

## **The complaint**

The estate of Ms T complains that Aviva Life & Pensions UK Limited mis-sold the late Ms T a lifetime mortgage. The estate also complains that Aviva has unfairly taken legal action to repossess the mortgaged property following Ms T's death.

The complaint is being brought by Mr T on behalf of the estate, with the consent of an executor named on Ms T's will.

## **What happened**

Ms T took out a lifetime mortgage with Aviva in 2014 after receiving advice from a broker. She borrowed £1,300,000 including fees on a fixed interest rate of 7.54%. The mortgage offer said that Aviva had the right, acting reasonably, to take action to repossess Ms T's home if the lifetime mortgage had not been repaid within 12 months of her leaving the home because she had died or needed long term care.

Ms T died in July 2022. Aviva wrote to the personal representative of the late Ms T in August 2023 explaining that the mortgage was in default and needed to be repaid. The letter said the amount due was £2,443,604.45 and asked the representative to get in touch within 14 days to let it know the plans for repayment. It also said that if it didn't hear from the representative within that time, it reserved the right to take appropriate action in accordance with the mortgage terms.

Mr T, who brings this complaint on behalf of Ms T's estate, lives in the mortgaged property with his son. He told Aviva that he was sourcing finance to repay the mortgage so that he could continue to live in the property. Aviva explained that in order for it to allow further time for repayment of the mortgage, it would need to see evidence of the steps Mr T had taken to repay it. It noted that probate had not yet been granted, and that would be needed if Mr T was to sell the property to repay the mortgage. It said it could not allow the loan to remain outstanding indefinitely with no certainty of when the mortgage would be repaid.

On behalf of the estate, Mr T complained to Aviva about the sale of the mortgage, and about the action it was now taking to recover the mortgage funds. He said that Ms T was elderly and vulnerable at the time the mortgage was sold, and she could not have understood the implications of what she was agreeing to. He said the interest rate of this mortgage was much higher than the mortgage she had previously and has eroded all the equity in the property. He also complained to the Financial Services Compensation Scheme (FSCS) about the adviser who sold the mortgage to Ms T.

Aviva explained that the mortgage was sold via a broker, and the broker was responsible for ensuring the mortgage was suitable for Ms T's needs at the time it gave her advice. It said the mortgage terms allowed 12 months after the borrower's death for repayment of the mortgage to be made. It said it was aware of a family dispute that was preventing probate being granted, and the property could not be sold until that had happened. It said there was no indication the mortgage was going to be repaid in the near future. It was also aware it could suffer a negative equity situation; and so it wasn't prepared to allow the current situation to continue indefinitely.

Mr T brought the complaint to our service on behalf of the estate of Ms T. One of our investigators looked into things and explained the complaint about the suitability of the mortgage was the responsibility of the broker. He said any concerns about the fact Aviva had lent to Ms T had been brought too late under the time limit rules our service must apply. He considered how Aviva had handled things since Ms T had died but didn't think it had acted unfairly.

Mr T asked for the complaint to be passed to an ombudsman.

### **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.

#### Our service's jurisdiction to consider this complaint

Before turning to the merits of the estate of Ms T's complaint, I must first decide whether our service has the power to consider it.

The estate of Ms T is complaining about two events. Firstly, it complains about the sale of the mortgage which took place in 2014. And secondly, it complains about the action Aviva took during 2023 when it asked for the mortgage to be repaid in full.

The rules which set out the timescales within which a complaint must be made, in order for this service to be able to consider it, are set out in the Dispute Resolution (DISP) rules in the Financial Conduct Authority's handbook.

DISP 2.8.2R says that where a business doesn't agree, which Aviva hasn't, I can't look at a complaint that's made more than six years after the event complained about. Or if later, more than three years after the complainant was aware, or ought reasonably to have been aware, of a cause for complaint. Unless the complaint was made to the business before this, and the complainant received a written acknowledgement, or there's some other record of the complaint having been received.

We can however consider complaints that have been brought to us outside the above time limits if we're satisfied the delay was a result of exceptional circumstances.

The estate of Ms T's complaints about the sale of this mortgage are largely that the mortgage was not suitable for Ms T when she took it out. That includes the complaint that the interest rate was much higher than the rate on her previous mortgage, and that Ms T should not have been recommended this mortgage when she was elderly and vulnerable. I'm satisfied that any complaint about the sale of the mortgage and the suitability of the advice given is the responsibility of the broker that sold this mortgage to Ms T, and not Aviva.

