

The complaint

Mrs J, acting on behalf of her father Mr H via a power of attorney, complains about actions taken by Aviva Equity Release UK Limited in respect of Mr H's lifetime mortgage since he entered long term care.

What happened

Mr H has a lifetime mortgage with Aviva. The loan was originally taken out in 2004 by Mr H and his late wife, and was re-financed in 2008. It's secured over Mr H's property.

Sadly Mr H has experienced declining health. He has appointed his daughter Mrs J to act for him via a power of attorney. And in early 2023 it was necessary for Mr H to leave the property and move permanently into long-term care. Under the terms and conditions, that meant the mortgage fell due for repayment.

Mrs J got in touch with Aviva to discuss the mortgage. There were problems with that contact and Mrs J brought a complaint to the Financial Ombudsman Service later in 2023. The complaint was considered by one of our investigators, who said, in summary:

- Mrs J had complained of difficulties dealing with Aviva when she got in touch to discuss the possibility of repaying Mr H's mortgage. She also complained about delays in resolving the position, and that Mr H's mortgage was continuing to attract interest in the meantime.
- The account had operated, and interest had been charged, in line with the terms and conditions throughout the period leading up to 2023. The interest rate charged was that set out in the loan agreement and was not unfair.
- Once Mr H moved permanently into care, the mortgage became repayable. In those circumstances, no early repayment charge (ERC) would be payable. But that required Aviva to have information about Mr H's circumstances and medical condition, so it could check whether the contractual requirements for needing long term care and waiving the ERC were met.
- Aviva's requests for information were therefore necessary. But the process had taken longer, and been made more difficult, than it needed to be – some of that was due to how Mrs J had handled it, but some of that was due to how Aviva had handled it too.
- Mrs J had initially explored repaying the mortgage herself. But that hadn't been possible. Aviva had now agreed to assist with the sale of the property. For that to happen it would need confirmation from Mrs J and Mr H that they wanted to go down that road.
- To recognise Aviva's part in what had happened, it should remove interest charged to the mortgage balance between January and May 2023. It should refund Mr H's home insurance costs between March and June 2023. And it should pay Mr H £200 compensation.

- Aviva had separately offered compensation of £500 to Mrs J, as well as a contribution to her expenses. The investigator noted this offer, but because Mrs J was not the complainant she could not make an award to Mrs J or comment on whether Aviva's offer was fair.

Aviva accepted the investigator's recommendation. Mrs J said she would only accept it if assured that there would be some equity in the property left after the sale. The investigator said it wasn't possible to give that assurance. It would depend on how much the property sold for, and what the mortgage balance was at the time. But there was a "no negative equity" guarantee in place, so Mr H would not owe Aviva more than the value of the property even if the sale price wasn't enough to cover the full balance.

Mrs J wasn't happy with that and withdrew the complaint. It did not proceed to an ombudsman's decision and the investigator closed the file.

Aviva said that even though no final decision had been made and Mrs J had withdrawn the complaint, it would still be willing to implement the redress the investigator had recommended. It also said interest would continue to accrue until the property was sold, subject to the "no negative equity" guarantee. It also said that it couldn't let things continue indefinitely, so if the property wasn't sold or the mortgage repaid, it would have to start the process of taking legal action.

Mrs J has now brought a further complaint on her father's behalf. In summary, she's complained:

- That Aviva took several months to progress things when first contacted in January 2023, leading to additional interest being added to the balance.
- At that time the property was valued at £180,000 and the mortgage balance was £171,000, so Mr H still had some equity.
- Due to Aviva's delays, the balance had increased and the property was now in negative equity.
- Aviva was now refusing to deal with Mrs J even though she held power of attorney.

Aviva said it was trying to engage with Mrs J to reach an amicable resolution, but rather than engaging about the sale of the property she was focussed on making complaints which have already been addressed. It said that it understood from Mrs J that Mr H no longer had capacity to make his own decisions, but that Aviva would need to have a formal capacity assessment carried out – not least because the question of capacity would impact on how it took any legal proceedings to repossess the property. Aviva had not yet taken any legal action at the time this complaint was first made (though it has now done so; the property was repossessed in October 2025). But Mrs J had brought a claim against it in the County Court for her own expenses.

