

The complaint

Mr C and Mrs F complain that Aviva Life Services UK Limited mis-sold them a lifetime mortgage in 2003.

What happened

Mrs F's son, who holds power of attorney for Mrs F, is representing Mr C and Mrs F in this complaint.

In November 2003, Mr C and Mrs F met with an adviser from Aviva, then Norwich Union, to discuss releasing some money from their property that they estimated had a value of around £130,000.

A fact find document was completed and it was established that Mr C and Mrs F had a net joint disposable income of £108 a month, savings of £6,500 and they wanted to generate a lump sum of the maximum amount possible to complete some objectives over the next five years. The lump sum was required to repay their interest only mortgage of £20,000 early to reduce their outgoings, and to cover the cost of a new boiler, garage door, front door, a three-piece suite, carpets, full interior decoration, furnishings and at least two holidays a year. It also recorded they had an endowment policy with an estimated value of £20,000, but this wasn't due to mature until November 2006 – and this was included in Mr C and Mrs F's spending plans for the next five years.

In November 2003, the Aviva adviser provided Mr C and Mrs F with a letter setting out the recommendation being made and the reasons for doing so. The adviser recommended an index linked lifetime mortgage with a loan amount of £35,100, which was the maximum amount possible based on the estimated property value. I understand the loan amount was later increased to £39,150 because the property was valued at more than estimated. I can see Mr C and Mrs F signed the loan agreement on 15 December 2003 which enabled the loan to proceed. Shortly after, the lifetime mortgage completed with a variable interest rate of between 4.89% and 10.14% per annum compound.

In April 2024, Mrs F's son complained to Aviva on Mr C and Mrs F's behalf that the lifetime mortgage had been mis-sold to them for several reasons. A key concern was that it wasn't needed because Mr C owned a second, unencumbered, property which could have been sold or rented out to generate income. He also said Mr C and Mrs F were vulnerable and didn't understand what they were agreeing to at the time.

Aviva responded with two separate final response letters dated February and December 2024. It felt the recommendation for the lifetime mortgage was suitable for Mr C and Mrs F's circumstances at the time and it didn't uphold the complaint. In its response dated December 2024, it said Mr C and Mrs F didn't disclose the second property to the adviser or any outgoings in relation to it, so its adviser was only able to make a recommendation based on the information Mr C and Mrs F had provided.

Unhappy with Aviva's responses, the representative referred the complaint to our Service. Our Investigator considered the complaint, but he didn't think it should be upheld. In summary, he didn't think the lifetime mortgage had been mis-sold or that there was any evidence that Mr C and Mrs F were particularly vulnerable or lacked capacity to understand the implications of the contract.

The representative didn't agree. In summary, he said:

- The mortgage was sold to Mr C and Mrs F in their own home, during a time when they were vulnerable, and they agreed to it whilst under pressure.
- The adviser didn't complete due diligence correctly as there was a second property that should have been taken into consideration.
- Mr C and Mrs F didn't need the money, and it wasn't fully spent.
- It was a requirement that the family of Mr C and Mrs F should have been informed about the lifetime mortgage, but they weren't. And had they been, they would have provided Mr C and Mrs F with the funds.

As agreement wasn't reached, the complaint has been passed to me for 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.

The representative has provided detailed submissions, and I've read these carefully, but I don't intend to set it all out in my decision. No discourtesy is intended by that, it simply reflects the informal nature of the service we provide. Instead, my decision will concentrate on the issues I think are central to the outcome of the complaint. But I'd like to reassure him that I've carefully considered everything that's been said.

I've thought very carefully about what the representative has said about Mr C and Mrs F being vulnerable and that they'd felt pressured by Aviva to agree to the loan. However, initially, I would say that Mr C and Mrs F would have had to have asked Aviva to talk about releasing money from their home, as it's my understanding Aviva didn't cold-call for this type of mortgage. And it is apparent from the point-of-sale documentation that Mr C and Mrs F told the adviser what they wanted to release money for - which in my opinion, were all legitimate reasons for someone to take out a lifetime mortgage.

