

The complaint

Mrs B has complained about the interest rate applied to her equity release mortgage with Aviva Equity Release UK Limited. To settle the complaint, Mrs B wants Aviva to pay compensation equivalent to overcharged interest.

The complaint has been brought on Mrs B's behalf by her son, Mr H.

What happened

On 3 September 2004 Mrs B took out an equity release mortgage with Aviva. She borrowed £215,000 on a product called an Index-linked Cash Release Plan. In common with this type of mortgage, no monthly payments are due; instead interest rolls up into the outstanding balance. This is repayable either when the borrower dies, goes into long-term care or sells the property voluntarily.

The mortgage can be transferred onto a new property (either wholly or in part, depending on the value of the new property). In some circumstances if the loan is repaid early, an early repayment charge may apply – and the details of when this might apply and how it is calculated are explained in the mortgage offer.)

The interest rate on the mortgage is variable and is linked to movement in the Retail Prices Index (RPI), and is subject to a minimum and maximum rate. The mortgage documentation states that the interest rate will not be lower than 4.89% per annum or higher than 10.14% per annum.

In February 2020 Mr H contacted Aviva with a complaint about Mrs B's mortgage. Mr H said that the interest rate on the mortgage is very high, given interest rates have been low for such a long period of time. Mr H said that the equity in Mrs B's property has been materially eroded since she took out the mortgage and that Aviva should pay compensation for this.

Aviva explained that the variable interest rate was set out in the mortgage documentation and that interest had been applied in accordance with this.

Unhappy with Aviva's response, the complaint was brought to the Financial Ombudsman Service by Mr H on behalf of Mrs B. Aviva said that it would only consent to us looking at events that had happened in the six years before the complaint was first raised – so only issues arising from February 2014 onwards. Our investigator looked at the time limits and agreed that anything that had happened before February 2014 was out of time, and there were no exceptional circumstances that would allow us to disregard the time limits.

Mr H accepted this and so the investigator looked at the interest that had been applied since February 2014. Having done so, she was satisfied that Aviva had applied interest in line with the terms of the mortgage agreement. As a result, she didn't think the complaint should be upheld.

Mrs B didn't accept the investigator's findings. Mr H has made some further points, which I summarise below:

- the mortgage agreement linking interest to RPI is fundamentally wrong;
- the average Bank of England Base Rate over the period 2014-2020 was 0.45%, and Mr H's own personal mortgage interest rate was 1.9%, which highlights how much Aviva was overcharging;
- this is a case of a big financial company taking undue advantage of an old lady, weak in financial literacy and struggling to understand the full implications and detail of an equity release agreement;
- there is a specific RPI for mortgages which should have been used and which would not have resulted in the overcharging to which Mrs B has been subjected;
- the Financial Ombudsman Service prides itself on doing the right thing and with fairness at its heart, so it would seem very clear that this mortgage agreement is unfair one-sided and unjust, which the Financial Ombudsman Service must recognize and put right.

Because the matter remains unresolved, it falls to me to issue a final decision on the complaint.

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.

Our rules say that if Aviva hasn't consented (which it hasn't – and is under no obligation to), and there are no exceptional circumstances to explain the delay, I can't look at anything that happened more than six years before the complaint was first raised, which was in February 2020. This means that I can only consider events from February 2014 onwards. I note this has been accepted by Mrs B and Mr H, and so I will look only at what's happened since then. To be clear, I'm not looking at what happened at the point of sale, nor anything relating to the advice Mrs B was given to take out the mortgage in 2004.

I will explain that the role of the Financial Ombudsman Service is to consider individual complaints from consumers against a financial business in relation to financial products. We are independent and impartial, which means that we are not consumer champions, nor industry regulators and we do not act for, or represent the interests of, either consumers or financial businesses. My role is to look at the evidence in this complaint, in order to decide what is fair and reasonable, in accordance with our rules (the DISP rules, published by the Financial Conduct Authority (FCA) and in line with the Financial Services and Markets Act 2000.

The terms on which Aviva offers products to customers is a matter for its own commercial judgement. I have no power to tell Aviva how to structure the interest rate on a lifetime mortgage product. It is the role of the FCA to oversee and regulate products offered to the public. If the FCA thought that linking the interest rate to the RPI is inherently unfair, it has powers which allow it to intervene. But as the FCA has not taken any action in relation to this type of mortgage, this rather suggests that the FCA is satisfied that using an interest rate linked to the RPI is not unfair to consumers.

I've noted Mr H's comparison of Aviva's interest rate with his own mortgage interest rate and with Bank of England Base Rate. 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 standard residential mortgage interest rates, or to reflect

changes in Bank of England Base Rate – because the interest rate in the contract is linked to the RPI.

When the contract was entered into, Aviva advanced the funds in the knowledge that it would receive no interest or capital for many years. And Mrs B knew (from the advice she received in 204 from the financial adviser and her own solicitors) that she had the use of the money without needing to make any repayment, with this eventually coming out of the equity in her home. 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. The implications of this on the overall amount owed are explained clearly in the annual statements which Mrs B received from February 2014 and in the years since – which is the period covered by this complaint.

In the circumstances, I'm satisfied that Aviva has done nothing wrong in applying the contractual interest rate to the mortgage. Consequently, there is no basis on which it would be fair or reasonable for me to order Aviva to reimburse any of the interest it has charged in line with the terms of the contract.

I appreciate that this will be a disappointing outcome for Mrs B and Mr H. I don't underestimate Mr H's strength of feeling about this matter, and I take on board his concerns about how the equity in his mother's property is affected by this mortgage. But for all the reasons given above, I'm afraid I have to disagree with Mr H, because I'm satisfied Aviva hasn't done anything wrong.

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 correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 19 April 2021.

Jan O'Leary
Ombudsman