

The complaint

This complaint is brought by Mr M as representative of the estate of the late Mrs M. This is a small estate and so there is no requirement for a Grant of Probate.

On 24 September 2024 I issued a decision in which I explained that the only issue I have jurisdiction to consider is the following matter.

Mr M's complaint on behalf of the estate is that Aviva Equity Release Limited failed to pay over surplus funds to the estate after it sold the property the late Mrs M had mortgaged to it.

What happened

In 2009 Mrs M took out an equity release lifetime mortgage with Aviva (then known as Norwich Union Equity Release Limited). Mrs M borrowed £47,000 from Aviva, secured by a mortgage on her home.

In common with this type of mortgage, no monthly repayments are required. Instead, compound interest accrues month by month against the outstanding debt. The mortgage is repayable on the death of the borrower. The mortgage contained a 'no negative equity' guarantee. This meant that when the mortgage was repaid, if the amount owing under the mortgage was more than the value of the property, Aviva would write off any shortfall debt.

I am sorry to note that Mrs M passed away in 2016. Mr M wasn't able to sell the property and handed over possession to Aviva. The property was sold in December 2017 for £85,000.

In 2022 Mr M contacted Aviva. He believed there were funds left over from the redemption of the lifetime mortgage and that these were never paid over to the estate. (Mr M also raised other issues which, as I explained in my decision dated 24 September 2024, I have no jurisdiction to consider.)

In its final response letter Aviva explained that the amount owed to Aviva was just under £100,000, and so there were no funds left to pass on to Mrs M's estate. Because of the 'no negative equity' guarantee, the additional £15,000 owed to Aviva was written off. Dissatisfied with Aviva's response, Mr M complained to our service. An Investigator looked at what had happened, but was satisfied that there were no surplus funds due to the estate.

Mr M asked for an Ombudsman to review the complaint. Mr M said that he would like the case reviewed *"on the moral grounds as Aviva did not do the right thing by the way they treated the family and how they caused a lot of family stress"*.

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 will reiterate what I said in my decision of 24 September 2024, which is that I have no jurisdiction to consider Mr M's complaints that the mortgage was mis-sold, that Aviva

continued to charge interest after Mrs M passed away and that Mr M says he was forced to hand back the property to Aviva. Therefore whilst I note Mr M's strength of feeling about those matters, and his wish that we consider his complaints about them, I am unable to comment on them as I have no legal power to do so.

After the property was handed back to Aviva to sell in 2017, it was marketed and eventually sold for £85,000. Aviva's agents provided Aviva with comparables of neighbouring properties (including internal photographs from estate agents' listings) that were in better than Mrs M's property. Those properties had sold for more than Mrs M's, but the photographs and estate agent's listing from the time show that Mrs M's property needed modernisation and redecoration, and this was reflected in the sale price. I'm therefore satisfied that the property was not sold at an under-value.

Aviva wasn't under any obligation to leave the property on the market for a long period in the hope that its value would increase. That would have increased Aviva's exposure to financial loss, because of the interest that continued to accrue against the outstanding debt.

The property was sold for £85,000, and the balance on the mortgage account (including the costs of sale such as estate agents' and solicitors' fees) was just under £100,000. Because of the 'no negative equity' guarantee, Aviva wrote off the remaining balance.

The fact that the balance owed on the mortgage was higher than the amount the property was sold for meant that there were no funds left to pass on to Mrs M's estate. Whilst I understand how disappointing this must have been for Mr M, I'm unable to find Aviva has done anything wrong.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M on behalf of the estate of Mrs M to accept or reject my decision before 29 October 2024.

Jan O'Leary
Ombudsman