

The complaint

This complaint's about an equity release lifetime mortgage that Mrs E took out in 2003 with Aviva Equity Release UK Limited. She complains that Aviva levied an early repayment charge (ERC) when she sold her house and redeemed the mortgage. The complaint has been brought by Mr E; he's also said the interest rate is too high.

What happened

In what follows, I have summarised events in rather less detail than has been presented, using my own words to do so. 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 in my view will have little or no impact on the broader outcome.

Mrs E took the mortgage out in 2003. The terms of the mortgage provide that no monthly repayments are required. The intention is that the mortgage is due to be repaid if the last surviving borrower goes into full-time residential nursing care or after their death. It can be repaid voluntarily before either of those events have happened, but then an ERC is usually payable.

Interest on the loan is charged (at a rate that's fixed for the life of the mortgage) and rolled up into the outstanding balance and then compounded until the debt is repaid. All of this means that if the loan runs for a number of years, there can be a significant balance to be repaid.

Mrs E has now sold her house, repaid the mortgage and moved into what is described on the complaint form as assisted living housing. Aviva levied an ERC on redemption of the mortgage. When Mr E raised this with Aviva on Mrs E's behalf, Aviva wasn't persuaded it should waive the ERC. Our investigator didn't recommend the complaint be upheld; Mr E asked for the case to be referred to an ombudsman for review.

What I've decided – and why

I'll make some general observations before dealing with the specifics of the complaint. As I said earlier, if I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

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, or when we have enough information on file to decide it.

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

I've no doubt Mrs E's circumstances are difficult, but what I have to decide is whether Aviva has treated her fairly. The starting point is the terms of the mortgage agreement; Mrs E agreed to be bound by them when she took out the equity release loan in 2003.

The interest rate

Having no regulatory function means it's not my role to decide if a particular interest rate is fair or not. So I can only comment in general terms. The rate charged is 7.55% fixed for the duration of the mortgage. The use of fixed rather than variable rates have always been normal on equity release mortgages, as they enable a lender to forecast the likely growth in the debt over time as the interest rolls up.

That's important to the lender, from a risk assessment point of view when deciding how much to lend. But it also gives a degree of clarity to the borrower about how their debt will grow over time, because that forecast can be incorporated into the mortgage offer, as it was in this case.

Yes, 7.55 % sounds very high in the current climate. But this rate was set in 2003, when the financial landscape was very different from what it is now. For much of the first decade of the 21st century, the general expectation was that rates generally were already low and more likely to rise than fall over the short to medium term. All that changed in late 2007/early 2008, when the financial crisis struck, and rates plummeted to record lows from which they've still not moved significantly. That could not possibly have been forecast in 2003.

The ERC

The mortgage agreement allows for the ERC not to be levied if the mortgage is being repaid either because the borrower had died or required to move into full-time residential care. I've used the word "required" because the agreement specifies in some detail how Aviva will assess whether such a move has happened by necessity rather than desire.

In a situation such as this, Aviva might typically request information from a borrower's doctor. The information it asks for is in a prescribed form (and includes an assessment of mental capacity) consistent with the assessment criteria specified in the mortgage agreement, and must be provided by a suitably-qualified medical professional.

Here, Aviva didn't do that. When we asked why that was, it told us that during a phone conversation with Mr E, enough information was gathered to make it self-evident without a further, medical, assessment that the changes to Mrs E's living circumstances wouldn't qualify her for the ERC to be waived. I've listened to a recording of that conversation and I am satisfied Aviva made a fair judgement based on the answers Mr E provided to the questions asked of him.

For Aviva to waive the ERC, the move that prompted Mrs E to sell and redeem the mortgage would have had to be driven by need rather than want. That's the case even where the impetus for the move came from Mrs E initially. I understand and appreciate Mrs E found Aviva's levying of an ERC unwelcome; but for the reasons I've set out, it wasn't unfair, and that's the test I have to apply.

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 consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 11 November 2021.

Jeff Parrington

Ombudsman