Aviva said that overall it was trying to work with Mrs J to bring matters to an end, but that the mortgage still needed to be repaid. It said that it had instructed solicitors. It accepted that its solicitors had delayed in responding to correspondence from Mrs J between August and September 2024, and that between November 2024 and January 2025 the solicitors had delayed progressing the issue of a capacity assessment for Mr H. It therefore offered to remove interest added to the mortgage balance during those periods. It also offered to pay Mr H £150 compensation.

Mrs J didn't accept Aviva's offer. She said that Aviva had originally said it would take possession of the property, but then insisted on a capacity assessment first, causing further delay. She said that she and Mr H wanted a family member to take over the property and benefit from any equity, but Aviva had never said that was possible. She said that Aviva had required her to act as a Litigation Friend in legal action it would take. And she said it was still refusing to engage with her about various matters she'd raised.

Our investigator said we wouldn't look again at anything that had been considered in the previous complaint that Mrs J had withdrawn. He said that the further delays in moving things on since then had been because Aviva needed to establish whether Mr H had capacity to be named in litigation to repossess the property before it could go to court. And for the same reasons it couldn't accept a voluntary surrender without determining capacity. He said that was reasonable, and because no agreement could be reached Aviva had had to ask the court to authorise a capacity assessment. An assessment was carried out in April 2025, which found that Mr H did indeed no longer have capacity.

The investigator said that this was a reasonable course of action. He said there had been delays because the relationship between Aviva and Mrs J had broken down. He said that had been clear for some time, and so Aviva could reasonably have started the process of asking the court for an assessment in September 2024, not January 2025. He therefore said that Aviva should remove all interest charged between September 2024 and January 2025, not just the shorter periods it had identified. He said its offer of £150 compensation was fair.

Aviva said it didn't agree with all the investigator's findings. However, its primary concern was to bring matters to a close quickly, which it felt would be in everyone's best interests. It therefore said it would agree to the redress he had suggested.

Mrs J didn't accept the investigator's view and asked for an ombudsman to decide the complaint. She said that any legal costs incurred by Aviva's solicitors because of the delay should also not be added to the mortgage. She said that the long delays in resolving things meant that the property had deteriorated and lost value, and Mr H should be compensated for that. She said the impact on Mr H and the emotional distress he had experienced was not fairly compensated for by £150. And she said that there was no need for legal proceedings around the question of capacity in any case. There was a valid power of attorney in place so Aviva should just have dealt with her. Requiring an independent expert assessment caused further delay and cost. And the court proceedings to obtain an assessment were unnecessary. Aviva had also dismissed other options, such as the property being taken over by a family member but not communicated that. It had refused to engage with her and tried to block her bringing the complaint back to us. Aviva had sent court orders to Mr H rather than to Mrs J despite the power of attorney. And it had tried to call Mr H in his care home. It had caused long delays and refused to engage with Mrs J despite her always acting in Mr H's best interests and trying to bring a resolution to the situation.

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.

It's clear this matter has been going on for some time. This is the second complaint Mrs J has brought to the Financial Ombudsman Service – having withdrawn the first one because she didn't agree with the redress that investigator recommended. I've taken into account everything that happened on that complaint as well as this one. But I agree with the current investigator that it's not appropriate for us to revisit our findings on that case or the outcome the investigator reached. I don't agree that the previous investigator said that the complaint could be re-opened or re-visited at a later stage. And it's not the case that the redress award

now needs to be changed. Where additional interest is charged because of a lender's delays, the correct outcome is to remove that interest from the mortgage balance, as the previous investigator said. I appreciate Mrs J didn't – and doesn't – agree with that. But she had the opportunity of having that complaint reviewed by an ombudsman at the time, and instead she chose to withdraw it. I'm not going to revisit the outcome of that complaint here.

The root of this issue is that Mr H moved into long term care, as a result of which his mortgage needed to be repaid. The previous investigator found that there was delay on Aviva's part in responding to Mrs J about that in 2023. That's why she said that interest charged during the period of delay should be removed from the balance.

