

The complaint

Ms Z complains that Mrs Z was mis-sold a lifetime mortgage by Aviva Equity Release UK Limited (Aviva) as she was vulnerable and it was not suitable for her needs.

Mrs Z has been living in a care home since 2022 and has been assessed as no longer having capacity to manage her affairs. Therefore, the complaint has been brought on her behalf by one of her children, Ms Z.

What happened

Mrs Z took out a lifetime mortgage with Aviva on 30 May 2014. Her initial loan was for £55,000 with a cash reserve of £30,100, which Mrs Z took out in full on 23 February 2017.

Ms Z has complained about a number of issues in relation to Mrs Z's lifetime mortgage, both in relation to the initial sale and to the way Aviva has managed the mortgage and treated her (Ms Z) since she made her complaint.

Ms Z complains that Aviva would not provide details to her about the mortgage due to her not having financial deputyship, however it had previously discussed the mortgage with Ms Z's son so had no regard to confidentiality.

In respect of the complaint about the mortgage being mis-sold, I have already issued a jurisdiction decision setting out that this Service doesn't have the power to consider this part of Ms Z's complaint.

I can see that Ms Z has raised further issues in relation to Aviva's management of the mortgage and handling of her complaint once she became involved in the matter. However, these have been dealt with in a separate complaint (our reference ending M9D5). Therefore, those other issues will be dealt with in a separate decision.

This decision will therefore only look at the issues regarding the provision of information by Aviva to Ms Z before deputyship was granted as set out above.

Our Investigator looked into the matter and found that Aviva had not acted unfairly by not responding to the queries raised by Ms Z until it had received confirmation of the deputyship. She did not believe that Aviva had divulged any sensitive details about the mortgage to Ms Z's brother, and had only provided information on how the loan worked and the steps which would need to be taken when Mrs Z moved into long-term care. Therefore, the Investigator did not ask Aviva to do anything more in relation to the complaint.

Ms Z disagrees with this, so the case has come to me to make a 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.

Having looked at the evidence I agree with the Investigator's view for broadly the same reasons and I've explained my reasons further below.

Aviva says that it was permitted to discuss policy details during the initial contact with Ms Z's brother in 2023. As Ms Z's brother asked it to speak with Ms Z, who had power of attorney,

an email was sent to Ms Z in order to provide her with information regarding the process for redeeming the mortgage and any requirement relating to the provision of long-term care. Aviva said that, as Mrs Z had lost capacity, it needed the deputyship in place. Any further communications or requests would fall under the deputyship rules and this meant it was unable to discuss the outcome of the complaint or answer any policy specific questions. It said that once deputyship was received it was happy to provide the information requested.

I've listened the call between Ms Z's brother (Mr Z) and Aviva on 12 January 2023. The adviser asked for details in relation to Mrs Z's long-term care but said that she would not be able to discuss the details with him at that stage.

There was a further call between Mr Z and Aviva on 21 March 2023, when the conversation again largely related to Mrs Z's long-term care. The adviser again explained to him that she couldn't do much until they had the relevant authority.

Having listened to these calls, I am satisfied that Aviva did not breach confidentiality as it didn't provide any personal details regarding Mrs Z to Mr Z.

Mr Z provided Ms Z's details as she had applied for deputyship and Aviva sent her a letter the following day, 22 March 2023, setting out the date the mortgage was taken out, the amount borrowed, the further cash reserve borrowed and the outstanding amount as of that date. It also attaches a copy of the application form which set out the purpose of the loan and details of the legal and financial advisors used to secure this. The email went on to acknowledge that the granting of deputyship may take some time due to lengthy delays at the Court of Protection but explained that the loan would become repayable 12 months after Mrs Z had gone into long-term care.

Ms Z made her complaint about the sale of Mrs Z's mortgage to Aviva in May 2023. In July 2023, Aviva said that it was unable to discuss the specific details of Mrs Z's mortgage with Ms Z at that stage as there was no lasting authority or proof of deputyship on record which said that she could act on Mrs Z's behalf or have access to the information she had requested. In order to answer Ms Z's questions in relation to the complaint, it would need to discuss specific details of the policy. As there was no lasting authority on the file showing that she was allowed to have access to this information, it was unable to fully discuss the complaint with her. Aviva invited Ms Z to come back once she had the relevant authority and then it would be able to give her a full decision on its findings as it had investigated the points raised.

Although Ms Z had applied for financial deputyship from the Court of Protection at the time she made her complaint to this Service (in July 2023) and had been waiting some time for it by this stage, it had not yet been granted.

I can see that Ms Z contacted this Service on 25 October 2023 confirming that she now had the deputyship for Mrs Z. I have seen a document showing that appointment of Ms Z as deputy to make decisions on behalf of Mrs Z in relation to her property and affairs was made as of 21 September 2023, on a document sealed by the Court of Protection on 25 October 2023.

In relation to Ms Z's complaint that Aviva would not provide her with the details of Mrs Z's mortgage when she complained, I am satisfied that it didn't do anything wrong. This is because Aviva needs to ensure that it has the appropriate authority to speak to a party regarding any complaint. As Ms Z was not appointed as deputy to make decisions on behalf of Mrs Z until September 2023, Aviva was unable to provide her with the information she wanted prior to this in respect of the complaint she had made on Mrs Z's behalf.

Whilst I can understand Ms Z's frustration with the process, I won't be asking Aviva to do anything further in relation to this aspect of the complaint.

My final decision

For the reasons I've explained above, I don't uphold this complaint and don't require Aviva Equity Release UK Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Z to accept or reject my decision before 19 August 2024.

Rachel Ellis
Ombudsman