

The complaint

Mr and Mrs V complain about the service received from Aviva Equity Release UK Limited during their application for a lifetime mortgage. Specifically, they complain about delays caused by Aviva and their agents during the process which they say resulted in them having to accept a mortgage offer at a higher interest rate than they'd applied for.

What happened

In August 2022 Mr and Mrs V applied to Aviva for a lifetime mortgage with the help of their financial adviser. They wanted to borrow £1,000,000 to repay their existing interest only mortgage that had reached the end of its term.

Aviva instructed a valuation of Mr and Mrs V's property, but due to the nature of the property and estimated value, the earliest available date for the valuation to take place was 23 September. Mr and Mrs V were unable to make that date, so it was booked in for 30 September. The valuer initially concluded that the property was not suitable for lending purposes as it looked like it was used for commercial activity. Aviva clarified some information with Mr and Mrs V's financial adviser and the valuer, and it was ultimately agreed that the property was suitable security for lending purposes on 10 October 2022.

A mortgage offer was issued on 25 October 2022. Aviva offered to lend Mr and Mrs V £1,000,000 on a fixed interest rate of 5.09%. The offer was valid until 1 December 2022.

The conveyancing process began but was not completed in time for the expiry of Mr and Mrs V's mortgage offer. Aviva agreed to extend the offer to 15 December 2022. The conveyancing process still hadn't been completed by the extended deadline. Aviva said they were unable to extend the offer any further, and so issued a new offer to Mr and Mrs V which stated the interest rate charged on the mortgage would be fixed at 7.65%.

Mr and Mrs V's financial adviser complained to Aviva. He said that delays caused by Aviva's solicitors had resulted in Mr and Mrs V missing out on the interest rate they'd applied for.

The mortgage completed on 2 February 2023. Mr and Mrs V made their own complaint about how the whole process had been handled. Aviva issued two final response letters addressing the concerns raised by Mr and Mrs V and their financial adviser. In summary they said:

- Before Mr and Mrs V's application was submitted, Aviva had discussions with their financial adviser about the details of the titles that would be included in the charge. The adviser confirmed all five titles would be included. Aviva said the adviser should have disclosed the overages (restrictions on the titles) during this part of the process as they can be the reason for a declined application, and the adviser had access to Aviva's lending criteria.
- Aviva give a 14-week fixed rate expiry date which starts from the date an application is received – regardless of size of loan or property value. This period would only be extended if Aviva had caused delays during the process. In Mr and Mrs V's case,

they took 8 working days longer than they should have done to carry out due diligence. The offer was extended by 10 working days.

- Due to the high value of Mr and Mrs V's property, the local valuer did not have the mandate to value it, and another qualified valuer had to be assigned. The valuation was scheduled to take place within acceptable timescales for a high value property.
- Aviva are responsible for the actions of the solicitors acting on their behalf during this transaction. They have robust governance, assurance, and reporting frameworks in place to monitor external relationships as required. Throughout Mr and Mrs V's application a qualified solicitor was reviewing the technical documents and providing responses. When Mr and Mrs V's solicitors asked to speak to the senior solicitors acting for Aviva, they should have given a clear response explaining the senior solicitors are not customer facing but had provided the written responses and updates.
- Between 7 November and 15 December there was correspondence between Aviva and their solicitors about the titles to be included in the charge, and Mr and Mrs V's request to exclude certain ones. There was a delay in giving Mr and Mrs V (and their solicitors and adviser) a substantive response during this time, but they needed to give appropriate consideration to the non-standard request.
- On 5 December Aviva's solicitors were told about the overages on the titles. Until recently Aviva declined all properties with overages, now they are assessed on a case by case basis, so this had to be referred back to Aviva for a decision.
- Aviva's solicitors have agreed there were delays that could have been avoided during the process. Aviva said that when taking account of any avoidable delays the mortgage still wouldn't have completed before the 15 December extended deadline. Aviva said the mortgage could have completed on 28 December had things happened as they should have done. They offered to pay Mr and Mrs V £200 for the stress and anxiety caused, as well as cover the interest Mr and Mrs V had to pay on their previous mortgage during the period 28 December to 2 February. Aviva said they would also consider covering any additional solicitors' fees Mr and Mrs V incurred as a direct result of the delays, but only where the solicitor had to chase for updates outside of the 10-day turnaround time given the case was very technical at all stages.

