

The complaint

Miss F has complained that there were delays by Aviva Equity Release UK Limited's solicitor that meant her lifetime mortgage application failed to complete before the mortgage offer expired.

What happened

Miss F wanted to buy a new home and she applied for a lifetime mortgage with Aviva through an independent mortgage broker. A mortgage offer was issued on 22 September 2022 which explained that Miss F had until 21 November 2022 to complete the mortgage.

The mortgage didn't complete by the deadline and Miss F complained to Aviva. Aviva didn't uphold the complaint. It said its solicitor couldn't open the documents Miss F's solicitor had sent by email, and despite everything that happened it was still in a position to complete before the mortgage offer expired.

Miss F referred the complaint to our service and it was looked at by one of our Investigators. He didn't think Aviva was responsible for the delays and so didn't ask it to take any further action.

Miss F didn't agree and so the case was 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 Miss F won't take it as a discourtesy that I've condensed her complaint in the way that I have. 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.

We've been provided with timelines from both sides, and regardless of whether Aviva or its solicitor was at fault or not, that shows that Miss F had a frustrating experience in trying to obtain this lifetime mortgage. She has my sympathy for all the difficulties she experienced.

However, I can't uphold this complaint just because the process was difficult or frustrating for Miss F, or because she didn't get a lifetime mortgage at the end of it. I can only uphold this complaint if I'm satisfied that Aviva (or its solicitor when acting as its agent) did something wrong – and I'm not persuaded it did.

This is a decision about Aviva so I can only consider its actions (and the actions of its solicitor). And just because I don't think Aviva (or its solicitor) was at fault, doesn't mean we're blaming another party. Sometimes these things are no-one's fault; some applications are just unsuccessful due to a combination of factors despite no-one doing anything really wrong.

It's standard for mortgage offers to only be open for a limited period of time and the deadline

of 21 November 2022 was set out in the offer of 22 September 2022.

I understand Miss F's solicitor first emailed Aviva's solicitor some information on 3 October. Aviva's solicitor responded on 10 October to say it couldn't open the documents. Miss F's solicitor emailed the documents again on 13 October, with Aviva's solicitor responding on 18 October to say it was still unable to open them. Aviva's solicitor said the October emails it received from Miss F's solicitor just contained a link, which it couldn't access, presumably to view the documents, rather than the documents being individually attached to the email. This was explained to Miss F's solicitor and to her mortgage broker (via Aviva).

There's been some confusion about the term 'data room' with it being referred to as a format, and Miss F's solicitor saying they weren't sent in that format, they were sent as PDFs. A data room isn't a format in itself, it is a way of exchanging documents that is recognised in law firms as a way of sharing documents between the relevant parties. It's a cloud-based data sharing platform. Documents can be held within the data room in different formats, such as PDFs, but rather than the documents being individually attached to an email, a link to the data room is sent instead which allows the receiver access to where the documents are stored.

Miss F said her solicitor hasn't heard of data rooms and always sent the documents as PDF documents but that isn't how they appear to have been received by Aviva's solicitor. I don't know what went wrong, and I don't need to know to fairly decide this case as all I need to know is that Aviva's solicitor was unable to open the documents that were sent in October and that it notified Miss F's solicitor of that.

Whilst Miss F has sent us numerous emails between her, her solicitor, her mortgage broker and Aviva's solicitor, the earliest of those is from 19 October so doesn't cover the period in question. If the documents had been sent in early October as individual PDF attachments, rather than through a data room information sharing system, that would have been easy to prove by providing us with copies of those earlier emails. That said, even providing the emails wouldn't be enough here as even if they had been sent in the correct format, that doesn't get us round the issue that Aviva's solicitor was unable to open them.

Miss F's solicitor sent the documents as individual PDF attachments by email on 1 November, which Aviva's solicitor was able to open. At that point matters could progress. I can see there was some back and forth between the solicitors, with Miss F's solicitor saying they were awaiting some information from the vendor's solicitor. Then on 10 and 11 November the final documents were provided to Aviva's solicitor.