Importantly, Mr C and Mrs F were required to obtain independent legal advice specifically to check they understood what they were agreeing to, and I haven't seen any evidence which suggests their solicitor raised any concern about any vulnerability or their capacity to enter into the agreement at the time.

I've also considered the representative's view that Aviva should have told Mr C and Mrs F's family about their intention to take out the loan. However, there is no requirement for consumers considering taking out a lifetime mortgage to involve their family in the process. It is something that is recommended, but it would be inappropriate for an adviser or lender to insist that a customer disclose information about their finances to a third party or contact a third party directly themselves. Importantly, here, the representative didn't hold power of attorney for Mrs F until 2022. And in this case, records indicate Mr C and Mrs F told the adviser that they'd discussed the matter with their family and that they were happy for them to proceed. Whether this was true or not was not something that I would expect the adviser to question, as an adviser is entitled to assume their customers are being honest with them.

I've gone on to consider the suitability of the advice given to Mr C and Mrs F in 2003. A key concern about the suitability of the advice given to take out the lifetime mortgage is that Mr C had another property that could have been sold or rented out to generate funds for Mr C and Mrs F to achieve their objectives. I can't be certain about exactly what was discussed at the time of sale. However, I've reviewed the point-of-sale documentation from 2003, which was completed at the time of advice, so it should reflect what was said and agreed at that time. Having carefully reviewed these documents, I haven't seen anything that indicates Mr C and Mrs F told the adviser about the other property – so I'm not persuaded the adviser was made aware of it.

I'm satisfied from what has been documented that Mr C and Mrs F had ample opportunity to disclose the second property to the adviser had they intended to do so. And I haven't identified anything that I think should have alerted the adviser to the fact that there was another property. Importantly, the records indicate Mr C and Mrs F confirmed they lived together and I can't see that any outgoings for the second property were discussed with the adviser.

Further, the representative has told us that Mr C's son was living in the property at the time, so it's possible that this may have been a reason for Mr C and Mrs F not wanting to sell or rent the property out. Having taken this all into account, I'm unable to conclude the adviser acted incorrectly in the circumstances.

The representative has also said none of Mr C and Mrs F's family recall them needing such immediate home improvements, and that Mr C and Mrs F were of an age of "make do as needs be". However, the discussion recorded in the recommendation letter indicates Mr C and Mrs F wanted to release money from their home to "enjoy the remainder of our retirement." The recommendation letter says they wanted to make specific improvements to their home and go on at least two holidays a year. It is also documented that they wanted to reduce their outgoings, and by redeeming their interest only mortgage early, they were freeing up income to achieve their aims that would otherwise have been used towards the monthly repayments. It was ultimately up to Mr C and Mrs F to decide how they wanted to use any equity in their property. It's not uncommon for older borrowers who have a substantial property asset but limited savings or income to release equity to supplement their income or pay for an improved standard of living.

The records indicate alternative options to fulfil Mr C and Mrs F's requirements were discussed. This included remortgaging and short-term loans. However, other than the possibility of generating funds from the second property – which I'm not persuaded the adviser was made aware of - given their income and limited savings at the time, the lifetime mortgage was likely the only option they had to do what they wanted. As such, based on the information Mr C and Mrs F provided to the adviser at the time, it would appear that the lifetime mortgage was suitable for their needs and priorities in 2003.

I also consider the evidence we have shows that Aviva set out the key features of the lifetime mortgage – including the interest rate, how the balance would increase because of compound interest and the ERC – in a clear, fair and not misleading way. While the representative said that Mr C and Mrs F did not use all of the proceeds of the loan, it does not follow that the advice to take the mortgage was unfair or unreasonable. Aviva had no control over what Mr C and Mrs F did with the funds from the mortgage and it did provide a warning that the interest rate on a deposit account was likely to be less than the interest rate on the mortgage and therefore leaving money on deposit was likely to erode its value.

Overall, while I know that the representative won't agree, I am satisfied that Mr C and Mrs F understood and accepted the lifetime mortgage contract. Given that it provided for the needs and requirements Mr C and Mrs F had, I don't consider that it was mis-sold or inappropriate for them at that time.

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 C and Mrs F to accept or reject my decision before 4 June 2025.

Michelle Griffiths
Ombudsman