

The complaint

Ms H complains that Aviva Equity Release UK Limited (Aviva) will not provide her attorney access to the online portal used to manage her account.

What happened

Ms H took out an equity release mortgage with Aviva in May 2023.

In June 2023, Ms H's daughter was appointed as her attorney. Under the lasting power of attorney (POA) that Ms H completed, Ms H's daughter was given the power to make decisions about financial and property affairs on Ms H's behalf. Ms H's daughter subsequently sought to interact with Aviva on her mother's behalf.

Initially, Aviva told Ms H's attorney that she could email in a copy of the POA in order to discuss the account but was later told that it would need to see the original, wet ink signed copy of the full POA documentation.

The POA documentation was provided to Aviva in September 2023 and Ms H's attorney requested access to Aviva's online portal known as MyAviva. The attorney explained that both she and Ms H wanted to be able to see the balance of the account as and when they needed to, without the inconvenience of having to call up. They wanted to see how any Voluntary Partial Repayments (VPR) were allocated to the account and how this would impact the final balance.

Although it initially said the attorney could have access, Aviva confirmed that its internal policy did not allow attorneys access to MyAviva under any circumstances. It explained that Ms H's attorney could still gain all the same information via the phone, letter or email and that any VPRs would have to be done over the phone in any event. It also explained that the MyAviva portal does not show the projected impact of VPRs on the final balance.

Unhappy with Aviva's service, Ms H complained via her attorney. Aviva investigated the complaint and acknowledged it had given misleading information about whether the original POA documentation would be needed, how it should be sent in and initially told the attorney they could have access to MyAviva. It offered £150 in compensation to Ms H and offered to pay £10 in postage fees to the attorney.

Dissatisfied with Aviva's response, Ms H's attorney referred the complaint to our Service.

One of our investigators looked into the complaint and recommended that it be upheld. He thought granting Ms H's attorney access to MyAviva would enable her to have oversight of the account as and when she needed and that the alternative channels being offered by Aviva were far less convenient.

He was not persuaded the rationale put forward by Aviva supported its argument that allowing Ms H's attorney access to MyAviva increased the level of risk Ms H was exposed to. He also highlighted a particular principle within the Consumer Duty which requires firms to provide the same level of support to representatives as it provides to consumers. He

wasn't satisfied that Aviva's decision to decline access to MyAviva was consistent with its obligations under the Duty. And as Aviva has the functionality to allow the attorney access (having previously granted her access in error), he recommended that it provide access to the attorney and pay an additional £150 in compensation to recognise the distress and inconvenience caused to Ms H.

Aviva disagreed with the investigator's assessment. I've summarised its submissions below.

It said if it were to provide MyAviva access, it would be unable to understand if it was the customer or the attorney who is exercising their contractual rights or obligations. It would also be unable to exclude access to any additional policies the customer may hold which the attorney does not have authority to manage.

This would create various legal risks, such as a data protection risk where it grants an attorney access to information relating to another product or process that they don't have the authority to deal with. As well as potential customer harm, for example if an attorney were to cancel cover they did not have authority to act on.

It also set out that allowing an attorney to have access to MyAviva could lead to an attorney changing all contact details on other products, which would leave Aviva with no way of contacting its customer and which would be a significant financial crime/financial abuse risk.

Aviva is also of the opinion that the investigator's interpretation of Consumer Duty principle 2A.6.R(1) is incorrect. And while it notes the wording in the duty refers to a firm needing to provide the *same* level of support to a representative as it would a consumer, it doesn't agree this means the level of support should be identical. It maintains that while a representative cannot access MyAviva in the same way a consumer would, they would be able to get the same information through other communication channels in a timely manner. And therefore, the level of support is the same, even if the method of delivery differs.

After carrying out thorough risk assessments across all products, where an attorney is acting, it doesn't believe it can confidently deliver the same level of oversight through MyAviva as it can through other methods of contact. Consequently, the potential pitfalls of allowing attorneys access to MyAviva are outside its risk appetite. It provides MyAviva as a commercial (non-contractual) service and chooses for risk, security and operational reasons to restrict access to that service.

Aviva considers the scope of our investigator's assessment to exceed an individual determination and one that binds its commercial actions. To commit Aviva to extend the MyAviva service beyond Ms H could create an unreasonable commercial burden. It would not be commercially viable for it to provide a bespoke digital service to a myriad of parties acting with the consent or authority of its customers. The assessment breaks its commercial model, and means it cannot choose its commercial services, how to deploy them, or control the risks associated with them.

It refers to previous decisions by this Service and information published on our website which it thinks supports its position that it should not be directed to allow Ms H's attorney access to MyAviva.

As the complaint could not be resolved informally, it has now been passed to me 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.

It is important to set out that this decision relates solely to the individual complaint raised by Ms H's attorney, on behalf of Ms H, against Aviva. It does not set a precedent, nor does it give a general direction to Aviva as to how it should manage its commercial offerings. I do not agree that this case falls outside the scope of this Service or that by upholding it, I am making a direction that binds Aviva's commercial offerings or in some way breaks its commercial model as it has suggested. Instead, I have based my decision on the individual facts that pertain to Ms H's complaint and my recommended award relates to Ms H's account only.

