

The complaint

Mr F complains that Aviva Equity Release UK Limited would not accept regular payments by standing order or direct debit. He said that Aviva is discriminating against him because of a health condition he has.

What happened

In May 2023, Mr F received mortgage advice from a third-party mortgage broker. They recommended that he should take out an equity release mortgage with Aviva. No payments were required to the mortgage, but Mr F was allowed to make payments of up to 10% of the mortgage balance each year.

Mr F wanted to make regular overpayments to the mortgage. But Aviva told him it could not accept payments by standing order or direct debit. The only way it would accept payments from Mr F was by phone. Mr F said he was told by the broker and his solicitor that it was common practice to be able to set up a standing order to make payments. He also said that he'd been diagnosed with Alzheimer's disease and it was likely that he would become forgetful in the future. He wanted to set up a standing order or direct debit so that he did not forget to make payments and incur more compound interest.

The investigator initially thought the complaint should be upheld. But I later emailed Mr F and explained why I did not consider I could uphold this complaint.

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'm sorry to hear what Mr F has been through and I hope my decision doesn't cause him any unnecessary upset. But after carefully considering everything both sides have said and provided, I don't consider I can uphold this complaint.

The terms and conditions of the mortgage set out that Aviva can't accept standing orders or direct debits. So there was no mistake by Aviva in not doing so. I note the mortgage was sold by a broker. They were responsible for making sure that the mortgage was suitable for Mr F and that he understood the key features, including how payments could be made.

Aviva is not responsible if the mortgage was not suitable for Mr F's stated needs, for example if he told the broker that being able to make regular over payments by standing order or direct debit was important to him.

The investigator thought the complaint should be upheld on the discrimination point – she recommended that Aviva should phone Mr F every month to arrange a payment. But Aviva did not accept that. It pointed out there were a number of practical difficulties for it to put in place that suggestion. It also said that it was working on amending its systems so it could accept standing orders or direct debits in the future.

I've thought very carefully about this - and I've challenged Aviva robustly on what it can offer to help Mr F. The law requires it to make reasonable adjustments in certain circumstances – and that is one of the things I must take into account in deciding what is fair and reasonable in the circumstances of a complaint. But I think Aviva has given us valid reasons why calling Mr F each month would not be practical or reasonable in the circumstances. For example, there would be complications in arranging the phone call, Aviva would still need to complete its security checks and in the circumstances, there was scope for confusion.

Looking at what Mr F told us, it is not clear that the proposed settlement would resolve things for him either. So I don't think it would be fair or reasonable for me to require Aviva to call Mr F every month to take a payment.

We also explored whether Aviva - as an adjustment to its usual procedure - should accept payments from Mr F by standing order or direct debit. It has explained that there are some technical challenges in putting that in place that would not be straightforward to resolve. I accept that is likely to be correct. So I don't think it would be fair for me to say that it should do so.

I asked Aviva to explore if there were any other adjustments it could make to help Mr F. It said it wasn't aware of Mr F's need for an adjustment until he complained to us. But it said there was nothing practical it could offer. It recommends involving a power of attorney in handling Mr F's affairs if he needs help. This is not a perfect solution and does not give Mr F what he wanted.

The difficulty I have is that I am not aware of any practical steps that are reasonably available to Aviva that would overcome the potential disadvantages Mr F faces because of his medical condition. There does not appear to be any adjustments it could offer that would help with Mr F's individual circumstances. Therefore, as things stand, I am not proposing to say that Aviva should do anything to put things right. While there might be an ongoing requirement for it to make reasonable adjustments, at this time I can't see there are any adjustments that it could practically make in the circumstances that would help Mr F.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 27 June 2024.

Ken Rose
Ombudsman