

The complaint

Ms C complains that Aviva Equity Release UK Limited (Aviva) has refused to allow her to make lump sum repayments of over 10% per year towards her lifetime mortgage.

To put matters right Ms C wants Aviva to allow her to repay more than 10% of the total amount borrowed each year.

Ms C is represented in this matter by a family member.

What happened

In early 2023 Ms C took out a lifetime mortgage with Aviva. Ms C received advice on the mortgage from an independent financial adviser.

Ms C's representative has explained that she took out the mortgage with the intention of repaying more than 10% of the mortgage balance each year, until the mortgage was fully repaid. He says that Ms C's financial adviser and the solicitor acting for her '*...advised that we could pay 10% without penalty per annum, any payment beyond this would incur a penalty according to the early repayment charge*'.

However, when Ms C contacted Aviva to make a lump sum payment to reduce the outstanding mortgage balance it said she could only repay a maximum of 10%, of the total amount borrowed, each year.

Ms C complained to Aviva. She said she felt that the lifetime mortgage offer it had provided when she took out the mortgage said that she could make capital repayments of over 10% per year.

Aviva did not uphold Ms C's complaint. It said it felt Ms C had '*misunderstood the offer document*'. It said it was satisfied that the wording in the offer document met the regulatory requirements it must comply with. It noted that the section on making voluntary partial repayments set out that the offer document should be read in conjunction with the terms and conditions for the mortgage. It said the terms and conditions for the mortgage made clear that borrowers could only make voluntary partial repayments of up to 10% per year.

It also noted that Ms C was required to receive both legal and financial advice before she took out the lifetime mortgage. It explained that this was intended to ensure that the mortgage product was suitable for the customer's personal and financial needs and that the customer understood the terms of the mortgage product. It said this advice should have covered the voluntary partial repayment allowance.

Ms C's representative was not satisfied with Aviva's response and he referred the complaint to this service.

Having carefully considered Ms C's complaint, our investigator said she didn't think Aviva had acted incorrectly in this matter. She said she felt that the mortgage offer and the terms and conditions, when considered together, provided sufficient information about the

mortgage and the option to make lump sum payments towards the outstanding mortgage balance.

Ms C's representative responded to say that he did not accept our investigator's view. In particular, he reiterated that he felt the mortgage offer was unclear and misleading. He said:

Allowing Aviva to write such poorly written material amounts to allowing mis-selling of mortgages. Are you happy with the offer document and its continuing use by Aviva. Surely you would recommend a re-write of the overpayment section so that there is no confusion for future customers. If you would recommend a re-write then you should consider that Aviva make way or amends for their error and allow us to make partial payments (overpayments) beyond 10%.

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 am sympathetic to Ms C's position and I have carefully considered the documentation that was provided to both Ms C and her financial adviser when the lifetime mortgage was arranged.

Ms C's representative says he feels the documentation Aviva provided was misleading and led Ms C to believe that it would be possible to repay more than 10% each year of the total amount borrowed.

As Aviva has acknowledged, '*... the wording on the offer document does not clearly state that there is only a maximum 10% voluntary partial repayment*' permitted each year. However, I must take into account that the mortgage offer made clear that it should be read in conjunction with the terms and conditions for the mortgage.

Under the heading 'Overpayments' the mortgage offer set out:

You can choose to make voluntary partial repayments at any time.

Each year, the maximum amount you can repay without incurring an early repayment charge is 10% of the total of the initial loan, any additional borrowing and cash reserve releases, excluding any accrued interest. There is no limit to the number of repayments you can make in a year, but each instalment must be a minimum of £50.00.

When you make a voluntary partial repayment, we will apply this to your lifetime mortgage on the day the money is received and the amount on which we charge interest will reduce. We will send you a statement to show how your lifetime mortgage has reduced.

This is more fully explained in the terms and conditions booklet.

(bold is my emphasis)

The terms and conditions set out in Section 6, under the heading 'Early repayment':

If you wish to do so, you may make occasional voluntary partial repayments under the terms of this section. We do not expect repayment for any other reason because you may have to pay an Early Repayment Charge.

