

## The complaint

Mr and Mrs R complain that Aviva Equity Release UK Limited imposed unfair conditions on their lifetime mortgage offer after they had already paid for a property valuation.

## What happened

In October 2021, Mr and Mrs R applied for a lifetime mortgage with Aviva via a broker. As part of this application Mr and Mrs R confirmed that the property included a separate occupied living space. This was a tenanted cottage on the property.

In November 2021, Mr and Mrs R paid around £5,000 for a property valuation as part of the mortgage application process. While they have concerns with this valuation, that is being dealt with as a separate matter and doesn't form part of this complaint.

When Aviva provided a lifetime mortgage offer in December 2021, this included two "Special Conditions". One of which said that *"the self-contained part of the property must only be let on an Assured Shorthold Tenancy agreement with a term of six months, terminable at the end of the term upon the giving of two months notice; further it must be in our approved form."*

Mr and Mrs R were later asked to provide a copy of their existing tenancy agreement which had a longer term than six months. They also raised with Aviva that they didn't think it was reasonable for it to insist on limiting the term of any tenancy to six months. Mr and Mrs R provided their reasons for this and offered to include a clause in any future tenancy agreements to provide a specific shorter notice period in the event that Aviva need to take possession of the property.

Aviva agreed that it would still lend with the existing tenancy agreement in place but required any future tenancy agreements be on its standard terms.

In February 2022, Aviva also told Mr and Mrs R that they would need to inform it if they needed live-in carers and asked that they provide a copy of their care schedule. Mr and Mrs R say that this is private information and that they think this requirement contradicts the applicable lifetime mortgage terms and conditions.

At the time Aviva said that it needed to ensure no legal rights accrued during the carer's residence. Aviva has since said that it doesn't think it has contradicted its terms and conditions, and that when it requested confirmation of a carer moving into the property it wasn't doing so under the terms of 13.7 (which covers when a borrower would need to inform Aviva of someone moving into the property). Rather it is doing so to assist it in establishing the care needs of its customers. Aviva added that should its customer qualify for long term care this would then exempt them from early repayment charges (ERC).

Mr and Mrs R remained unhappy with these requirements and so haven't accepted the lifetime mortgage offer. They say they should have been told about these requirements before they paid the valuation fee – the implication being that they wouldn't have pursued this lifetime mortgage had they been made aware of them. Mr and Mrs R have also said that

they've spent at least 40 hours dealing with these issues and that it's been frustrating.

When Mr and Mrs R complained to our service, the investigator didn't uphold the complaint. In summary, they said that it wasn't Aviva's responsibility to ensure the product was suitable for Mr and Mrs R as it was recommended by a broker. They thought the condition Aviva included about future tenancy agreements was in line with its terms and conditions which were available at the time of the application, and that Aviva had acted fairly by allowing the existing tenancy agreement as it was. They also didn't think it was unreasonable for Aviva to ask to be notified of live-in carers.

Mr and Mrs R didn't agree, they reiterated their position. And emphasised that they thought Aviva's requirements should have been brought to their attention before they paid the valuation fee. They say they were happy with the Key Facts document provided and that they were under the impression that they had effectively been given an offer subject to the valuation. Mr and Mrs R say Aviva has the discretion in its terms and conditions to allow a longer tenancy and so it should do that here – particularly as Aviva has already accepted that their type of property could take more than 12 months to sell. Mr and Mrs R also said that they were told the information about live in carers was a requirement.

The matter was passed to me, and I issued my provisional decision on 23 August 2023. I explained I intended to uphold part of the complaint. In summary I said it was fair for Aviva to require future tenancy agreements to be on its standard terms, but that I didn't think it was reasonable to have required Mr and Mrs R to share information about their live-in carer needs. I explained I thought that Aviva should pay Mr and Mrs R £250 compensation.

Both parties accepted my provisional decision, but Mr and Mrs R but noted that they didn't think I had explained why I didn't think they would have gone ahead with the lifetime mortgage had Aviva not imposed a requirement to inform it of their live-in carer needs.

### **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.

Having done so, including considering the further comments from Mr and Mrs R, I'm upholding part of this complaint – I'll explain why.

#### **Aviva's requirement for any future tenancy agreements to be on its standard terms.**

I don't think Aviva has acted unreasonably by including a condition in its lifetime mortgage offer that sets out the terms on which part of the property can be let out. This is because:

- As a starting point, Aviva is allowed to set the terms on which it is willing to lend, this is a commercial decision. I'll go on to explain why I think it's made this decision fairly.
- This condition is not unusual in the industry – it's common for lenders to restrict or not allow tenancy agreements on residential mortgages for legitimate business reasons.
- This condition is consistent with Aviva's terms and conditions, which were available online throughout the application process. This lifetime mortgage was recommended by a broker and so it wasn't for Aviva to ensure the product was suitable for Mr and Mrs R's needs.
- The condition was included in the mortgage offer as a Special Condition because it was relevant to Mr and Mrs R's circumstances. I understand Mr and Mrs R think they should have been made aware of it sooner, but Aviva considered this element during the underwriting process. This was the appropriate stage in the process for Aviva to

have considered the different elements that affected its decision to lend. It was clear about this requirement at offer stage (and importantly before the lifetime mortgage completed) at which point Mr and Mrs R were not obliged to proceed. Lenders aren't expected to complete their underwriting process before a potential customer makes an application or pays the valuation fee. It was always a possibility that information could come to light during the underwriting process that may have meant Aviva was not willing to lend, could change what it was willing to lend, or impose conditions on the lending.