I appreciate Mr T disagrees, and thinks Aviva should be held responsible for the broker's actions. But I'm afraid that's not the case. The broker was not acting on behalf of Aviva at the time it gave its advice, and it was a different firm completely. Our service has no basis to hold Aviva responsible for the actions of the broker at the time.

Mr T has also indicated that Aviva should not have lent to Ms T in 2014, as the interest rate it agreed to lend this mortgage at has eroded the equity in the mortgaged property. As Aviva lent the mortgage, I'm satisfied it is responsible for dealing with this part of the complaint, but I'm also satisfied this part of the complaint has been made outside the time limits I've referred to above.

Aviva's decision to lend to Ms T was made in 2014, more than six years before this complaint was made in 2023. As such, I've thought about when Ms T (or her estate) became aware, or ought reasonably to have become aware, of her cause to complain to decide if we can consider this part of the complaint.

I've seen the paperwork that was issued to Ms T at the time the mortgage was agreed in 2014. I'm satisfied the mortgage offer made clear that the interest rate charged on the mortgage would be fixed at 7.54% for the duration. It also contained a breakdown of what that would mean for the amount owed under the mortgage each year up to a term of 15 years. It gave cash projections for each year. For example, it said in 10 years the amount owed would be £2,689,327.38. I think Aviva made clear to Ms T the financial implications of taking out this mortgage, and the impact it would have on the property's equity at the time she agreed to it. So if she was concerned about the cost of the mortgage, and its implications, I think she ought reasonably to have been aware of that at the time. As that was more than three years before this complaint was made, the complaint has been made outside the time limits I must apply.

Mr T has said Ms T was elderly and vulnerable. I appreciate this may have impacted her ability to complain. But I note that Mr T was also involved in the sales process of this mortgage and made a complaint in 2014 about the delays in the funds being made available on Ms T's behalf. So I'm satisfied that if Ms T was unable to make this complaint herself within the relevant time limits, Mr T could have done so on her behalf as he did with the other complaint.

I've not been made aware of any other exceptional circumstances which have resulted in this complaint being made outside the time limits. As such, I'm satisfied our service has no power to consider it.

Mr T (on behalf of the estate) is also complaining about the action Aviva has since taken to recover the outstanding mortgage debt. As this part of the complaint has been made within the six year time limit, I'm satisfied we can consider it. I will now determine the merits of that part of the complaint.

#### Has Aviva acted fairly and reasonably?

When Ms T agreed to this mortgage, she did so on the basis that it would become repayable upon her death, or in the event she needed to move into long term care. The mortgage offer made clear that Aviva had the right to take action to repossess the property if the mortgage had not been repaid within 12 months of Ms T leaving her home because she had died or moved into long term care. Ms T died in July 2022, and by July 2023 the mortgage had not been repaid.

Whilst Aviva was contractually entitled to start legal action to repossess the property in August 2023, I also need to consider whether I think it was fair and reasonable for it to do so. Based on the circumstances, I think it was.

Mr T was discussing the situation with Aviva on behalf of the estate. It seems two potential options were discussed – selling the property, and Mr T raising his own finance to redeem the mortgage so he could continue living in the property with his son. But by August 2023 no clear plans had been agreed about a way forward. Aviva asked to see evidence of the progress Mr T had made in refinancing, but Mr T wasn't able to provide any. Aviva had also been made aware of delays being caused in probate being granted as a result of a family dispute.

The interest that was being charged on this mortgage daily was £480.37. Mr T had

expressed concerns about the lack of equity in the property and how quickly this was being eroded. Given that after a year, Aviva had not received any evidence that Mr T had made progress in his search for finance, and it was aware that probate had not been granted which would allow the house to be sold by the executors of Ms T's estate, I don't think it was in the interests of the estate to let the matter continue with no clear plan or timescale for repayment. As such, I don't think Aviva was acting unreasonably when it started legal action to take repossession of the property.

### **My final decision**

Considering everything, for the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms T to accept or reject my decision before 25 November 2024.

Kathryn Billings  
**Ombudsman**