

The complaint

This complaint's about an equity release mortgage that Mrs and Mr B held until recently with Aviva Equity Release UK Limited. They took it out in 2015, took further advances from time to time, and then applied to "port" – that is, move the debt over to a new mortgage on a different property. The essence of Mrs and Mr B's complaint is that Aviva reduced the amount of the ported lending by around £18,000 on the day they completed. This has left them with very little of the money they were expecting to free up after moving house.

What happened

By way of a provisional decision dated 6 November 2023, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are known to Mrs and Mr B and M2L. I'm also aware that the investigator issued a comprehensive response to the complaint, which has been shared with all parties, and so I don't need to repeat the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mrs and Mr B being identified. Instead I'll give a brief summary of the key events, rounding the figures, and then focus on giving the reasons for my decision. 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.

Mrs and Mr B took the mortgage out in 2015; by the start of 2022, the outstanding balance was in the region of £138,000. In January 2022, Aviva issued an illustration (*not* an offer to lend) for a mortgage on the new home. As the new property value was less than that of the existing one, the illustration showed that around £4,400 of the balance would have to be repaid in order to keep within Aviva's then loan-to-value (LTV) limit.

This meant the new debt would be just over £133,000, but the illustration contained a narrative indicating that the actual amount to be lent could vary and would be decided once the date of completion was known.

Mrs and Mr B's house move took several months, and in June 2022, Aviva changed its lending policy to reduce the maximum LTVs it would allow. This impacted on Mrs and Mr B's porting of their mortgage because their actual offer was issued on 22 July 2022, in anticipation of a completion date of 27 July 2022. Under the new, lower, LTV policy, Aviva was only willing to lend a little over £119,000. Taking into account the increase in the outstanding balance in the interim (to just under £142,000) Aviva now required Mrs and Mr B to repay around £22,500.

Mrs and Mr B felt they had no option but to accept the mortgage offer, as they were committed to completing the transaction, but later complained that they'd been left short of the money they'd been expecting. Aviva upheld the complaint because it had missed two opportunities to warn Mrs and Mr B's mortgage broker of the policy change before they exchanged contracts and the offer was issued. It offered Mrs and

Mr B £250 compensation for the distress and inconvenience they'd suffered from finding out at such a late stage.

Mrs and Mr B referred their complaint to us. They also arranged a re-mortgage with a different lender (which I'll refer to as "P") and redeemed the mortgage with Aviva. The new mortgage from P was for around £141,000. In the meantime, Aviva revisited the case and decided on further reflection to increase its offer of compensation to £750. When our investigator considered all the arguments and evidence, he concluded that Aviva's increased settlement offer was fair, and didn't recommend any further redress be awarded to Mrs and Mr B.

Mrs and Mr B have asked for the case to be reviewed by an ombudsman. They say that if they'd been told about the policy change and that this would reduce the amount they could borrowed, they'd have aborted the sale and purchase and stayed in their existing home.

What I've provisionally 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, I've reached a slightly different conclusion from the investigator on how the case should fairly be settled; I'll explain why.

The first, and in some ways most important, point to make here is to reiterate that the document Aviva issued in January 2022 was not a mortgage offer. I can understand if Mrs and Mr B were under a misapprehension that it was, because I've noted that their solicitor described it as a mortgage offer in an email dated 9 May 2023. However, that document was merely an illustration and it said as much. On the very first page, Section 1 says the following:

"This illustration is for the transfer of your lifetime mortgage to your new property. It is not a legally-binding mortgage offer and it does not oblige Aviva Equity Release UK Limited to provide you with the mortgage described in this illustration."

The illustration also makes it clear further in that the eventual amount Aviva will lend is subject to variation and can only be confirmed once the completion date is known. Section 2 says:

"The final figures will be different and we will confirm these once we know the date of your move."

I don't know, and won't speculated on, whether and to what extent Mrs and Mr B read and assimilated those narratives, but I'm mindful they had the services of a mortgage broker whose role it was to ensure they understood the material Aviva had provided. To be clear, I imply no criticism of the broker, and none should be inferred. The point being made is that I consider Mrs and Mr B should reasonably have known that Aviva at this stage was not committed to lending a specific amount, and that the amount they'd need to repay on moving was likely to be different on completion.

Aviva could only finalise the amount of the new mortgage (and hence the amount Mrs and Mr B would have to repay) once the completion date was known. Unfortunately, in the meantime, Aviva had changed its lending policy. It was perfectly entitled to that, but Aviva's mistake was that it missed two opportunities to let Mrs

and Mr B's mortgage broker know about the change and how that would impact their borrowing when they moved house.

