

## The complaint

This complaint is about an equity release lifetime mortgage held by Mrs N with Aviva Equity Release UK Limited. Mrs N is represented in the complaint by her son, Mr N, who is acting under a Lasting Power of Attorney granted by Mrs N.

Mr N's complaint is that, despite numerous requests, Aviva failed to provide him with a copy of its terms and conditions on headed paper so that he could ascertain the criteria for Long Term Care (as defined by Aviva). Mr N also says that, despite asking Aviva multiple times since June 2021 whether a family member would be allowed to provide Long Term Care to Mrs N, Aviva failed to reply to his queries about this.

Mr N says that the delay by Aviva in providing this information has caused financial loss, due to the interest that has accrued on the lifetime mortgage while he was waiting for an answer from Aviva.

## What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mrs N or Mr N being identified. So for these reasons, I will keep my summary of what happened quite short.

In 2002 Mrs N took out an equity release mortgage with Aviva, originally in joint names with her husband, who I am sorry to note passed away in 2020. The mortgage loan agreement provides a definition of Long Term Care, which is *"the permanent care you would need from another person or other persons, either to help you to perform two or more ADLs (Activities of Daily Living), or because you are cognitively impaired."*

There follows a list of ADLs, which is based on definitions recommended by the Association of British Insurers, relating to mobility, washing, dressing, feeding, toileting, etc.

On 23 February 2022 Mr N wrote to Aviva saying:

*"Recently I have been attempting to obtain a copy of your "Terms & Conditions" (a document referred to on your own web site) relevant to this Lifetime Mortgage Agreement and have made numerous phone calls the most recent of which being 3 February 2022..."*

*On each occasion I have clearly explained that we need to see Aviva's definitive definition of **Long Term Care**. Our mother's health is at best uncertain and the time may come soon when she needs care beyond the ability of any family member. When this time comes, what we do not want to face are any early repayment penalties ... because Aviva considers the situation does not meet their definition of 'Long Term Care'..."*

Although Mr N was promised by Aviva that it would send the information, it wasn't sent until May 2022. Aviva said that if Mr N considered Mrs N met the definition of needing Long Term Care, he should speak to Aviva.

However, it wasn't until 19 April 2023 that Mr N spoke with a member of staff, when Aviva confirmed that Mrs N met its definition of a customer needing Long Term Care and that this care could be provided by a family member. As a result, no ERC would be payable if the mortgage was redeemed.

Mr N complained about the delay. He said that he'd been asking Aviva to provide a copy of its terms and conditions with a definition of long term care since June 2021 – and had specifically been asking whether that care could be provided by a family member. As a result, Mr N thought Aviva was at fault and should not charge interest on the mortgage loan due to its delay.

Aviva paid £200 compensation to Mrs N for delay in responding after Mr N had requested information in February 2022, but said it had no record of any earlier requests.

Dissatisfied with Aviva's response, Mr N complained to our service on behalf of Mrs N. An investigator looked at what had happened but didn't think the complaint should be upheld. He wasn't able to find any evidence that Mr N had asked about whether the care provider could be a family member until his conversation with Aviva on 19 April 2023. The investigator thought the £200 paid by Aviva for the delay between February 2022 and May 2022 was fair and reasonable.

Mr N disagreed and asked for an ombudsman to review the complaint. He said that he'd provided evidence that he'd been in contact with Aviva in June 2021, when he'd set up an on-line account on behalf of Mrs N. In addition, Mr N said that he had repeatedly asked Aviva for its definition of Long Term Care and – specifically – who was entitled to provide that care.

### **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.

I'll begin by explaining that I'm not required to address each and every point raised in the complaint. 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. In addition, where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

There is a clear contradiction here in what the parties are saying; Mr N insists he had been asking Aviva since June 2021 to provide its terms and conditions, including its definition of 'Long Term Care', and specifically to confirm whether a family member would be allowed to provide Mrs N with that care.

Aviva, on the other hand, says that it wasn't until February 2022 that Mr N first asked for a copy of the terms and conditions with the definition of Long Term Care, and that it wasn't until the conversation on 19 April 2023 that he'd asked if a family member could provide that care.

The available evidence shows that the first time Mr N asked Aviva for a copy of its terms and conditions was in his letter dated 23 February 2022. Mr N followed that up with further

correspondence, stating that he would only accept a copy of Aviva's terms and conditions on "*company headed documentation*".

Whilst there was a delay in Aviva providing a copy of the terms and conditions after receiving the letter dated 23 February 2022, I note that these have always been available online, and include a definition of Long Term Care. I'm therefore not persuaded that this was information that Mr N could only have obtained directly from Aviva, as it is in the public domain and he could, if he had wanted to, accessed it immediately.

I'm also not persuaded from the letter dated 23 February 2022 that Mr N had been asking since June 2021 whether Long Term Care could be provided for Mrs N by a family member. That's because, in his letter of 23 February 2022, Mr N says that "*the time may come soon when [Mrs N] needs care beyond the ability of any family member.*" He was not asking whether a family member could provide Long Term Care. Nor is there anything in Aviva's contemporaneous account records to show Mr N asked at any other time if a family member would be able to provide Long Term Care to Mrs N.

So whilst I acknowledge Mr N's strength of feeling, the available evidence doesn't persuade me that he was asking this specific query since June 2021 without reply. And, as explained above, Mr N could have found the terms and conditions online on Aviva's own website. In the circumstances, whilst there was some delay between February 2022 and May 2022, I think there were steps Mr N could have taken to mitigate his own position, rather than insisting on receiving a paper copy of the terms and conditions on Aviva's headed notepaper.

I'm satisfied that the £200 Aviva paid to Mrs N for the delay between February 2022 and May 2022 is fair and reasonable, and I'm not asking Aviva to do anything more.

### **My final decision**

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 16 August 2023.

Jan O'Leary

**Ombudsman**