borrow money on the strength of his asset much as many other people do. Because of that I can't fairly uphold this complaint.

**my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 November 2019.

Gerard McManus  
**ombudsman**