Where a business does something wrong, as Aviva accepts it has done here, we aim to place the affected parties (so Mrs and Mr B) as close as possible to the position they'd be in if the business hadn't made the mistake. In that regard, what Mrs and Mr B have told us, albeit with the benefit of hindsight, is that if they'd known about the change before exchange of contracts they'd have aborted the house move altogether.

I have no reason to doubt the sincerity of that statement, but of course they have moved, and in practical reality, that's not something that can be reversed. Also, looking at things dispassionately, as I'm required to do, I've also noted how much Mrs and Mr B said they were looking forward to the move and the next chapter of their lives that it represented.

So it seems to me that, if Aviva had told Mrs and Mr B about the policy change and the effect it would have on their lending, it's just as likely that rather than abort the move altogether, Mrs and Mr B would have done what they ended up doing later in 2022. That is, source another lender that was willing to lend them the money they were expecting in the first place.

That being so, the position in which Mrs and Mr B currently find themselves is, in all likelihood, not hugely different from where they would have been if Aviva hadn't failed to tell them about the policy change. They'd still have ended up borrowing the amount they have, from the new lender, which I note is charging a lower interest rate than Aviva.

But if Aviva hadn't got things wrong, it would not have come as such a shock to Mrs and Mr B that they'd couldn't borrow the amount they wanted by staying with Aviva. The larger mortgage from P would still have happened, and Mrs and Mr B would still have paid the fees they did for the mortgage with P, but it would have been arranged in a more orderly fashion, and in a calmer environment where Mrs and Mr B hadn't experienced the disappointment and distress Aviva put them to.

That brings me to the question of redress. Aviva has provided us with details of costs associated with closing down the mortgage. Mrs and Mr B would always have had to pay these costs when the mortgage was repaid, regardless of whether it was ported between properties first. So the fees charged by Aviva for closing down the mortgage are not refundable.

At my direction, the investigator asked Mrs and Mr B if they had incurred broker fees for arranging to port the Aviva mortgage to the new house, and if so, whether those fees would still have been payable if Aviva hadn't issued an offer. Mrs and Mr B have provided an invoice for a £600 fee charged by their broker, but that was for arranging the new mortgage. They're not due to have that reimbursed because, like the Aviva costs, they'd have incurred it anyway. But if they also incurred a broker fee for the porting work that would otherwise not have been charged, they're entitled to have that reimbursed, but only on production of the relevant evidence.

Even in the best-ordered situation, some things can or will go wrong in such a complex transaction as a house purchase, and some degree of stress and inconvenience is to be expected. That said, having looked at the specific circumstances of this case, if Aviva had not reviewed its original offer of £250, I would certainly have been minded to award more. However, Aviva has forestalled

that by increasing its offer to £750. No two cases are the same, and the consumers' circumstances are different in every case.

In my view, Aviva's increased offer is much more consistent with the level of award we'd typically make in a situation such as that faced by Mrs and Mr B. They have referenced things they wanted to do but couldn't do as a result of having to repay around £18,000 more than anticipated when they moved. From the completion statements I've been provided with, Mrs and Mr B received (or should have) surplus funds of around £29,000 following the house move in July 2022, and then a further sum of around £18,300 following the re-mortgage in October 2022.

That's what I was alluding to when I said Mrs and Mr B's current position isn't hugely different from what it might otherwise have been. They have referred to Aviva getting off "scot-free", and I understand their strength of feeling. But where a person suffers detriment as the result of a mistake (or in this case, an omission) on the part of a business, the law expects them to take reasonable steps to mitigate their position and limit the adverse impact on them. Mrs and Mr B have done that by taking the steps which, on balance, I think they'd most likely have taken in any event if Aviva had done as it should."

I initially gave the parties two weeks to respond to the provisional decision; Aviva did so first, providing evidence of a conversation with Mr B in which it informed him that they could apply to Aviva directly to port the mortgage, without using a broker. At my direction, the investigator informed Mr and Mrs B that I was modifying my provisional decision to withdraw the proposed broker fee refund, and gave them an additional week to reply. We've now heard from Mr and Mrs B who confirmed they still believe the £750 to be inadequate compensation.

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 considered afresh everything that both parties have said and provided, I'm persuaded that £750 is fair compensation, for all of the reasons set out above. I've noted what they've said about the terms of the fee agreement between them and their broker. However, Mr and Mrs B chose to use the services of a broker, after Aviva had made it clear that they could have conducted the transaction directly.

I imply no criticism of Mr and Mrs B for using a broker, and none should be inferred. It's a choice they were perfectly entitled to make, but as it was their choice, I can't fairly require Aviva to pay their fee for doing so.

My final decision

My final decision is that I uphold this complaint, by ordering Aviva Equity Release UK Limited to pay Mrs and Mr B £750 compensation for their time, trouble and upset.

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 Mrs and Mr B to accept or reject my decision before 25 December 2023.

Jeff Parrington

Ombudsman