- Aviva has considered Mr and Mrs R's circumstances and used its discretion to accept the existing tenancy agreement which contained a longer term. I think this is fair as it recognises that Mr and Mrs R already had a tenancy in place that may be difficult to change. I don't think this means it needs to accept a longer term for new tenancies.
- Mr and Mrs R think of the tenancy as an asset and offered to amend the tenancy agreement as a compromise. They also say Aviva has accepted the property may take longer to sell for other reasons, and that the loan to value is so low that there's little risk to Aviva of not being able to recover the debt. While I do understand where Mr and Mrs R are coming from, Aviva isn't required to negotiate on these terms. It's for Aviva to decide what risk it is willing to accept. Here, Aviva has provided a reasonable explanation for why it has included this condition. The property would be the security for the lifetime mortgage, and selling the property is a common way to repay this type of debt. Longer tenancies can make it more difficult to sell a property as not all potential buyers will want to let out part of the property. This is therefore a legitimate concern for Aviva to have. Mr and Mrs R think that their beneficiaries would likely repay the lifetime mortgage rather than sell the property, but this isn't something Aviva can rely on. Aviva has already made a reasonable concession in allowing part of the property to be let out on its standard terms and accepting the existing tenancy.
- Aviva has told Mr and Mrs R that they don't need to be notified each time a tenancy changes, but they must all be on its standard terms. This is also in the applicable terms and conditions at 14.2(c).

#### Aviva's requirement to be informed of any live-in carers and for a copy of the care schedule.

I don't think it was reasonable for Aviva to require that Mr and Mrs R inform it of any live-in carers or provide their care schedule. I'll explain why.

- In February 2022, Aviva said Mr and Mrs R were required to inform it if they needed live-in carers and asked that they provide a copy of their care schedule. Mr and Mrs R say this contradicts the account terms and conditions and that this is private information.
- Aviva initially said it needed to ensure no legal rights accrued during the carer's residence. Aviva has since said information about live-in carers helps it to establish the care needs of its customers, and whether they qualify for an ERC exemption.
- Section 13.7 of the account terms and conditions say that the borrower isn't required to inform Aviva if someone moves into the property, provided they aren't becoming a joint owner and therefore a new borrower. Rather it is the borrower's responsibility to ensure anyone moving into the property is aware that the property is subject to a legal charge and that they may not be able to remain in the property if it needs to be sold to repay the lifetime mortgage.
- On the face of it, this section does appear to contradict Aviva's initial reason for asking Mr and Mrs R to share information about any live-in care they might need. As it clearly says it is for the borrower to ensure anyone who moves in understands the property is subject to a legal charge and that they may not be able to remain in the

property.

- Aviva has since said that it didn't rely on section 13.7 when asking for this information, rather it did so to establish Mr and Mrs R's long term care needs. I've looked to see if any other part of the terms and conditions references this requirement, and I don't think it does. The section on long term care needs is in relation to the scenario where the borrower(s) need to move out of the property and move into long term care – hence why an ERC may be relevant as sometimes a borrower will need to sell the property early to pay for care and repay the borrowing early at the same time. There is no link to when a borrower remains in the property and needs care, other than the possibility that this is a precursor to the borrower needing to move into long term care – which will not always be the case.
- So, I don't currently think it was reasonable for Aviva to require Mr and Mrs R inform it of a carer moving into the property, or to share something as private and personal as their care schedule.
- So, I think it would be appropriate for Aviva to pay Mr and Mrs R some compensation. This is to reflect the upset and frustration caused by unfairly asking for this information and positioning it as a requirement, and to recognise the time Mr and Mrs R have spent on the matter as a result. Taking into account what Mr and Mrs R have described, I think £250 is a fair amount and in line with our published award bandings. I've considered that this isn't the only issue Mr and Mrs R have complained about, but it is the only part I intend to uphold, and so I've apportioned the time they've described dealing with Aviva. This isn't an exact science, and so I've treated it as though they spent roughly half the time they've described on this issue.
- Mr and Mrs R have said that we shouldn't assume they wouldn't have completed on the mortgage had this issue not arisen. However, they have not said that they would have. I can never know for certain what decisions a customer would have made should the circumstances have been different. Rather, I need to consider what I think it is more likely than not based on the information I do have. Here, in that hypothetical scenario, Mr and Mrs R would still have had a significant issue outstanding in relation to Aviva's lifetime mortgage offer i.e. Aviva's requirements in relation to future tenancy agreements (as covered above). So, on balance, I think it's more likely than not that Mr and Mrs R wouldn't have proceeded to complete on the lifetime mortgage even if Aviva hadn't asked for information about their live-in carer needs. And so, I don't think there is any financial loss in the circumstances.

### **My final decision**

My final decision is that Aviva Equity Release UK Limited should pay Mr and Mrs R £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 9 October 2023.

Stephanie Mitchell  
**Ombudsman**