

## The complaint

Mr B complains that when he makes payments to Aviva Equity Release UK Limited it will not allow him to decide which of his loans the payment is applied to.

## What happened

Mr B has an equity release mortgage with Aviva, made up of three parts:

- 2015, £29,000 at an interest rate of 5.31%
- 2016, £6,000 at an interest rate of 6.04%
- 2019, £15,400 at an interest rate of 3.79%.

From time to time, Mr B makes a payment to his mortgages. But Aviva applies the payment to the last loan that Mr B took out. Mr B considers this is unfair. He wants the payment to be applied to the loan with the highest interest rate.

The investigator thought the complaint should be upheld. She said that Aviva had not shown that it was acting in line with the terms and conditions or its policy – so it should apply the overpayments to the loan with the highest interest rate as Mr B chose and pay him £250 for any distress and inconvenience.

Aviva did not accept what the investigator said. It made a number of points, including:

- In November 2019, it changed the way it applied voluntary partial repayments (VPRs) to “last in first out”. The payments would be applied to the last loan taken out. Previously it applied the VPR proportionately over all of the loans.
- In June 2020, it updated the call scripts for its staff so that customers requesting a VPR would be told the above policy. In May 2021, it updated the scripts for customers requesting a drawdown would also be told the new policy. It is in line with the terms and conditions of the mortgages, which say, “Aviva will explain to you how any voluntary partial repayment will be applied in advance of a partial repayment being made and will upon your request, also provide this explanation in writing.”
- In this case Mr B had not made a VPR before the new policy was put in place in 2019. So he had no expectation of the VPR being applied differently.
- When Mr B called to make the VPR in January 2020, the call scripts had not been updated, but it would have gone through the figures with him.
- When Mr B made the last three VPRs, the call scripts would have been updated and the methodology would have been explained to him. He was therefore able to make an informed choice about what to do.
- Aviva has never applied the VPR to the loan with the highest interest. It would not be fair

to other customers to apply VPRs differently just for Mr B.

- We'd previously issued a response on this issue in favour of Aviva.
- The investigator was wrong to say that if the VPRs were applied to the loan with the highest rate then it will allow Mr B to repay the loan earlier. The maximum amount borrowers can make in VPRs in a 12 month period is 10% of the initial loan amount, including any drawdowns and additional borrowing.

### **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.

The mortgage offer said, as relevant:

#### **"Overpayments**

*Once you have had your lifetime mortgage for one year, you can choose to make partial repayments. Each year, the maximum amount you can repay is 10% of the initial amount you have borrowed. If you borrow more or borrow from your cash reserve you can also repay up to 10% of those amounts each year. You can repay in up to 4 instalments every year but each must be a minimum of £500.*

*When you make a 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 your terms and conditions booklet."*

The terms and conditions said:

*"5.8 After 12 months has elapsed since the Completion Date of your Lifetime Mortgage you may make up to 4 voluntary partial repayments in any subsequent 12 month period preceding an Anniversary Date provided that:*

*a. the minimum amount of any single payment is £500;*

*b. the maximum aggregate payment that you make in any such 12 month period is 10% of the sum of the initial loan amount, any Additional Borrowing and Cash Payments (and not, for the avoidance of doubt, taking into account any interest accrued, mandatory or voluntary partial repayments made or the Cash Reserve), although Aviva reserves the right to vary the maximum payment at any time by giving notice to you;*

*c. in the previous 12 months you have neither taken any Cash Payments from your Cash Reserve under Section 2 nor been given any Additional Borrowing under Section 13;*

*d. Aviva is informed in advance of the voluntary partial repayment; and*

*e. the voluntary partial repayment is made by BACS, CHAPS, Easter Payments, Debit Card or cheque.*

*Aviva reserves the right to return any voluntary partial repayment in full where any of the above conditions are not satisfied.*

*5.9 Voluntary partial repayments will not be applied until cleared funds are received and will*

*be used to reduce the Total Amount You Owe. A repayment statement will be issued to confirm the voluntary partial repayment.*

*5.10 Aviva will explain to you how any voluntary partial repayment amount will be applied in advance of a voluntary partial repayment being made and will, upon your request, also provide this explanation in writing at that time.”*

It isn't in dispute that Mr B was permitted under the terms of the loan to make VPRs. Nor is it in dispute that the VPRs Mr B made met the above conditions.

Condition 5.10 says that Aviva will explain how a VPR would be applied before any VPR is made. It allows Aviva to have the discretion to set a policy about how VPRs would be applied to the amount borrowed.

Aviva have a wide amount of latitude in deciding its policy about how VPRs are applied. But it is for me to decide what is fair and reasonable in the individual circumstances of this complaint. To decide if the policy is fair and reasonable, that it has been applied correctly and fairly in the circumstances of this case, and that if it was fair for Aviva to change its policy, I need to see the policy. Despite requests Aviva has refused to provide a copy of its policy to us.

Under our rules, Aviva is required to co-operate with us and provide the information we request. I can accept information in confidence if that is appropriate, so that only an edited version or summary of the evidence is provided. It isn't clear why Aviva has not provided the information we requested. But it has been given a fair opportunity to do so. As it has not given us the information we asked for, I can take account of its failure to provide the information requested.

It might well be possible that Aviva has followed its policy and the policy is fair. But without a copy of its policy I don't see how I could determine that it has followed its policy in this case or that the policy was fair. In view of that, and taking account of its failure to provide the information we requested, I agree with the outcome reached by the investigator that Aviva should apply the VPRs that Mr B has made to the loan with the highest interest rate – and that should be backdated to the date Mr B made the VPRs'

Mr B has been caused unnecessary upset and inconvenience in having the VPRs applied in this way. I consider the investigator's recommendation is fair in all the circumstances.

I'd note I have not made any determination about how Aviva should apply VPRs in future. If Mr B were to make further VPRs and they were applied in the same way, then he would need to raise a complaint about that and refer it to us if he is unhappy with the outcome. It is likely we would need to see Aviva's policy to determine what is fair and reasonable if he were to bring another complaint.

### **My final decision**

My final decision is that Aviva Equity Release UK Limited should:

- Apply any voluntary partial repayments that Mr B has made up to 21 September 2021 (when he referred his complaint to us) to the borrowing with the highest interest rate, backdated to the dates that Mr B made the payments.
- Pay Mr B £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 26 May 2023.

Ken Rose  
**Ombudsman**