

The complaint

Mrs J complains to Aviva Life & Pensions UK Limited ("Aviva") about the sale of a lifetime mortgage in 2005.

The mortgage was taken out in joint names but when Mrs J's husband ("Mr J") died it transferred automatically to Mrs J's sole name. The complaint has been brought on Mrs J's behalf by a member of her family who I will refer to as "Mr J1".

What happened

Mr and Mrs J got an index linked lifetime mortgage in 2005. They borrowed £48,400. The lender was Norwich Union Equity Release Limited. The mortgage was recommended by a representative of Aviva.

Mr J1 says the mortgage was mis-sold. He says Mr J wanted an equity release mortgage, not a lifetime mortgage. Mr J1 accepts that both Mr and Mrs J signed the mortgage documentation in 2005. However, he says Mr J was in charge of the couple's financial affairs, so Mrs J didn't really understand or consent to the mortgage. He says Mrs J thought she was entering into an equity release scheme where she was giving up 25% of the value of their property (then around £55,000) in exchange for approximately £40,000 upfront. He thinks Aviva should ensure that's what she has.

Aviva said it hadn't done anything wrong.

Our investigator looked into the matter. He didn't think Aviva had done anything wrong either. Mrs J remained unhappy. Mr J1 asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

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.

Having done so I don't think this complaint should be upheld either. I'll explain why.

Mr J1 has told us that Mr J wanted an equity release mortgage, and that Mr J put the mortgage documentation in a folder marked "equity release". So he thinks that Mr J (if he hadn't passed away) would have been very surprised to realise that he'd been sold a lifetime mortgage in 2005.

I understand Mr J1's concerns. However, I think it's worth me making two points at this stage. Firstly, the mortgage documentation Mr and Mrs J both signed referred to them taking out a lifetime mortgage. Secondly, a lifetime mortgage is a type of equity release mortgage. So I can see why Mr J1 says Mr J put the documentation in a folder labelled "equity release".

A lifetime mortgage is a type of mortgage on which no regular repayments are made, and interest rolls up over the years. As a result, the amount the debt has increased by can sometimes come as a shock to family members as it appears to have done in this case. But

that doesn't mean the consumers that took out the mortgage – Mr and Mrs J – didn't understand the consequences of the interest roll up and weren't happy to agree to it at the time.

I've considered what Aviva has told us about what happened around the time of the sale and the relevant documentation. Aviva has provided a draft letter that sets out what was discussed between the Aviva adviser and Mr and Mrs J in 2005. It says that Mr and Mrs J wanted to pay off existing mortgages, credit cards and overdrafts, and provide for holidays and other outgoings. They didn't have savings, wanted to stay in their home, and didn't have the income to enter into a conventional mortgage. I can see that a number of different options were discussed at this time.

Aviva's notes show that Mr and Mrs J wanted to release a greater sum than they eventually borrowed from their property – and accepted the potential risk of faster erosion of the equity within the property due to fluctuating interest rates. Mr and Mrs J discussed borrowing various amounts.

So while I can't be certain exactly what was said around the time of the sale, I think the documentation I've referred to above sets out a clear picture of the conversations that took place in 2005, and why Mr and Mrs J went for the product they did. I've also considered the mortgage illustration that was provided to Mr and Mrs J before they entered into the mortgage. That says the interest rate on it will change but will never be less than 4.89% or more than 10.14%. The illustration of how the interest will roll up was based on the interest rate at the time of the sale - 7.93%.

In the circumstances, I think that Mr and Mrs J were both in a position to say something about the mortgage around the time they took it out if they didn't think it was right for them, or if they didn't understand it.

Mr J1 has told us that Mrs J followed her husband in financial affairs and wouldn't have understood the mortgage or questioned the documentation she signed – she simply signed where she was directed by Mr J, so she did not provide a true consent.

I understand the point Mr J1 has made. However, I think Aviva could reasonably expect both Mr and Mrs J to look at the documentation they were provided with and say something if they didn't understand it. But Mrs J didn't complain about the sale until 2022. Both Mr and Mrs J had many years before that to say something if they thought that the mortgage they were sold was different to the one they thought they'd taken out.

Finally I think it's worth saying that I can also see that Mr and Mrs J got legal advice before they took out the mortgage. Mr J1 has said that the relevant solicitor wasn't independent. That might be the case. However, I'm satisfied the solicitor would have ensured that Mr and Mrs J both understood the terms of the mortgage before they entered into it and checked to make sure that they wanted to enter into it. Mr J1 has said that Mrs J didn't get independent financial advice before she entered into the mortgage. However, I'm satisfied that the documentation Mr and Mrs J were provided with in 2005 gave them the information they needed in order to make an informed choice about whether to take the mortgage out or not. I don't think it would be fair to say that the mortgage was mis-sold because Mrs J chose to follow Mr J's lead in relation to it.

I'm conscious that Mrs J will be disappointed by the outcome of this decision. However, having taken everything into account, I'm satisfied that the advice and recommendation were suitable and that the mortgage wasn't mis-sold.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 21 December 2023.

Laura Forster
Ombudsman