There was further communication between Mr and Mrs V and Aviva, including a Data Subject Access Request. Mr and Mrs V referred their complaint to our service. In summary they said:

- They had no choice but to accept the December offer at the higher interest rate as they had no intention of moving house and their existing fixed rate mortgage term had expired. Their ages meant their mortgage options would be limited. As a result of Aviva's delays, they have been disadvantaged in excess of £25,500 per year. They accept Aviva's offer to refund additional interest and legal fees incurred as a result of the delay, but reject the £200 offered by way of compensation. They also reject the facts and assumptions on which the offer was based.
- Based on the delays caused by Aviva, the valuers, and Aviva's solicitors, they should have extended the mortgage offer (or fixed rate expiry date) by 36 working days. That would have allowed the mortgage to complete on the 5.09% fixed rate.

Our Investigator looked into things, and said that in his opinion, the offer Aviva had made to

put things right was fair.

Mr and Mrs V disagreed. In summary they said:

- This is a complex case in a number of aspects, but it hinges on the failure to extend the fixed rate expiry date in December 2022.
- As their property required a high value survey, which would take the valuers longer to arrange, the relevant timeframes should have been considered when reviewing whether an extension of the offer deadline was appropriate.
- Aviva were given the title numbers before the application was submitted – the titles contained the restrictions in respect of the overages. Mr and Mrs V's solicitors also made Aviva's solicitors aware of the restrictions in November. The solicitors failed to make Aviva aware of the restrictions for 27 days after they had the information. Had Aviva's solicitors notified Aviva of the overages in a timely way, the fixed rate expiry date would have been met.
- During the pre-application process Aviva had discussions with Mr and Mrs V's financial adviser about the property and the titles. If the taking of security is going to be challenging because of its complexity, that should be taken into account by Aviva, should they wish to proceed, when setting the fixed rate expiry date. Aviva's 'one size fits all' approach does not result in treating customers fairly.
- Complete disclosure of all the aspects of the property and the application was made to Aviva before or during the application. Aviva have said they do not download full title information from the Land Registry prior to assessing the application, they carry out a high-level overview. But Aviva did not make Mr and Mrs V's financial adviser aware of that before the application was made.
- They are having difficulty understanding the relevance of disclosure at the pre-application stage. If they had given full disclosure then the consequences are exactly what happened in practice, and Aviva made no alteration to their fixed rate expiry date or offer in respect of the disclosure. If they had not given full disclosure, what would Aviva have done differently?

Mr and Mrs V asked for the complaint to be referred to an Ombudsman for a final decision.

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.

Firstly, I want to acknowledge the submissions made by both parties on this complaint. Mr and Mrs V have submitted a great deal of information and evidence, as well as detailed analysis, to support their complaint points. I mean no discourtesy by only summarising the points above. I want to assure both parties I have considered everything provided before reaching this decision, but we are an informal service and that requires us to deal with the crux of the complaint to decide if more needs to be done to put things right. So I hope both parties understand that I won't be commenting on every individual point made during this complaint process. Rather I have considered the evidence in the round, focusing on what I deem to be the relevant points to reach a fair outcome.

It is not in dispute that the application process for Mr and Mrs V's mortgage took longer than it should have done. Aviva have admitted there were avoidable delays caused here, both

before and after they issued their mortgage offer to Mr and Mrs V. What I need to decide is whether there were further delays than Aviva have already identified, what the impact of any delay was, and whether Aviva should have done anything differently to mitigate any losses experienced by Mr and Mrs V as a result of the delays.

Aviva's policy states that the interest rate is fixed on the date the mortgage application is received providing it completes within the guaranteed period of 14 weeks. If the mortgage hasn't completed within the 14 weeks and the customer still wants to continue, the interest rate prevailing on the working day after the expiry date of the initial 14 weeks will be the new interest rate that will apply for a further 14 weeks. Aviva have told us that the only way the 14-week period can be extended, is if they have caused any delays during the process.

Mr and Mrs V are unhappy that Aviva did not use their discretion to amend this fixed rate expiry date to account for the fact that their property was considered 'high value' and therefore required a specific valuer to attend the property, which would take longer than the average valuation would. Aviva have set their 14-week deadline on the basis that the average application takes between 8-12 weeks to complete. Therefore, the policy accounts for the fact that some applications will take longer than others to complete and includes some additional time for those applications that may be more complex than average. Whilst the valuation of Mr and Mrs V's property may have taken longer than it would have done if the property did not require a specific valuer to complete the valuation, I'm not persuaded that Aviva should have set a different fixed rate expiry date at the outset, as the value of the property wouldn't necessarily have prevented the mortgage from completing within the 14-week period.

