

The complaint

This complaint is brought by the Executors of the estate of the late Mr L. The complaint is that Mr L and his late wife, Mrs L, were mis-sold an equity release mortgage in 2003 by Aviva Equity Release Limited.

To settle the complaint the Executors would like Aviva to compensate the estate for financial loss.

Both Executors have joined the complaint but our dealings have been with Mrs B. The joint Executor is also named Mr L, so for ease of reference and to avoid confusion, I will refer to Mrs B throughout.

What happened

In 2003 Mr and Mrs L took out an equity release mortgage with Aviva (then Norwich Union). They borrowed £46,000 at a fixed interest rate of 7.55% per annum. In common with this type of mortgage, no monthly repayments are due. Instead interest rolls up into the loan, which is repaid on the death of the last surviving borrower.

At the time they took out the loan, Mr L was aged 66 and Mrs L was 68. They were both retired. The application form shows that, of the £46,000, Mr and Mrs L intended to use £10,000 to purchase a new car, £6,000 for home improvements and the remaining £30,000 was to be given to their son to enable him to start a new business.

Before taking out the loan, Mr and Mrs L were given advice by their own independent solicitor. The solicitor confirmed to Aviva that he'd explained the terms and effects of the equity release mortgage to Mr and Mrs L. He'd advised them that they might wish to discuss the matter with their beneficiaries, due to the effect of the mortgage on their estate. He confirmed that, after discussing the mortgage with Mr and Mrs L, they wanted to go ahead with it.

I am sorry to note that Mrs L passed away in 2016. In February 2023 Mr L, represented by Mrs B, raised a complaint with Aviva. The complaint was that the mortgage had been mis-sold because the terms were never clearly explained and that Mr and Mrs L hadn't understood what they were agreeing to, or its long-term effects. They weren't told how they could have raised the money in other ways. In addition, they were vulnerable – both retired, and Mrs L had been diagnosed with dementia.

Aviva didn't uphold the complaint, so it was brought to our service. An Investigator looked at what had happened, but didn't recommend the complaint should be upheld. She was satisfied that Mr and Mrs L had been made aware of the terms and conditions of the mortgage before they took it out.

Before the complaint could be passed to an Ombudsman for a decision, sadly Mr L passed away in August 2023. The complaint has now been brought the joint Executors of the late Mr L's estate.

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.

First of all, I would like to express my condolences to Mrs B and her family for the loss of Mr L. I have no doubt this has been a very difficult time for the family. I am therefore sorry to bring disappointing news; I am not upholding the complaint. These are my reasons.

The application form shows that Mr and Mrs L had explained how they wanted to use the funds they were raising. In particular, the majority of the money raised - £30,000 – was given to their son to start a business. It's not unusual for parents to want to offer financial help to their children.

Mr and Mrs L were of modest means, with their only asset being equity in their house. They were retired with no earned income. Given this, they wouldn't have qualified for a standard mortgage with monthly repayments, and so the only way they could raise these funds was through an equity release mortgage.

I note that Mr and Mrs L were advised to discuss their plans with their family. I would have expected, given that Mr and Mrs L were not wealthy people, that at the very least their son would have queried where the £30,000 they gave him to start his business came from, if there had been no discussion with family about them taking out this mortgage. I therefore think it's more likely than not that Mr and Mrs L discussed their plans with at least some of their family.

The documents from 2003 show how the mortgage debt would increase year-on-year with the roll-up of interest. Mr and Mrs L would also have received annual statements from Aviva showing the amount outstanding and any potential early repayment charge they might incur if they wanted to repay their mortgage in full. So I'm not persuaded that they were unaware of the gradual increase of the amount owing under the mortgage.

Mr and Mrs L were given advice by their own independent solicitor, who confirmed the plan had been explained to them, and that they wished to go ahead with it. If the solicitor had had any concerns about Mr and Mrs L's level of understanding or suspected either of them was suffering from any cognitive impairment, the solicitor was under a duty under the Safe Home Income Plan rules, to inform Aviva, and the transaction would not have gone ahead.

This brings me to the medical evidence Mrs B has sent us. On the complaint form, Mrs B has told us that at the time the mortgage was taken out in 2003, Mrs L had been diagnosed with dementia and Mr L was her carer. However, in an email of 17 July 2023 Mrs B revised this and said that Mrs L had not been diagnosed with dementia in 2003, but had early dementia symptoms, such as memory problems, increasing confusion, reduced concentration and personality and behaviour changes. Mrs B has confirmed that Mr and Mrs L didn't make either Aviva aware of this at the time.

The medical records Mrs B has sent us show that it wasn't until August 2011, more than eight years after the mortgage was taken out, that Mrs B first raised concerns with Mrs L's GP about Mrs L's poor memory. It wasn't until July 2015, twelve years after the mortgage was taken out, that Mrs L was diagnosed with dementia. I'm therefore not persuaded that the medical evidence supports the contentions either that Mrs L had been diagnosed with dementia in 2003 (as claimed on the complaint form) or that Mrs L was showing symptoms of dementia in 2003 but hadn't been diagnosed (as Mrs B said in July 2023).

In all the circumstances, I'm unable to find any evidence that the mortgage was mis-sold.

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 the estate of Mr L to accept or reject my decision before 9 July 2024.

Jan O'Leary
Ombudsman