

## The complaint

This complaint is about a mortgage that Ms G took out in 2006 on the advice and recommendation of a broker who represented Aviva Administration Limited (“AAL”). Ms G, who has third party representation) is unhappy with several aspects of the mortgage, but chiefly that AAL recommended she consolidate existing consumer debts into the mortgage and take it on an interest-only basis without making sure she had a strategy for repaying the capital.

## What happened

The details of this complaint are well known to both parties so I won't repeat them again in detail here. Instead I'll give a brief summary (in my own words and rounding the figures involved) and then focus on giving the reasons for my decision.

Ms G took the mortgage in 2006; it was for a little over £125,000 (including fees), on interest-only, and repayable after 20 years. The complaint is that the interest-only mortgage was mis-sold, and used to consolidate previously unsecured consumer debt. Our investigator didn't recommend the complaint be upheld. Ms G's representative has asked for the complaint to be reviewed by an ombudsman.

## 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.

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. 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.

In this decision I have to look at the sale of the mortgage (in terms of regulatory requirements and what was regarded as good industry practice *at the relevant time*) and considered generally whether AAL did anything wrong when the mortgage was taken out. In doing that, I can give no regard to the regulatory standards as they are *today*, or to any hindsight that the intervening years might have brought.

I've considered all of this very carefully; it's for us to assess the reliability of evidence and decide how much weight should be attached to it. When doing that, we don't just consider

individual documents in isolation. We consider everything together to form a broader opinion on the whole picture.

The starting point in a complaint of this type is the point-of-sale documentation from 2006. The value of such documents is that they're contemporaneous; so they should reflect what was said and agreed at the relevant time. Unless there's a compelling reason to believe the information is inaccurate, we'll generally attach some weight to it. Even if anomalies or mistakes are identified, that doesn't automatically mean a mis-sale has taken place. We still have to consider whether they might or might not have affected the suitability of the advice that was given.

The essence of the complaint, as encapsulated in the witness statement presented by Ms G's representative, is that AAL didn't provide Ms G with enough information about interest-only, the alternative capital repayment method, or the implications of consolidating debt over a longer term.

However, the suitability letter AAL issued to Ms G in June 2006 goes into considerable detail on both issues. It says how AAL would normally be recommending a capital repayment mortgage, but that Ms G had expressed a preference for interest-only in the short term (around two years) whilst she stabilised her finances following a relationship break up.

Accordingly, AAL recommended interest-only with a statement that Ms G should switch to repayment at the earliest opportunity, because: *"the longer you delay this the higher the overall costs will be over the term. There will come a point in time where conversion to a repayment mortgage over the same term will not be affordable. This could result in you needing to extend the mortgage term or risk losing the property."*

In asking for the case to be reviewed by an ombudsman, Ms G's representative says AAL should still have recommended capital repayment from the outset given Ms G could have afforded it. Everything has a context, and when I look at what AAL said in the suitability letter, I don't think it unreasonable to infer that AAL's recommendation would have been for capital repayment but for Ms G saying she didn't want it right away.

As for the consolidation element of the mortgage, the point of sale documentation shows that Ms G was taking the mortgage out to repay the existing joint mortgage *and* raise extra funds to clear some debt. In the suitability letter, AAL said:

- *After explaining to you the advantages and disadvantages of debt consolidation, you need to consolidate your existing debts into your mortgage To be able to achieve your current objectives.*
- *By adding short-term debt to your mortgage you are increasing the total interest payable on your mortgage by £70549.88.*
- *Securing previously unsecured debt could result in you losing your home if you are unable to afford the repayments.*
- *Consolidating your debts may reduce your monthly payments, but the total cost of borrowing may increase because the debt will be repaid over a longer time period.*
- *Previous credit may have been on a fixed rate of interest, but once added to the mortgage the interest rate may vary over time. Consideration was given to any penalties that would be payable on settling the existing debt.*

I'm not sure AAL could have made either message any clearer or unambiguous. Overall, I'm satisfied that in Ms G's specific circumstances at the time, the recommendation AAL made wasn't unsuitable; nor was it made without adequate explanation of the potential consequences or other alternatives.

The new mortgage created about £27,000 of new debt. The rest of the mortgage repaid debt that already existed. Ms G clearly wanted the mortgage (arguably she needed it in order to buy out her joint borrower) and must accept a measure of responsibility for having taken it. Taking it on interest-only made the monthly cost more manageable, but of course, it meant the capital wasn't being repaid. But I'm satisfied AAL made Ms G aware of this, just as it did the consequences of consolidation. This was by any reasonable analysis an informed decision.

Ms G may not have intended to remain on interest-only for long; as I understand it, she was made redundant in 2008 and found herself struggling with the monthly payments as they were, so ruling out any notion of switching to repayment.

That's not something I can consider as part of this complaint, insofar as it happened later, and involved Ms G's employment rather than AAL. Nor can I fairly criticise AAL for not predicting in 2006 that Ms G would lose her job in 2008. AAL could not possibly know that was going to happen when it recommended the mortgage. Of course, what can be concluded with some confidence is that the difficulties Ms G faced with the mortgage when she lost her job would have been more severe if she had already been on capital repayment. But that too could not have been predicted in 2006. I make the point simply for context and completeness.

### **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 Ms G to accept or reject my decision before 26 April 2022.

Jeff Parrington

**Ombudsman**