

## The complaint

Mrs Z complains about Mrs Z's lifetime mortgage with Aviva Equity Release UK Limited (Aviva).

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.

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

In respect of this complaint, Ms Z has raised the following issues:

- There was a lack of response from Aviva after she contacted it on numerous occasions between March 2023 and July 2023. She requested case notes and audio recordings which she hasn't received and she is concerned that Aviva is withholding information.
- The tone of an email from Aviva threatening to involve its debt recovery team if the property had not been sold by autumn 2023, which was 12 months after she went into permanent care.
- The fact that Mrs Z's care home only officially confirmed her placement at the end of September 2023, so the 12 months should run from then.
- She believes that no early repayment charge (ERC) should be payable when the mortgage is redeemed.
- The cost of the lifetime mortgage as the interest rate charged was high despite interest rates generally being low.
- Aviva did not share with Mrs Z that the broker who it entrusted to sell its products and who recommended the mortgage had dissolved.
- Aviva has not confirmed suspension of the deadline for a repayment plan, and this should be backdated to the date of the first email to Mrs Z's son on 21 March 2023.

In respect of the complaint about the interest rates, I have already issued a jurisdiction decision setting out that this Service only has the power to look into this part of Ms Z's complaint from 23 February 2017 onwards (from when the further cash reserve was taken out).

I can see that Ms Z has raised further issues in relation to the sale of the mortgage and the fact that Aviva did not provide information to Ms Z before she had financial deputyship despite speaking with her brother, which she says raised issues with confidentiality. However, these have been dealt with in a separate complaint (our reference ending M2Y0). Therefore, those other issues have been dealt with in a separate decision.

This decision will therefore only look at whether we can look into the issues set out in the bullet points above.

Our Investigator looked into the complaint and did not find that Aviva had acted unfairly or unreasonably in respect of the information it provided and correspondence sent. She found that it was fair for Aviva to say that Mrs Z had been in long-term care since at least May 2022 and that Aviva had therefore not acted unreasonably by expecting the loan to be repaid, as this was more than 12 months ago. In respect of the interest charged, the Investigator did not find that Aviva had acted unfairly by charging the rates which had been explained in the offer and statements. She also did not believe that Aviva had acted unfairly in not suspending the interest until the mortgage had been repaid. Overall, the Investigator did not uphold the complaint and did not ask Aviva to do anything further.

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 in respect of each of the points raised.

There was a lack of response from Aviva after she contacted it on numerous occasions between March 2023 and July 2023. She requested case notes and audio recordings which she hasn't received and she is concerned that Aviva is withholding information.

I have dealt with a related issue in my final decision on Mrs Z's other complaint in relation to Aviva not providing Ms Z with details of Mrs Z's mortgage due to her not having financial deputyship.

Ms Z has provided a copy of a document showing that she was appointed as deputy to make decisions on behalf of Mrs Z in relation to her property and affairs as of 21 September 2023; the document was sealed by the Court of Protection on 25 October 2023.

As Ms Z did not have financial deputyship during the period between March and July 2023, I am satisfied that Aviva did not do anything wrong in not providing her with the case notes and call recordings she had requested relating to Mrs Z's mortgage. This is because Aviva needs to ensure that it has the appropriate authority to share information regarding any complaint made. 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.

The tone of an email from Aviva threatening to involve its debt recovery team if the property had not been sold by autumn 2023, which was 12 months after she went into permanent care.

This part of Ms Z's complaint appears to relate to an email sent to her by Aviva on 22 March 2023. I have looked at the email, which sets out the amount borrowed and outstanding balance. It also explained that the loan would become repayable from the date Mrs Z's care became permanent and that Aviva would look for repayment of the mortgage within 12 months of that date. 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 that the balance could not be left outstanding indefinitely. Therefore, if it was not repaid within the 12 months, it would be passed to Aviva's Mortgage Enforcement & Recovery Team, who would look to see what action Aviva could take to recover the loan.