Nevertheless, the mortgage did need to be repaid. It's a term of the contract that it must be repaid either on the death of the last surviving borrower, or when they can no longer live in the property and need to move into long term care.

But repaying the mortgage is the only requirement. Mr H or his family could have sold the property themselves. Or the mortgage could have been repaid in other ways – for example by Mrs J or another family member raising the funds needed to repay. It wasn't necessary for Aviva to sell the property itself. I'm not persuaded that Aviva misled Mrs J about that.

Mrs J says that the mortgage could have been transferred to her daughter to take over instead, and that Aviva failed to mention that option. But I'm afraid she's not correct about that. There is provision in the terms and conditions for an additional borrower to be added – this is most often used when, for example, the borrower re-marries and their new partner moves into the property. But the mortgage can't just be transferred to an entirely separate person. Mrs J's daughter isn't in any case eligible to take a lifetime mortgage with Aviva because she is under the minimum age of 55. Mrs J or her daughter could have bought the property from Mr H and repaid the mortgage that way. But they couldn't have simply taken the mortgage over.

By the time of the previous complaint, the property hadn't been placed on the market for sale. Aviva said it would be willing to carry out an assisted sale – meaning it would take over the marketing and sale of the property. However, this didn't happen either. That's because there was a disagreement about the process for Aviva being authorised to take over the property and sell it.

Mrs J has power of attorney for Mr H. The specific power of attorney she has came into force immediately it was put in place, rather than only coming into force on any loss of capacity on Mr H's part.

If Mr H had lost capacity, then he couldn't consent to his property being taken over and sold by Aviva. In that situation, Aviva could accept authorisation from his attorney, because Mr H would not be in a position to make a decision for himself and only the attorney could act for him. The attorney would have an obligation to act in Mr H's best interests and Mr H would not be in a position to disagree with any decision the attorney might make.

But if Mr H had not lost capacity, then Mrs J could still, under the terms of this grant, act as his attorney. But he could also make decisions on his own behalf. In that situation, Aviva would need agreement from Mr H direct before agreeing to take over and sell the property, because otherwise it couldn't be sure that it was his own decision or that he agreed with his attorney's decision.

The difficulty here is that it wasn't clear whether or not Mr H did retain capacity. The law says that unless there is evidence to the contrary, it must be presumed that a person does have capacity. At different times – while making clear that she was not medically qualified to say

so either way – Mrs J has suggested that he does have capacity, and that he does not.

In those circumstances, I think it was reasonable that Aviva couldn't go ahead with a voluntary surrender of the property unless either a) there was definitive evidence that Mr H had lost capacity, in which case it could accept his attorney's decision on his behalf; or b) Mr H himself consented. But Aviva was concerned that it might not be possible for Mr H to consent if, as Mrs J had suggested, he did lack capacity. The law says that capacity is to be presumed unless there is evidence to the contrary. But here there was evidence to the contrary in some of what Mrs J had said. At other times she said that he did retain capacity – which meant Aviva would need to get authorisation from him.

Aviva therefore tried to contact Mr H directly. Mrs J objected to that. Aviva asked Mrs J to obtain evidence from Mr H's GP in the form of a capacity certificate or capacity assessment. But the GP said it couldn't do that. This meant that Aviva didn't have a clear way forward – it couldn't contact Mr H direct, and it couldn't dispense with the need to do so without evidence he no longer had capacity.

In the meantime, the mortgage remained outstanding. The property had been unoccupied for some time. It wasn't on the market for sale. And the balance was increasing. Aviva therefore decided to begin possession proceedings. This would mean, if its application was granted, that the court would give it possession of the property – and it wouldn't then need Mr H's consent to market and sell it.

However, taking court action presented the same difficulties. If Mr H lacked capacity, he couldn't be party to court proceedings. The court would have to appoint a Litigation Friend to act for him. Whereas if he retained capacity, he would have to be party to the proceedings himself (albeit that he could be supported by Mrs J, or be legally represented). And there remained reasonable doubt, based on what Mrs J had told Aviva, about whether he had capacity or not.

Given that it wasn't possible to obtain a capacity assessment from Mr H's GP, that meant there would need to be an independent capacity assessment – an independent expert would need to meet with Mr H and assess whether he did or didn't have the capacity to be named in court proceedings.

