

The complaint

This complaint is about an equity release mortgage Mr and Mrs E took out in 2014 with Aviva Equity Release UK Limited. Mr and Mrs E complain that Aviva should not have lent them the money.

What happened

This is one of a pair of linked complaints, as Mr and Mrs E have, at the same time, complained that the intermediary who arranged the mortgage (whom I'll refer to as T) shouldn't have done so. The two complaints are discrete from each other, and my decision here deals solely with the actions of Aviva. My decision on the complaint against T will be a separate document.

That said, the two complaints do arise from a common set of circumstances, so it's inevitable that there will be a degree of commonality in the two narratives. Also, there will be occasions in this decision against Aviva where I will refer to T, because context requires me to.

The events leading up to, and arising out of, the complaint are complex and the evidence in the case, is detailed. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repeated arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented, using my own words and rounding the figures.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral. Another reason I have left out a lot of the detail is to avoid the risk of identifying the consumers when my decision is published.

In 2014, Mr and Mrs E had three main financial needs: these were:

- circa £59,000 to repay an existing loan;
- circa £40,000 to make gifts to their children; and
- circa £100,000 to pay the balance on an overseas property investment they'd agreed to buy and paid a deposit on several years previously.

To achieve they applied to Aviva for an equity release mortgage. The amount borrowed was £200,000 with a reserve of around £105,000 for possible future draw-downs. Sadly, some time after Mr and Mrs E had completed on the purchase of the overseas property, the developer went out of business, and their property was taken by the liquidators.

The gist of Mr and Mrs E's complaint is that the equity release mortgage that enabled them to complete the purchase shouldn't have happened, for two broad reasons; these are, in summary:

- their home was subject of an irrevocable trust, making it unsuitable security for an equity release mortgage; and
- Aviva shouldn't have lent them money to fund such a risky investment.

Two of our investigators considered the complaint, but neither recommended it be upheld. Mr and Mrs E have asked for the complaint to be reviewed by an ombudsman and made a further detailed submission.

What I've decided – and why

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 Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

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.

So that there's no ambiguity, that includes the material received from Mr and Mrs E on 4 January 2021.

If the available evidence is incomplete and/or contradictory, we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

When you're as close to a difficult situation as Mr and Mrs E have been for so long here, it's a natural subjective reaction to want to pursue every individual issue with vigour. But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail and taking an overview.

Aviva lent Mr and Mrs E the money they wanted to fund completion of their overseas purchase. But that doesn't mean Aviva was in any way responsible for the overseas purchase itself, or advising Mr and Mrs E on its suitability as an investment.

By their own evidence, Mr and Mrs E's decision to invest overseas was taken several years before the mortgage was taken out, and they'd already paid a substantial deposit. Aviva had nothing to do with that. Mr and Mrs E have previously brought a complaint to us about the financial business that *did* recommend they make the investment.

The complaint against Aviva is that the mortgage should not have been provided, for the two primary reasons I summarised earlier. That's what I have to decide and in reaching my conclusions, I can have no regard for the hindsight that subsequent events have brought. I'll address them in turn, starting with the question of the trust.

The available evidence points to Aviva not having been made aware that a trust existed, and I've addressed the possible impact of that omission in my decision on the complaint against T. But the point is entirely moot in relation to the complaint against Aviva.

Aviva did its own due diligence to assess the suitability of Mr and Mrs E's home as security for a mortgage. It did that by conducting a Land Registry search on the proposed security, which confirmed that the property was held in joint tenancy (not tenants in common which would be the case if the property was subject to a trust).

That's the check I'd expect a responsible lender to make, and on this occasion, the check confirmed that there was no impediment to Aviva lending money secured by a mortgage over Mr and Mrs E's current home. Other than the valuation to assist Aviva in deciding how *much* it would lend, there was no requirement for Aviva to make any further checks or enquiries on Mr and Mrs E's property.

That brings me to Mr and Mrs E's second reason for maintaining that Aviva was wrong to lend them the money; their intended use of around half of the initial amount lent to fund completion of their overseas investment.

Mr and Mrs E say lenders have a regulatory duty not to lend where the intended purpose is as risky as this one was eventually revealed to have been. I appreciate the strength of feeling with which they hold that opinion, but I don't agree that Aviva breached its regulatory obligations when it lent them the money they'd applied for.

A lender has a duty to lend responsibly, and to meet that duty, it assesses an application on the applicants' ability to afford monthly payments and the risk that the money lent might not be repaid. However, this was an equity release mortgage; it required no monthly payments, so affordability wasn't an issue.

Also, because this was an equity release mortgage, the risk of it not being repaid altogether was minimal. It is, by design, a type of loan that is expected to be repaid from the sale of the property after the last surviving borrower has either died or been required by circumstance to move into residential care. So, from Aviva's point of view, a responsible lending decision didn't need an assessment of the riskiness or otherwise of Mr and Mrs E's intended use of the money.

Mr and Mrs E pose the question of why Aviva would have asked about their intended use of the money if it wasn't a factor in the lending decision. That's a straightforward question to answer. Lenders need to know that any money they lend is not going to be used for illegal purposes; that's all.

Mr and Mrs E clearly had high hopes for their overseas investment, and it seems to me that their highest priority in 2014 was borrowing the money they needed to complete on it. The equity release mortgage was, as I've found, the only realistic means of achieving that, and I can't find that Aviva was wrong to provide the mortgage Mr and Mrs E wanted because of what happened later.

I understand how devastated Mr and Mrs E must be that the investment was taken away from them in the way it was. But however much sympathy I might have for their situation, overall I can't find that this has happened because of acts or omissions on the part of Aviva.

Mr and Mrs E don't have to accept my conclusions, and if they don't, then neither they nor Aviva will be bound by my final decision. Subject to any time limits or other restrictions a court might impose, Mr and Mrs E's right to take legal action against Aviva over the subject matter of this complaint won't have been prejudiced by our consideration of it.

My final decision

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 Mr E and Mrs E to accept or reject my decision before 15 February 2021.

Jeff Parrington

Ombudsman