If you want to repay your Lifetime Mortgage and you do not need Long-Term Care, you

should discuss your intentions with your financial adviser to make sure it is the most appropriate course of action for you. You may have to pay an Early Repayment Charge.

6.1 You can only repay part of your lifetime mortgage where you are:

a. required to make a mandatory partial repayment because you are moving home under the terms of section 10.2 having someone move into the property under the terms of section 13, or selling part of the property with our consent under the terms of section 11; or

b. making a voluntary partial repayment in accordance with the terms of this section.

6.2 In the 12 month period between each anniversary date, you can make unlimited voluntary partial repayments provided that:

a. the minimum amount of any single payment is £50:

b. the maximum aggregate payment that you make in any such 12 months is 10% of the sum of the Lump Sums and Cash Payments (and not taking into account any interest accrued, mandatory or voluntary partial repayments made or the Cash Reserve), although we reserve the right to vary the maximum payment at any time by giving notice to you.

(bold is my emphasis)

Having carefully considered the documentation that was provided, I think Aviva did set out that it would not accept voluntary partial repayments of over 10% in any 12 month period.

I must also take into account that Ms C received advice on the suitability of this mortgage from her financial adviser. I appreciate that Ms C may not have read the terms and conditions for her mortgage in detail, but it is not clear to me why her financial adviser did not make her aware of the restrictions on making lump sum payments towards the mortgage, particularly if this was something Ms C had said was important to her.

As the mortgage offer set out, a lifetime mortgage is:

...a special type of loan which is usually designed to run for the rest of your life, and which means that you borrow money that is secured on your home to give you a lump sum/or a regular income. The amount you owe to the lender is usually paid back from the proceeds of the sale of your home after death. If you are borrowing with someone else, this would be after the death of the last borrower. Any money left over would be paid to your beneficiaries.

It is quite unusual for a lifetime mortgage borrower to want to make capital repayments to reduce their mortgage balance, particularly so soon after the mortgage has been arranged. If this was something Ms C discussed with her financial adviser when she and her late partner took out the mortgage, I would have expected their adviser to carefully consider whether a lifetime mortgage was suitable and in particular whether a lifetime mortgage that only permitted lump sum payments of 10% of the total amount borrowed each year was suitable, or whether another way of raising the money they required might better meet their needs.

It is not clear from the documentation that has been provided whether Ms C told her mortgage adviser that she intended to make lump sum payments towards the mortgage when the lifetime mortgage was arranged. It appears from some of the correspondence that has been provided to this service in connection with this complaint that Ms C's late partner did discuss making lump sum payments towards the mortgage with their financial adviser.

I also note that Ms C's representative has provided copies of email correspondence he had with Ms C's financial adviser – after the mortgage had been arranged - setting out that she could make lump sum payments of over 10% per year. Again, it is not clear to me why the adviser said this would be possible, based on the documentation Aviva provided when the mortgage was arranged.

That said, this complaint relates to the documentation Aviva provided to Ms C and her advisers at the time the lifetime mortgage was arranged. I have not considered any advice Ms C received from her financial adviser as part of this complaint.

Having carefully considered this matter, although I am sympathetic to Ms C's position, I don't think Aviva has acted incorrectly here. I am satisfied that the mortgage offer and terms and conditions, when read together, made clear that Ms C could only make part repayments of up to 10% of the total amount borrowed in any 12 month period. In reaching this decision I have taken into account that Ms C received advice on the suitability of this mortgage for her personal and financial circumstances from her financial adviser.

I note that Ms C's representative has said he feels this service should '*...recommend a re-write of the overpayment section so that there is no confusion for future customers.*' As our investigator explained, this service determines complaints on their individual merits. We do not have the power to fine a business or order it to change its processes or documentation, that is the role of the industry regulator the Financial Conduct Authority (FCA). If Ms C's representative wishes to pursue his wider concerns about the wording Aviva uses in its mortgage offer documents he may wish to contact the FCA directly.

My final decision

My decision is that, for the reasons I have set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 12 August 2024.

Suzannah Stuart
Ombudsman