

The complaint

This complaint's about an equity release lifetime mortgage that Mrs E took out in 2005 with Aviva Life Services UK Limited. The complaint is that the lifetime mortgage was mis-sold; Mrs E, who sadly now lacks capacity, is represented here by Mr E as her attorney.

What happened

In what follows, I have summarised events in rather less detail than has been presented, using my own words. No discourtesy's intended by that; it's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn and not be side-tracked by matters which in my view will have little or no impact on the broader outcome.

Mrs E took the mortgage out in 2005; it was for £34,000 and replaced an existing mortgage, which had a balance of around £14,200.

The terms of the mortgage provide that no monthly repayments are required. The intention is that the mortgage is due to be repaid if the borrower goes into full-time nursing care or after their death. It can be repaid voluntarily before either of those events have happened, but then an early repayment charge (ERC) is payable.

Interest on the loan is rolled up into the outstanding balance and is compounded until the debt is repaid. All of this means that if the loan runs for a number of years, there can be a significant balance to be repaid.

Our investigator didn't recommend the complaint be upheld; Mr E asked for the case to be referred to an ombudsman for review.

What I've decided – and why

I'll make some general observations before dealing with the specifics of the complaint. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts. We're impartial, and we don't take either side's instructions on how we investigate a complaint, or when we have enough information on file to decide it.

Under our rules, we can consider a complaint from a consumer. Mrs E is a consumer, so she meets the definition of an "eligible complainant" set out in our rules. Our rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant or authorised by law. In this respect, Mr E is bringing the complaint on behalf of Mrs E, in his capacity as her attorney.

But I must explain that, although Mr E represents Mrs E, the complainant here remains Mrs E. Mr E brings the complaint on Mrs E's behalf in the same way that other consumers might instruct a solicitor or accountant to represent them in a complaint. But this does not entitle Mr E to consider it his complaint or to air his own grievances about Aviva, because he is not its customer. This is Mrs E's complaint, and Mr E's role is limited to putting it forward for Mrs E.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

If the available evidence is incomplete and/or contradictory, we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

The starting point here is the point-of-sale documentation from 2005. The value of such documents is that they're contemporaneous; so they should reflect what was said and agreed at the relevant time. They're not fool-proof, of course; it's always possible information might be recorded incorrectly. But unless there's a compelling reason to believe the information is inaccurate, we'll generally attach some weight to it.

Here, that complication is compounded by the fact that Mrs E now lacks capacity, and what I'm being asked to consider is, in effect, Mr E's description of perceived defects (of which there are many) in the sales process. Mr E's description of Mrs E's situation, and her understanding of it, in 2005 is rather different from what the contemporaneous evidence from 2005 would suggest. That's not unusual in itself but it inevitably must diminish the weight I can attach to Mr E's evidence. Overall, I'm satisfied I should, attach greater weight to the point-of-sale documentation from 2005.

In the absence of direct complaint testimony from Mrs E, in this decision I have looked at the sale of the mortgage (in terms of what was regarded as good industry practice at the relevant time) and considered generally whether Aviva did anything wrong when the mortgage was taken out. In doing that, I can give no regard to any changes in circumstance that the intervening years might have brought.

The information-gathering exercise identified specific financial objectives; these were:

- clearance of the existing mortgage;
- increasing savings; and
- the setting aside of funds to boost income over the next five years.

At this point, Mrs E wasn't working, having taken early retirement, but was intending to return to work part-time in the foreseeable future. The records also noted Mrs E's preference at the time to enjoy the use of her money now, whilst she could still enjoy it, rather than risk being forced to put it towards funding care later.

To achieve these objectives, it was noted that Mrs E was prepared to risk the equity in her home reducing to zero, notwithstanding that future house prices rises would in all probability make this unlikely.

Mr E has told us that Mrs E's family knew nothing about the mortgage until recently; that may well be true (albeit I see that the suitability letter notes that Mrs E had discussed her plans with the potential beneficiaries of her estate). But even if Mrs E didn't tell her family what she was planning on doing, there's nothing unusual or sinister in that. Many elderly people prefer to keep their personal and financial arrangements private.

Mrs E would have needed some form of borrowing if she was to be able to realise her stated objectives. So I've next considered whether something other than a lifetime mortgage would have been a better option. Given the overall financial circumstances that prevailed at the time, it's unlikely that Mrs E would have been accepted for a traditional mortgage, always assuming she wanted to continue making regular monthly payments.

The point-of-sale documentation shows that Aviva's advisor covered this off with Mrs E, who indicated that she didn't want to continue making regular payments. He also ruled out a home reversion plan as she didn't wish to give up ownership of her home.

All of that indicates to me that, contrary to what Mr E now says, Aviva's advisor did assess Mrs E's situation quite thoroughly, and in some detail, before making his recommendation. It also persuades me that an equity release mortgage was probably the most, indeed perhaps the only, viable option for Mrs E in 2005 given the circumstances recorded at the time.

It's normal for interest to roll up on a lifetime equity release mortgage, and then to attract further interest on a compounding basis. The effect of this is demonstrated in monetary terms in the point-of-sale material. I've seen the mortgage offer Aviva issued to Mrs E; the illustration of future growth in the mortgage balance used an assumption that the mortgage would last for 29 years, but it includes a narrative pointing out this assumption and reminding the reader of the lifetime nature of the mortgage.

Looking again at Mrs E's situation as recorded at the time and taking into account the reasons why Aviva recommended the particular lifetime mortgage it did, I'm not convinced Mrs E would or could have done anything different from what she did. It was in all likelihood her only option if she wished to achieve the financial objectives recorded at the time.

Whether the plans for the money being raised came to fruition after the mortgage was arranged doesn't affect the suitability or otherwise of the advice given at the time. It's possible that after the mortgage had gone through, Mrs E subsequently changed her mind about what she'd do with the money, but Aviva's duty was to give suitable advice, which I'm satisfied it did. Aviva wasn't obliged to monitor its customer's behaviour after the sale to ensure she did what she'd said she was going to do. For completeness, it's my understanding that the savings account set up to hold the set aside funds was eventually closed in 2012.

Lastly, before she took out the mortgage in 2005 Mrs E was required to have independent legal advice from a solicitor. The solicitor confirmed that she'd explained the terms of the mortgage to Mrs E.

The significance of this should not be underestimated; by completing the certificate, the solicitor, who was instructed by Mrs E entirely independently from Aviva, certified that she'd expressly drawn Mrs E's attention to the following, which I've paraphrased slightly:

- Mrs E might wish to discuss the transaction with her beneficiaries due to its effect on her estate proceeds on death.
- The amount of Income Support and Council Tax Benefits to which Mrs E might be entitled either now or in future, could be reduced as a result of proceeding with the lifetime mortgage.
- Mrs E had agreed to proceed with the lifetime mortgage as being suitable for her requirements, based on advice provided by Aviva.
- The standard security provided Mrs E with security of tenure for the duration of her lifetime (subject to her complying with the conditions contained or referred to therein. and

- After Mrs E dies, interest will continue to be charged until the lifetime mortgage is repaid.

I think that if the solicitor had had any concerns that Mrs E didn't understand (or indeed, wasn't capable of understanding) the nature and effect of what she was signing, she wouldn't have allowed Mrs E to proceed with it.

My final decision

I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 6 October 2025.

Jeff Parrington

Ombudsman