

The complaint

The estate of Mrs H complains that Aviva Life & Pensions Limited mis-sold her an equity release mortgage on the basis that she was able to take further drawdowns she didn't need and affected her ability to apply for support for homecare in later life.

What happened

Mrs H took an equity release mortgage with Aviva in 2010. This was arranged on the advice of an independent mortgage broker. The equity release mortgage included a reserve that Mrs H could drawdown further funds from.

Sadly, Mrs H passed away in December 2024. In early 2025, the estate of Mrs H complained about the drawdowns taken from the mortgage in 2018 and 2019. Aviva didn't uphold the complaint, so the estate of Mrs H asked our Service to consider the complaint.

One of our Investigators looked into things. She thought the complaint about the drawdown taken in 2018 hadn't been referred to us in time for us to consider it under our rules. And she didn't think the complaint about the drawdown in 2019 should be upheld. The estate of Mrs H didn't accept this. So, the complaint has been passed to me to make a final 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.

We aren't free to deal with every complaint we receive. Our rules are known as the DISP rules and are maintained by the Financial Conduct Authority (FCA) and are published in the FCA's Handbook.

Insofar as is relevant in this complaint, DISP 2.8.2 R says that unless the business involved gives its consent (which Aviva hasn't here), we can't consider a complaint if it's referred to us:

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint

The first of the advances the estate of Mrs H has complained about was taken in 2018. The estate didn't complain until 2025, which means it's been referred to us too late under the first part of this rule.

I've thought about the second part of this rule and whether it gives the estate more time to bring the complaint. The reason for the complaint is that Mrs H didn't need or use the funds. But I think she ought reasonably to have known at the time of taking the funds, or soon after, that she may not have needed it. As this was more than three years ago, it's been referred to

us too late under the second part of this rule.

I accept that the estate of Mrs H may not have been aware of the advances earlier than it brought the complaint. But Mrs H was aware of them. The estate is only acting for Mrs H now that she's passed away, and I need to consider whether Mrs H could've brought the complaint sooner. And as I've said, I'm satisfied she could've.

I can set aside these time limits if the reason for the delay in complaining was as a result of exceptional circumstances. However, the bar for this is high, such as being incapacitated. Given that Mrs H was able to request further funds be drawn down the following year, I'm satisfied she would've been able to bring a complaint had she wished to. So, I can't say that exceptional circumstances were the reason that Mrs H or her estate weren't able to bring the complaint in time.

I can consider the complaint about the advance taken in 2019. But, like our Investigator, I don't think this complaint should be upheld.

The initial equity release mortgage was arranged for Mrs H by an independent mortgage broker who didn't work for or on behalf of Aviva. And it's the broker who is responsible for this advice. The broker's advice meant that Mrs H could draw further funds, to a pre agreed limit, at any time in the future.

I've listened to the call Mrs H made when she requested further funds in 2019. The reasons for the funds were plausible, that she wanted to have work carried out to repair her house, and she went into detail about the work that needed doing. There was no sign of any undue influence on Mrs H when requesting these funds. I'm satisfied the questions Aviva asked were reasonable, and that Mrs H would've given Aviva no cause for concern or reason not to release the funds as requested.

I accept the estate's point that Mrs H may not have required or used the funds, but it was her choice to drawdown the funds as she was allowed to because of the initial advice by the broker. In order to take this type of mortgage, both financial and legal advice is required. Both were provided to Mrs H, but neither by Aviva. Ultimately, the ability to take these drawdowns was because the broker advised Mrs H to take this type of mortgage where they were possible. She utilised that in line with the mortgage agreement as she was entitled to.

As the broker is a separate company from Aviva, I cannot consider any of its actions within this decision.

My final decision

Whilst I recognise the estate of Mrs H feels very strongly about this matter, for the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs H to accept or reject my decision before 17 December 2025.

Rob Deadman
Ombudsman