Whilst I can appreciate that Ms Z and her family were going through a difficult time, I can't say that either the tone or the content of the letter were inappropriate. Aviva provided information in relation to the process once Mrs Z had gone into long-term care, which was in

accordance with the terms and conditions of the mortgage which Mrs Z had taken out. Therefore, I am satisfied that Aviva hasn't acted unreasonably in this respect.

Mrs Z's care home only officially confirmed her placement at the end of September 2023, so the 12 months should run from then.

Ms Z says that the care home Mrs Z currently resides in only officially confirmed Mrs Z's placement at the end of September 2023, when the deprivation of liberty procedure was signed off by the official assessor and the psychiatrist. Therefore, she says that the 12 months given to repay the mortgage should run from then. She says that Mrs Z had multiple moves in and out of hospital, emergency placements, temporary placements and it was not until September 2023 that the care home confirmed her permanent placement. Ms Z says that Aviva is trying to ignore the law in order to bring forward the date when long-term care began, in order to apply pressure for the property to be sold.

Aviva says that it received verbal confirmation from Ms Z on 19 December 2023 that Mrs Z had entered permanent long-term care in May 2022. It has also provided recordings of telephone calls between Ms Z's brother (Mr Z) and Aviva.

During a call on 12 January 2023, the adviser from Aviva asked Mr Z whether Mrs Z was in long-term care. Mr Z said that she was and that she would not be returning home. The advisor asked when she went into long-term care and Mr Z confirmed that Mrs Z had a fall in October 2021 and she never returned home. In respect of permanent care, he said that it was March or April 2023 that Mrs Z went into the home she was currently residing at and said that she wasn't ever going to come home.

There was a further call between Mr Z and Aviva on 21 March 2023. He was asked when Mrs Z had gone into care permanently and said he thought May 2022 and that it was definitely her permanent home now.

Ms Z says that her brother gave incorrect information during the calls about the dates of Mrs Z's treatment. She has provided a timeline and said that she believed that Mrs Z was coming home up until September 2023 when the deprivation of liberty was confirmed. I can see from the timeline that Mrs Z had a fall in October 2021. She did return home in May 2022 but was then subject to an emergency placement a few days later. Ms Z said that Mrs Z was free to go home with a support package in place so she did not expect that Mrs Z would not return home.

Ms Z has provided a copy of an email dated 21 June 2022 from Mrs Z's social worker, which refers to the placement at the home Mrs Z was in at the time being temporary. I have considered the email and it refers to the social worker not yet being clear whether Mrs Z would be staying at the specific care home long term. The email goes on to say that this would be dependent on the funding and negotiation about the room rate. So, whilst I accept that Mrs Z's placement at the specific home may not have been long term at that time, the email does not suggest that Mrs Z would be going back to live in the property.

Ms Z says that it is only the deprivation of liberty which signals that a care home resident is not free to leave and Mrs Z was therefore free to leave the care home at any time before that.

I have looked at the mortgage offer, which states that Aviva

*"has the right, acting reasonably, to take action to repossess your home for the following reasons:*

*- if the lifetime mortgage has not been repaid within 12 months of you leaving your home because you have died or need long-term care.*

*- if you leave the property for a continuous period of 6 calendar months without our agreement but you do not need long-term care."*

Section 4.1a of the mortgage terms and conditions states that:

*“You must repay your Lifetime Mortgage when one of the following events occurs:*

*a. If you are the only borrower:*

*i. When you die; or*

*ii. When you leave the Property permanently because you need Long-term care,*

*Whichever event occurs first.”*

Section 16 of the mortgage terms states that:

*“A default will arise:*

*If your Lifetime Mortgage has not been repaid within 12 calendar months of the date it became repayable under Sections 4.1a or 4.1b.”*

It goes on to state that if the account is in default then Aviva has the right to take such action as it considers appropriate to try and correct the default.

I've considered what Ms Z has said about the deprivation of liberty. However, the mortgage terms make it clear that the relevant date for the purposes of Aviva considering repossession action is 12 months from the date the borrower leaves their home if they need long-term care (or leaving the property for a continuous period of six months if they have not gone into long-term care). It is possible for someone to be in long-term care without deprivation of liberty, which will only happen when someone lacks the capacity to decide matters for themselves. And there is no requirement in Aviva's terms for someone to be subject to a deprivation of liberty for the 12-month redemption period to start.