Aviva recognised that after the valuation was completed, they took longer than they should have done to complete their due diligence before issuing an offer to Mr and Mrs V. As a result, they extended the offer to allow an additional 10 working days for the mortgage to complete on the 5.09% rate. I'm satisfied that was reasonable at the time as it put the application back in the position it would have been in but for those delays.

Mr and Mrs V say the deadline should have been extended further, as a result of the delays caused by the solicitors acting for Aviva. Mr and Mrs V's financial adviser also made that point to Aviva at the time of the offer expiry, as he was concerned about the lack of progress and lack of responses received during the conveyancing process.

Aviva have accepted they're responsible for the actions of the solicitors who acted on their behalf during this transaction. They've also accepted that the solicitors caused delays and took longer to complete the conveyancing process than they should have done. They've said that even if it wasn't for those avoidable delays, Mr and Mrs V's mortgage application would not have completed before the extended deadline. This was because of the complex legal work that was needed as a result of the number of titles included in the security, and the restrictions on those titles.

I appreciate Mr and Mrs V have worked through the timeline and calculated how many working days they feel were wasted as a result of inaction of the solicitors acting on Aviva's behalf. But Mr and Mrs V will be aware that just because the solicitors had not communicated with any of the other parties for a period, doesn't mean they weren't working on the legal issues needed to complete the mortgage transaction. Aviva have worked out that had there been no avoidable delays, the mortgage could have completed on 28 December. Having looked at the timeline of events, the notes on the account, and what both parties have said, I'm satisfied that's a reasonable assumption. Particularly as the complexities in the legal work needed as a result of the property details involved would have taken some time to resolve regardless of any delays. I don't think it's unreasonable to say the conveyancing process ought to have taken around two months in total to complete. And

that timeframe is not out of line with my experience of industry standards for this type of transaction.

I appreciate this resulted in an increase in the interest rate offered to Mr and Mrs V on their mortgage. It was unfortunate timing that this application was being processed during a time of rate rises across the industry. And I also understand why Mr and Mrs V felt they had no choice but to accept the mortgage offer at the higher rate. But I'm not satisfied that Mr and Mrs V have ended up with a mortgage at a higher rate than they initially applied for as a direct result of unfair treatment by Aviva.

I note both parties' comments on the information about the property that was disclosed to Aviva before the application was submitted. I don't consider that it makes a difference to the overall outcome of this complaint whether or not Aviva had a true understanding of the complexities involved with Mr and Mrs V's property before the application was submitted. I say that because Aviva agreed to lend to Mr and Mrs V despite the complexities, and the legal work would always have been necessary for the mortgage to complete regardless of whether the information about the overages and titles was known to Aviva from the outset.

Overall, I consider the legal process took around a month longer than it should have done. The mortgage should have completed in December, but unfortunately it didn't complete until February. Even if Aviva had extended the offer for one month on 15 December 2022, that would still not have allowed enough time for the process to be completed within the deadline. And so Mr and Mrs V would always have had to accept a mortgage at a higher rate than the one they wanted if they pursued the mortgage with Aviva. I understand this is frustrating and disappointing for Mr and Mrs V, as it is no fault of their own that the process didn't complete within the deadline either. And given the amount of borrowing here, the change in interest rate does have a significant impact on the amount of debt owed to Aviva. But for the reasons I've explained, I'm not satisfied Mr and Mrs V have lost out on the rate they wanted as a result of unfair treatment from Aviva either. As a result, I can't fairly ask them to apply the 5.09% rate to Mr and Mrs V's mortgage.

Aviva have offered to pay for the direct financial loss Mr and Mrs V experienced as a result of their avoidable delays. That includes paying the additional interest Mr and Mrs V incurred on their previous mortgage, and also reimbursing any additional legal costs incurred. They've also offered to pay Mr and Mrs V £200 for the distress and inconvenience caused by the delays. Having considered all the circumstances, and the direct impact the avoidable delays caused Mr and Mrs V, I'm satisfied Aviva's offer is a fair and reasonable way to put things right in this case.

My final decision

Considering everything, for the reasons I've explained, I'm satisfied the offer Aviva Equity Release UK Limited have made is a fair and reasonable way to put things right for Mr and Mrs V. So I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V and Mr V to accept or reject my decision before 10 July 2024.

Kathryn Billings
Ombudsman