

The complaint

The executors of Mr G's estate have complained about a lifetime mortgage he had with Aviva Equity Release UK Limited. They believe the mortgage was mis-sold in 2002, as was a further advance in 2022, essentially due to the nature of the mortgage – that compound interest was added to the balance, very significantly increasing the debt. In addition, in relation to the 2022 further advance, they have said that Mr G didn't need the money as he had over £50,000 in his bank account when he died the following year.

What happened

In 2002 the late Mr and Mrs G took out their lifetime mortgage with Aviva. They borrowed £19,500 with a fixed interest rate of 7.79% per annum. Interest would be rolled up onto the mortgage debt, so Mr and Mrs G didn't need to make any payments to the mortgage. The mortgage was to be paid when the property was sold following the second death, or move to residential care, of the borrowers.

Sadly, Mrs G died in 2016, and the mortgage was changed into just Mr G's name.

In 2022 Mr G spoke to a firm of independent financial advisers as he wanted to borrow more money. He borrowed a further £30,175, which it was documented he wanted for some home improvements (£5,000) and to provide for future care costs (£25,000). The remainder was to cover fees.

Sadly, Mr G died in 2023. In May 2024 the executors of Mr G's estate contacted Aviva. They said that they considered the mortgage and further advance should not have been granted as it was a *"poor decision"*.

Aviva responded to the complaint on 13 September 2024. It set out the process for the 2002 sale and what the documentation from the time said. This included an illustration showing how the balance of the mortgage would increase over time. Aviva did not uphold the complaint about the sale of the mortgage. In relation to the further advance of 2022 it said that had been sold by an independent financial adviser (IFA), so the complaint about the suitability should be referred to that business.

The executors were not happy with Aviva's response and referred the complaint to this Service. One of our Investigators looked at the complaint, but he didn't think we could consider the concerns about the 2002 advice as the complaint had been raised too late. In regard to the 2022 sale, he confirmed that the IFA was responsible for whether the further borrowing was suitable for Mr G, not Aviva. The Investigator explained that in relation to that advance, Aviva's role was to assess whether the application fitted with its lending criteria and whether it had provided clear information. The Investigator was satisfied that Aviva did both these things.

The executors asked that the complaint be referred to an Ombudsman. They highlighted that the consequences of the fees being added to the loan was not clearly set out, and so the information Aviva had provided was not clear and could be considered misleading. The executors said they thought that the fees, and the compounded interest on them, should

have been set out as a separate item in the illustrations to highlight the impact adding them to the mortgage balance would have. The executors also said that there should have been a way to pay the fee after the loan had been advanced, so that it didn't increase extortionately. In addition, they said that they did not accept that it was right for a company of Aviva's status to accept custom from an 87 year old man who lived on his own. They said they considered the whole concept of equity release immoral, especially when the customer had circumstances like Mr G's.

The executors said that they believed that the further advance application should have been turned down by Aviva as Mr G had sufficient funds in his bank account to pay for the needs he gave as the reasons for the borrowing. It was confirmed that when Mr G died the year after the further advance was granted, he had over £50,000 in his bank account.

Furthermore, the executors highlighted two sections from the mortgage terms and conditions, that they believed combined indicated that the terms and conditions had not allowed Mr G to take the 2022 further advance, as he was not the elder of the borrowers:

'11. Further loans

...

11.3 To decide whether or not we will agree to make a further loan, we will apply the rules governing our Flexible Cash Reserve Plan at that time. These will cover such things as the type and value of properties we are willing to accept as security for our loans, and the minimum and maximum amounts we are willing to lend. This is not an exhaustive list and there may be additional factors which will influence our decision.

12. Removing a joint borrower

12.1 If there are two of you and you wish to transfer the property to only one of you, because the other no longer lives at the property. You must ask for our consent.

...

12.4 If the remaining Borrower is the elder, he or she may be entitled to apply for a further loan. Paragraph 11.3 of this agreement will apply.'

As agreement could not be reached, it was decided that the complaint should be referred to an Ombudsman.

I issued a decision on 16 June 2025 setting out our jurisdiction in relation to the matters that have been raised as part of this complaint. I concluded that we could only consider the part of the complaint relating to the lending decision in 2022 and the information Aviva provided at that time.

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.

I note that the executors have highlighted that any charges added to the mortgage are not documented separately when it comes to the amount they will add to the balance in the future. They consider this should be done in order to ensure the borrower is fully aware of

the impact of the fees. As such, they do not consider the information Mr G was given in 2022 was sufficiently clear and could have misled him.

I have considered this matter carefully, and I would firstly confirm that Mr G would have had the option to either pay the fee at the time of the application or have it added to the mortgage. The impact of adding the fee to the borrowing (that interest would be charged on it) would be something that would be discussed as part of the sale, which Aviva is not responsible for. However, in relation to the illustration Mr G was given, there was no requirement for any fees that were being added to the mortgage to be documented separately regarding the projections for what the balance would be in the future. I am satisfied that the illustration was clear and was produced in line with the regulator's requirements. I am also satisfied that the documentation clearly set out all the information that Aviva was required to provide, including an explanation of how the mortgage worked.

In relation to the lending decision, I have looked at the part of the terms and conditions that the executors have highlighted. Section 12 relates to the situation where both borrowers are still alive, but one is no longer living in the mortgaged property, and so they want their share of the property transferred to the other. As that was not Mr G's situation, this condition didn't apply in 2022 when he asked to borrow more money.

As the Investigator explained, in the situation where Aviva was not responsible for the advice that was given, all it had to do was ensure that the application met its lending criteria. I note that the executors have said that Aviva should not have accepted an application from a single person of Mr G's age in 2022. However, this type of mortgage is designed specifically for people who are in later life. It is also not unusual for funds to be borrowed to provide for adaptations to a property or support needed to enable a borrower to remain in their home as they age, so the purpose of the borrowing would not have caused concern. The application fulfilled Aviva's lending criteria and I can't find that it was wrong to have accepted it.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask the estate of Mr G to accept or reject my decision before 22 July 2025.

Derry Baxter
Ombudsman