Given that Mrs Z has not lived in the property since May 2022 and has been residing in a care home since then, I am satisfied that Mrs Z has been in long-term care since at least May 2022. And I don't think Aviva has acted unreasonably by indicating that it would look to take action 12 months after this if the loan had not been repaid. Having said this, I would expect Aviva to act fairly and reasonably when dealing with Ms Z in respect of the repayment of the mortgage, in line with the mortgage terms.

Ms Z believes that no early repayment charge (ERC) should be payable when the mortgage is redeemed.

The mortgage offer sets out *“If you leave your home because you need long-term care you must repay this lifetime mortgage. You will not have to pay an early repayment charge”*.

Given that Mrs Z has left her home due to needing long-term care, she will not need to pay an ERC. Ms Z has not suggested that Aviva has attempted to charge an ERC at this stage. If it does so, then she will need to make a further complaint if this cannot be resolved between herself and Aviva.

The cost of the lifetime mortgage as the interest rate charged was high despite interest rates generally being low.

As set out in my earlier decision, I am only able to consider this part of Mrs Z's complaint in respect of the interest charged from 23 February 2017 onwards (when the further cash reserve was taken out).

I can see that the offer document from 2014 sets out that the interest on the initial loan would be charged at a fixed rate of 5.71% and gives a projection of how much would be owed over the next 15 years. It also sets out that a different fixed interest rate may apply to each or any future borrowing from the cash reserve and that each time cash was released this would increase the amount outstanding on the mortgage. The offer gave a further example of what Mrs Z would owe at the end of 15 years if she borrowed the whole of her cash reserve based on the current interest rate of 5.71%.

I have also seen the letter confirming the release of the further cash reserve dated 23 February 2017, which sets out that the interest rate of 5.32% would be applied to this amount.

Aviva sent Mrs Z annual statements which have been sent to from 2 June 2015 onwards. Having looked at the statements from 2017 onwards, these confirm that the interest charged was 5.71% in respect of the initial loan and 5.32% in respect of the cash reserve. So this was in accordance with the mortgage offer and – as both of these rates were fixed at the time the funds were borrowed – I wouldn't expect the rate to go down even if interest rates decreased generally.

Although I understand that Ms Z is upset at amount of interest charged and the amount which is now outstanding, it was Mrs Z who took out the mortgage with Aviva and the costs were made clear to her at the time. Therefore, I can't say that Aviva has acted unreasonably in this respect.

Aviva did not share with Mrs Z that the broker who it entrusted to sell its products and who recommended the mortgage had dissolved.

As set out in my previous decision about what parts of Mrs Z's complaint this Service could look into, the mortgage was not sold by Aviva and was sold by a broker who is no longer trading. This is a completely separate entity to Aviva and I would not expect Aviva to notify its customers that the company which provided advice – in some cases many years earlier – was no longer operating. Therefore, I don't think Aviva has acted unreasonably in this respect.

Aviva has not confirmed suspension of the deadline for a repayment plan, and this should be backdated to the date of the first email to Mrs Z's son on 21 March 2023.

For the reasons set out above, I don't think Aviva has acted unreasonably in expecting the loan to be repaid within 12 months of Mrs Z going into long-term care from May 2022. Therefore, I wouldn't expect it to suspend any deadline in relation to this.

In respect of the interest, the mortgage terms set out that "*We will charge interest on each Cash Payment from its Completion Date to the Repayment Date at its Interest Rate*". The email sent to Ms Z by Aviva on 22 March 2023 also set out that interest would continue to accrue on the balance until the mortgage had been repaid. Therefore, I don't think Aviva has acted unreasonably by not suspending the interest on the account until the mortgage has been repaid.

I know my decision will come as a disappointment to Ms Z, but I can't say that Aviva has acted unreasonably in the circumstances of this case and I don't uphold this 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**