

complaint

Mrs W through her relative Mr C complains that Aviva Life Services UK Limited mis-sold an equity release policy to her and her late husband. They want a reduction of the amount due to Aviva and compensation.

background

Mr and Mrs W owned their home. They borrowed money from Aviva to be secured over their home. The money was lent on the basis that it would be paid, together with interest, when the house was sold. No payments needed to be made in the meantime but the amount to be paid in the future grew over time. Mr W passed on, and Mrs W stayed in her home. Her children said that the policy was mis-sold and their father wouldn't have wanted their inheritance to have been lost. They said the amount lent bore little relation to what had to be paid at the end and took the equity available. Mr C also said that the family members should've been consulted; they knew about the loan but not the consequences.

Mrs W's children complained to Aviva, who said Mr and Mrs W had been fully advised by it and their solicitors about the policy. Mr C complained to us. The adjudicator's view was that the policy hadn't been mis-sold and Mr and Mrs W's family members didn't need to consent to the loan.

Mr C disagreed. He said the family should've been consulted and the loan was mis-sold, particularly as Mr W didn't spend all the money immediately.

my findings

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

I appreciate Mrs W and her family feel the policy was mis-sold, but I disagree. Mr and Mrs W received legal advice about the policy and advised both in person twice and in writing repeatedly by Aviva in detail about the policy. It's clear after receiving advice about the policy, Mr and Mrs W decided to increase the amount they would borrow, knowing the effect on the equity left in their home. I think Mr and Mrs W fully understood the agreement – they even completed a form saying Aviva's advice had been helpful.

And while it's advisable to discuss the loan with family members, it isn't required and in any event family members are never guaranteed to inherit someone's home. Wills can be changed and debts can mean nothing is left after a person's death. I'm told the family did broadly know about the loan, but not the details – but that is a matter for the family to have discussed with Mr and Mrs W, not Aviva. Aviva didn't owe the family a duty of care and couldn't breach Mr and Mrs W's confidentiality without their consent.

I considered whether the policy itself was suitable for Mr and Mrs W. Having looked at the evidence, I think it was – the alternatives were discussed, but Mr and Mrs W weren't in employment and didn't want to move. Mr and Mrs W accepted their equity would be reduced. It was explained by both Aviva and their solicitors how the policy would be repaid, and that the equity in Mr and Mrs W's home would be significantly reduced. It was clear no payments would be made while Mr and Mrs W lived in their home, which increased the costs considerably, but also meant Mr and Mrs W could use some of the equity available as they wished. I can't say the adviser should've told Mr and Mrs W not to go ahead in the circumstances.

Mr C says the policy is too expensive given how much was lent. But interest isn't being paid and won't be paid until Mrs W's home is sold; if there is a shortfall between how much is owed and the value of the property, Aviva can't get that back; Aviva can't force the sale of the property; and the interest rate isn't so high that it's unfair or unreasonable in the circumstances. There's no evidence Mr and Mrs W could've borrowed the money from another lender at a lower rate, or indeed borrowed the money at all. It was also Mr and Mrs W's choice when to spend the money.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 15 February 2016.

Claire Sharp
ombudsman