I note Aviva has referred to decisions issued by this Service and information published on our website. It considers these to support its position and to be at odds with the assessment issued by our investigator. But I shall remind Aviva that we determine each case on its individual merits and there are good reasons why we reach different decisions on cases that appear similar when the individual circumstances of the case are considered. It is also important to highlight that the information on our website to which Aviva is referring was made, and published, before the Consumer Duty was implemented and does not bind me to reach a certain outcome. Instead, I must decide this case based on the individual facts, while taking into account relevant law, regulations and what I consider to be good industry practice.

Ms H's attorney wants to use the MyAviva portal to help manage the mortgage with Aviva. Aviva declined this request and highlighted that its policy is not to allow attorneys access to the MyAviva platform and to instead provide them with the same information and support via other communication channels such as phone, email and letter.

While I accept MyAviva is not a contractual right afforded to Ms H through the terms and conditions of her mortgage, it is a service Aviva has chosen to offer to its customers. So, its decision not to offer it to her attorney is something I need to consider when determining if Aviva has acted reasonably in this case.

We asked Aviva to explain why its decision to decline Ms H's attorney access to the MyAviva platform was fair. Aviva has set out at length the increase in risk such an action would or could cause which I have summarised above, as well as its stance that it is still able to provide Ms H's attorney with the same level of support via other channels, as required by the Consumer Duty. But having reviewed Aviva's submissions carefully in addition to relevant rules, regulations and legislation, I am not persuaded Aviva has acted fairly in this individual case. I have set out why below.

If Ms H's attorney had access to MyAviva she would be able to have instant access to the mortgage account at any time of day. This would suit her and Ms H's needs to review the interest rate, the outstanding balance, look over annual statements and check what fees would apply if the mortgage was to be repaid early. By declining access to this portal, Ms H's attorney needs to call Aviva, potentially incur call waiting times and ensure she does so within business hours Monday to Friday. While she can also write a letter or email Aviva, Ms H's attorney would then need to wait for a response compared to being able to access the information instantly on MyAviva.

At its core, Aviva's primary concern is that attorneys having access to MyAviva would be a breach of financial crime and financial abuse regulations and could lead to severe consumer harm for the underlying customer. In particular, it said that granting access to MyAviva cannot be restricted to one particular product and instead means the attorney would have access to all Aviva products held by the consumer. And in such a scenario, the attorney may have access to information and or be able to make changes to products that they are not

authorised to view or administer.

I accept this could be a real risk if an attorney had a limited power of attorney or was a personal representative rather than someone authorised in law to act on the consumer's behalf. So, there could be scenarios where it would be fair and reasonable for Aviva to decline a customer's representative access to MyAviva. But I don't think that is the case here.

In Ms H's case, her attorney has authority in law to manage all her property and financial affairs and to make decisions on her behalf. The POA is not limited in time or scope. So, Ms H's attorney is authorised to access information about all Ms H's financial affairs and administer those products in Ms H's best interests. The scenarios Aviva has described in its submissions such as amending addresses, altering policies, and amending investments are all things Ms H's attorney is authorised to do and has been since the POA was registered in June 2023. The method in which she carries out such activities, either over the phone or via MyAviva, doesn't change the scope of her authority under the POA, nor does it change the impact such an action would have on Ms H. So, I disagree with the suggestion that it is the provision of MyAviva that would open Ms H and Aviva up to the various data breaches and risks of financial crime that it has suggested.

If Aviva is concerned that Ms H's attorney is not acting in her best interests as it has suggested, then it can report that concern to the Office of the Public Guardian and in such a scenario, withholding access to MyAviva may be appropriate. But Aviva has not taken this step so, at this point in time, Ms H's attorney remains authorised to handle her financial affairs under the lasting POA as set out above.

Taking everything into account, I am not persuaded Aviva has acted fairly or reasonably in declining Ms H's attorney access to MyAviva in this case. And as Aviva has the functionality to provide the attorney with access, I am not persuaded such a direction is beyond its capability to implement.

Putting things right

Aviva should now take steps to grant Ms H's attorney access to its MyAviva platform.

I understand Ms H has become frustrated and upset with Aviva's ongoing refusal to allow both her and her attorney online access to manage her mortgage which has taken a significant amount of effort to resolve. Considering this and the impact Aviva's actions have had on Ms H, I direct it to pay an additional £150 in compensation to Ms H for the ongoing distress and inconvenience its actions have had on her. This is in addition to the £150 Aviva has already offered Ms H.

For clarity, this award is for Ms H directly. I am unable to make an award to Ms H's attorney.

My final decision

For the reasons detailed, I uphold this complaint and direct Aviva Equity Release UK Limited to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 23 December 2024.

Lucy Wilson
Ombudsman