

## The complaint

This complaint has been brought by the Executors of the estate of the late Mrs B, who passed away in November 2019. The Executors have authorised Mrs B's daughter, Mrs F, to conduct the complaint on behalf of the estate.

The complaint is against Aviva Life & Pensions UK Limited. Mrs F says that an equity release mortgage was mis-sold to Mrs B by Aviva in April 2003. Mrs F is unhappy at the interest rate applied to the mortgage, and that, after Mrs B died, Aviva refused to freeze interest pending sale of the property.

To settle the complaint, Mrs F is asking Aviva to compensate the estate.

## What happened

In April 2003 Mrs B was given advice by Aviva about equity release mortgages. She attended the appointment with one of her daughters, Mrs E (who I understand has since passed away).

Mrs B went ahead with the mortgage, borrowing £22,100 at a fixed interest rate of 7.55% per annum. In common with this type of mortgage, no monthly repayments are due. Instead, interest rolls up on a compound basis and the total balance of capital and interest is repayable either on Mrs B's death, or if she left the property to go into long-term care.

Mrs B passed away in November 2019. In December 2019 Mrs F raised a complaint with Aviva about the mortgage. The property was sold on 13 January 2021. I understand that total interest of £58,000 was applied by Aviva on the initial advance, making a total repaid to Aviva of approximately £79,000.

In her complaint Mrs F said that Mrs B's son had bought the property for her in cash and that Mrs B would never knowingly have given away the majority of the equity. Mrs F also said that Mrs B had had mental health issues for many years, suffering from depression and anxiety. Although Mrs F acknowledged that Aviva was entitled to charge interest on the loan, she thought the rate was "*extortionate*" and that Mrs B had been incapable of understanding what she'd been doing when she took out the mortgage.

In addition to her complaint that the mortgage had been mis-sold, Mrs F was also unhappy that Aviva would not freeze interest pending a sale of the property. Mrs F said that, due to the pandemic, sales had fallen through.

Aviva didn't uphold the complaint, so it was brought to us, where an investigator looked at what had happened. He didn't think the mortgage had been mis-sold. He also thought Aviva was entitled to continue to apply interest to the loan.

Mrs F didn't accept the investigator's opinion and asked for an ombudsman to review the complaint. No further arguments or evidence have been put forward, other than dissatisfaction with the investigator's findings.

## 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 start first by explaining the extent of our powers in relation to this matter.

Under our rules, we can consider a complaint from a consumer. Mrs B was a consumer, and so met the definition of an "eligible complainant" set out in our rules. For the purposes of this complaint, the 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, the Executors are bringing the complaint on the estate's behalf, and as such are authorised by law to do so. Mrs F is the Executors' representative.

But I must explain that, although Mrs F is representing the estate, it is Mrs B who was Aviva's customer (or at least was at the time of the events complained about). Mrs F's role is to bring Mrs B's complaint on the estate's behalf, in the same way that other consumers might instruct a relative, solicitor or accountant to represent them in a complaint. But this does not entitle Mrs F to air her own grievances about Aviva, because she is not its customer; her role is limited to putting forward the estate's complaint.

I note from the detailed correspondence that Mrs F has expressed her own concerns about what she perceives to be Aviva's failings – and I do not doubt her strength of feeling about this. But because Mrs F is not Aviva's customer, her own concerns about Aviva don't form part of this complaint.

Mrs B hadn't complained about the mortgage previously, and it seems that it was only after Mrs B had died that a complaint was raised with Aviva. So in this final decision I have looked at the sale of the plan. Without a specific complaint from Mrs B about it, I have considered generally whether Aviva did anything wrong when the mortgage was taken out.

**Mis-sale of the mortgage:** The mortgage was taken out in April 2003, before mortgages became regulated by what is now the Financial Conduct Authority (FCA). The mortgage was arranged pursuant to the Mortgage Code, a voluntary code of practice to which Aviva subscribed. The mortgage was also covered by the rules of what was then known as the Safe Home Income Plan (now the Equity Release Council).

The FCA and the Equity Release Council are aware that there is potential years down the line for family members to find out their parents had taken out an equity release mortgage without consulting them first. These scenarios – and the fact that equity release mortgages are sold to elderly customers – is why this type of mortgage is (and always has been) subject to such a robust and rigorous sales process, with the need for borrowers to have advice from a financial adviser, *as well as* from their own solicitor. (In this case, the financial adviser worked for Aviva, and sold only Aviva products. There is nothing untoward about this, as it was disclosed at the outset.)

I note from the documents available at the time that Mrs B attended the meeting with her daughter, Mrs E, and that she confirmed to Aviva that she'd discussed taking out the mortgage with her children. Neither Mrs B nor Mrs E told Aviva that Mrs B had any mental health issues, and there is nothing in the evidence from the time to suggest Aviva knew, or should have known, that Mrs B suffered from anxiety and depression. Nor is there any

evidence of any cognitive impairment which would have prevented Mrs B from understanding what she was doing.

I'm satisfied the documentation provided to Mrs B about the mortgage explains how it worked, and that Mrs B also had advice from her own solicitors. The solicitors confirmed to Aviva that they'd explained the terms of the mortgage to Mrs B, as well as the implications of entering into the loan. If the solicitors had had any concerns about Mrs B's ability to comprehend what she was doing, they were under a duty to inform Aviva and stop the mortgage from being completed. But it appears that neither Aviva nor Mrs B's solicitors had any concerns in this regard.

***The interest rate:*** I don't have any power to tell Aviva what interest rate it should charge on this mortgage; that's a matter for its own commercial judgment, and is subject to oversight by the FCA.

Generally, equity release mortgages are priced at a higher rate of interest than standard residential mortgages. Aviva is under no obligation to alter the interest rate to mirror fluctuations in variable rate mortgages – because the contract is for a fixed rate of interest. The product is structured to reflect the fact that Aviva has lent money over a long term with no return on its funds until the mortgage ends – which could be in 25 or 30 years from the date it was taken out. The implications of this on the overall amount owed are explained clearly in the documents.

So when the contract was entered into, Aviva advanced the funds in the knowledge that it would probably receive no interest or capital for many years. And Mrs B knew she had the use of the money without needing to make any repayment, with this eventually coming out of the equity in her home.

I appreciate that compound interest over the years since the mortgage was taken out has increased the amount the estate has had to pay to redeem the mortgage. But I'm unable to find Aviva did anything wrong in structuring its product in this way. It is the same product structure used for most equity release mortgages, and so is standard across the industry.

***Aviva not freezing interest:*** The FCA set out guidelines for lenders to follow to help mortgage borrowers experiencing financial difficulties during the pandemic, such as payment breaks where payments are deferred for several months and repaid later on.

Those guidelines, however, do not apply to equity release mortgages – either where the borrower is still alive or where the borrower has passed away. That's because the guidelines are to help borrowers who are having difficulty making repayments. As no repayments are due under an equity release mortgage and all interest is deferred in any event, there was no need for there to be any deferral of interest, as this is provided for in the contract.

The terms and conditions of the contract allow Aviva to continue to charge interest pending a sale of the property. I appreciate that, due to lockdown, the property took longer to sell than anticipated. But I see the property was marketed after Probate had been granted in March 2020, and that a buyer was found in June 2020. I am told the property was sold in January 2021. It doesn't appear that the delay in completing the sale is as a result of anything for which I can hold Aviva responsible.

### **My final decision**

I appreciate Mrs F will be disappointed, but my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the Executors of the estate of Mrs B to accept or reject my decision before 12 April 2021.

Jan O'Leary  
**Ombudsman**