Aviva, via its solicitors, therefore asked Mrs J to try and arrange for a capacity assessment – so that it could know whether to take possession proceedings in Mr H's name, or whether it would have to ask the court to appoint a Litigation Friend.

Mrs J said she couldn't arrange an assessment. And she said Aviva should pay for it, and that Aviva should do it. But Aviva couldn't simply ask someone to visit Mr H and assess his capacity. If it was to do the capacity assessment, it would need permission from the court first.

I agree with the investigator that there was some delay here. By September 2024 it was clear that Mrs J wouldn't be providing a capacity assessment. Aviva could therefore have moved things forward then – rather than waiting until January. I agree that, in the circumstances, interest added to the mortgage balance in this period should be removed from the balance. I don't think that amount should be paid direct to Mr H. The consequence of the delay is that the mortgage would remain outstanding for longer, and that amount of interest would be added to the balance. Mr H had not made any actual payments to be refunded. If too much interest is added to the balance because of delay, then the correct remedy is to remove it again. This puts the mortgage balance back in the position it would have been in without the delay.

Once the court authorised a capacity assessment, one was carried out. It found that Mr H lacked capacity to be a party to litigation. Mrs J agreed to act as Litigation Friend, and Aviva issued possession proceedings. The property was finally repossessed in October 2025.

Other than the period I've identified above, I don't think Aviva caused unreasonable delay during the period covered by this complaint. It was reasonable for it to make sure the proper legal requirements for either the property being handed over, or it being repossessed through the courts, had been complied with. Throughout this period, there was nothing to stop Mrs J or her wider family finding an alternative solution, such as selling the property on the open market themselves or raising the funds to repay the mortgage and then transferring the property within the family.

I'm also not persuaded that Aviva's actions mean that Mr H no longer has any equity in the property. Mrs J says that when he first moved into care in early 2023 the property was valued at £180,000 and the mortgage balance was £171,000. But the figure of £180,000 does not come from a formal valuation, it comes from an estate agent's appraisal. It was an estimate for marketing purposes. There was no surveyor's valuation, and the property was not actually put on the market and sold. An estate agent's appraisal often gives a starting point for marketing rather than a formal valuation. It doesn't follow that if the property had been placed on the market at that level it would necessarily have sold for £180,000 at that time.

And even if it had been sold for £180,000, property sales usually take a few months, during which time the balance would have increased due to interest charges. Costs of sale, such as estate agent's and legal fees, would also have been deducted. I don't think there is any reliable evidence that the property actually was worth more than the mortgage balance even in early 2023, or that there would have been any equity left over if it had been marketed for sale at this time.

The mortgage has a "no negative equity" guarantee. That means that whatever amount it sells for, however much less than the mortgage balance that ends up being, Aviva will not recover the difference from Mr H or his family. As I've said, I'm not persuaded that there is good evidence that there was any realisable equity in the property at the point at which Mr H left it. And if it has declined in value since through being unoccupied, that therefore has not caused Mr H a loss. All it has done is increase the shortfall on the mortgage balance following sale which Aviva will have to absorb.

I do appreciate that this has been a difficult time for Mrs J. However, as we've explained before I can't award any compensation to her because this is not her complaint – it's Mr H's. I've taken into account what she's said about the impact of all this on him. However, I also have to bear in mind the outcome of the capacity assessment. And I also have to bear in mind that much of the worry she's described him as having experienced comes from the nature of the mortgage itself (which isn't part of this complaint) and a belief that he might be held liable for any shortfall (which, as I've said, he won't be – and has been made clear by Aviva all along). I'm afraid I'm also not persuaded that all of the time this process has taken, and the difficulties it has caused, can be laid at Aviva's door. In the circumstances I agree its offer of compensation of £150 is fair.

My final decision

My final decision is that Aviva Equity Release UK Ltd should:

- Re-work the mortgage balance to remove interest added between 19 September 2024 and 17 January 2025, together with compound interest on that interest added since; and

- Pay Mr H £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J on behalf of Mr H to accept or reject my decision before 5 January 2026.

Simon Pugh
Ombudsman