

The complaint

Ms M complains that Aviva Equity Release UK Limited wouldn't allow her to withdraw money from the cash reserve facility on her lifetime mortgage without being provided with copies of her bank statements and information about the cost of her surgery she wanted the money to fund.

What happened

In January 2017, Ms M took out a lifetime mortgage with Aviva. It was recommended to her by an independent mortgage broker. She borrowed £75,000, with a cash reserve of £111,562, which she could drawdown in the future.

Ms M took a £45,000 drawdown in December 2019.

In February 2021 Ms M called Aviva to request a £26,000 drawdown, but following discussions between Ms M and a third-party that was with her and she put on the phone to Aviva, Aviva had concerns and wasn't willing to release the funds

In February 2023, Ms M asked to withdraw a further £20,000 from the cash reserve, saying it was for surgery as the NHS queues were too long. Aviva asked Ms M for bank statements and information about the cost of the surgery so that it could consider her request.

The mortgage broker that set up Ms M's lifetime mortgage became involved and raised a complaint with Aviva. Aviva didn't uphold the complaint, saying that it has a responsibility as a regulated lender to ensure it lends responsibly, and its procedures are in place to protect its customers and Aviva as a business.

In the meantime the requested information was provided to Aviva on 24 February, Aviva spoke to Ms M about a few transactions that showed on her account, and then the funds were released on 3 March 2023.

Ms M referred the complaint to the Financial Ombudsman Service where it was looked at by one of our Investigators. He didn't uphold the complaint, saying the request for the information wasn't unreasonable to ensure the protection of Ms M.

Ms M's mortgage broker didn't agree and 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.

I trust Ms M won't take it as a discourtesy that I've condensed her complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

The Financial Ombudsman Service is impartial between, and independent from, consumers and businesses. We are not the regulator; that's the Financial Conduct Authority. My role is to weigh up the evidence and decide what is fair and reasonable in all the circumstances for individual complaints.

I largely agree with Ms M's understanding of the mortgage offer. I think it is difficult to read in any other way than that a drawdown from the cash reserve is available without any further approval.

However, that isn't the end of matters. I'm required to decide what I consider to be fair and reasonable in all the circumstances of the complaint.

Aviva didn't decline Ms M's request – it merely asked for further information so that it could try to protect her from potential fraud, scams and/or coercion. I consider this was a legitimate reason for it to ask for more information.

The terms and conditions of the lifetime mortgage state:

“1.2 Our promise to you

We will always act fairly, in good faith and in a reasonable manner towards you when we deal with your Lifetime Mortgage and when we apply or enforce these Conditions. We encourage you to tell us whenever you feel we have not done so. This promise is an overriding principle and you should read each of the Sections in these Conditions in light of this promise.”

I consider the reasons given by Aviva for wanting more information are in line with this promise, and are also in line with what I consider to be good industry practice. These are things that I am required to take into account in deciding what is fair and reasonable in the circumstances of a complaint.

Aviva is a member of the Equity Release Council. It has a number of overarching principles and outcomes. Whilst these have now been updated to take into account the more recent Consumer Duty, at the time Ms M took this drawdown these included:

- The best interests of its customers being paramount.
- Seeking to deliver suitable outcomes for customers...through every point of contact during the life of the product.
- Members will seek to identify and provide appropriate support to customers who may be exposed to...financial vulnerability at any point of contact.

In my experience, good industry practice would require lenders to look for potential warning signs that a borrower might have fallen victim to a fraud or scam or that a drawdown request

might not be in the borrower's best interests.

Ms M had made a request for a £26,000 drawdown in 2021 and Aviva had concerns about the nature of the request, and the conversation it had with Ms M and the third-party that was with her. Whilst Ms M's broker said that was in the past, it isn't uncommon when an attempt has been made to scam a consumer that a later attempt is made after some time has passed and with the consumer having been coached in what to say.

Ms M was now asking for £20,000 for a knee replacement but couldn't say how much it would actually cost her or when she was planning to have it done. Whilst it is completely legitimate that she might have wanted to check the funds were available before she contacted a surgeon, I can understand Aviva's concerns. Indeed, we see complaints from borrowers that the lender did not carry out adequate checks who have drawn down money in similar circumstances and then fallen victim to a scam.

I consider it was reasonable and good practice for Aviva to ask for the further information from Ms M before it approved the drawdown. The cash reserve was always available to Ms M. Aviva simply wanted to check that the drawdown was in her best interests and she hadn't been the victim of a fraud or scam, or potential coercion, before releasing the funds. As far as I can see it was not carrying out any checks that it would undertake when approving an application for an equity release mortgage. Rather it was taking steps to make sure that the drawdown was in Ms M's best interests.

Ms M may not have been the victim of a fraud or scam, or of any other potential things that could cause people to lose the money they draw down from an equity release mortgage. But I have seen cases where consumers have fallen victim to scams. I consider here that Aviva was acting reasonably – and in line with good industry practice – in asking for the information it did. It was Ms M's decision whether or not to provide that information, but without it Aviva could not satisfy itself that Ms M wasn't at risk of fraud, a scam or coercion.

Ms M's broker has said *"You also mentioned that they have the right to request certain information, but are you saying this should override treating customers fairly. As we understand it, this is what the ombudsman service should be all about. [Ms M] our client was not treated fairly and was treated terribly, this would become more apparent to you when you listen to all the telephone conversation that took place."*

I've listened to the calls and I don't agree that Ms M was treated terribly. Aviva's call handlers treated Ms M politely and with empathy, following the correct process for this drawdown request. Treating customers fairly isn't just granting them what they want if it potentially isn't in their best interests. I would argue a consumer that has been scammed out of £20,000 would argue a lender hadn't treated them fairly if the lender just released that money to them when the lender had concerns about whether they were being scammed.

I would be more concerned if Aviva didn't understand the importance of safeguarding and to question whether someone is acting in the best interests of the consumer, whether that someone be a relative or another third-party. As I've said, it isn't uncommon for a consumer being scammed to be coached in what to say in order to make access to the funds more likely to be successful.

Ultimately, Aviva was taking reasonable steps to protect Ms M – although she may not see it that way. I don't see how I could reasonably find that it was unfair or unreasonable for Aviva to take a cautious stance here bearing in mind the prevalence of fraud and scams. It would send out the wrong message if I were to find that Aviva should not take such steps to protect its customers. And I am satisfied that Aviva was acting in good faith here.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 24 April 2024.

Julia Meadows
Ombudsman