On 14 November Miss F's solicitor phoned Aviva's solicitor to request completion for 18 November. Aviva's solicitor said it couldn't confirm at that time as it was reviewing the file, and in an email to Miss F her solicitor confirmed he'd said to Aviva's solicitor:

"... that we require a completion date of 18 November 2022 or 21 November 2022 unless they are able to extend the offer.

I am assured this will be expedited albeit we are advised we will not get a response before tomorrow afternoon."

At that time it seems there was still an issue with the search enquiries, but Aviva's solicitor took a view that it was acceptable to proceed so on 15 November it confirmed completion could take place, with Miss F's solicitor notifying her of that around midday.

Unfortunately, the vendors of the property Miss F was looking to buy said they weren't in a position to complete before 9 December and as Aviva wasn't willing to extend the mortgage

offer on the same terms, the transaction fell through.

It may be that the time it took Miss F to be ready was a deciding factor in the vendor's decision to want completion on 9 December, but we can't say that for sure. It may be they never intended on completing before Miss F's mortgage offer expired. I can see in a timeline Miss F provided to our service with her complaint form that she said:

"11th Nov. I received an email from [Miss F's solicitor] 'I have just received an email from the Sellers Solicitors advising of a completion date 30 November 2022. I advised I would take instructions but that we are waiting on our Lenders Solicitors.... I do note however that your offer expires 21 November 2022 so if we are to agree this date it will need to be extended. Please could you speak to the Mortgage advisor?... Please would you kindly confirm the date is agreed and I will let them know and chase Aviva Solicitors again'. A completion date of 30th Nov. was suggested from Aviva solicitors this I found confusing. Why did [Aviva's solicitor] ask for a completion date after the deadline date of 21st Nov?"

From this we can see as early as 11 November the vendor of the property said they wanted to complete on 30 November, which was after Miss F's mortgage offer expired. Miss F's solicitor asked her to speak to her mortgage broker to see if an extension was possible (which it wasn't). To be clear, from the wording Miss F has provided, it was the sellers of the property that raised the 30 November as a completion date, not Aviva or its solicitor. I've not checked the email myself as it wasn't included amongst the emails Miss F provided to our Investigator, but I've no reason to think she misquoted it in the original timeline.

I can also see from the email trails that Miss F sent an email to her solicitor on 21 October which said:

"I received an update from [the estate agent] to say [the vendor's solicitor] is still waiting for the searches and they will be ready 3rd of November. Is there anything you can do to chase their solicitors."

Putting all this together, along with the emails Miss F provided to our Investigator, we can see that as early as 21 October the vendor's solicitor said they wouldn't have the searches until 3 November, and once those were provided at the start of November there were further enquiries passing between Miss F's solicitor and the vendor's solicitor (as is normal in purchase transactions). Then on 11 November the vendor's solicitor asked for a completion date of 30 November. None of this was linked to the delay due to Aviva's solicitor being unable to open the documents in October as this was work between Miss F's solicitor and the vendor's solicitor, independent of the mortgage lender and its solicitor. It seems, having considered everything very carefully, that the vendor wasn't aiming to complete before the mortgage offer expired on 21 November.

Finally, I think it is prudent to pick up on a couple of misunderstandings on Miss F's part. She's said:

"There were also questionable requests from [Aviva's solicitor] during the process one of which asked for a completion date of the 30th November a date after the deadline date of 21 Nov. They also requested a signed form from me to confirm I had insured the property I was buying. I could not sign this as I was informed that I had no insurable interest in the property until a completion was secured."

I've already dealt with the first point above, in that from Miss F's timeline it was the property vendor's solicitor that asked for 30 November, not Aviva's solicitor.

In respect of the second point, she wasn't being asked to confirm she'd insured the property before she had an insurable interest; the request from Aviva's solicitor for that form said it just needed it "*before completion*." That is entirely normal in a purchase transaction as building insurance should be in place from exchange of contracts, so Miss F simply needed to complete that form once she'd exchanged contracts for the purchase and provide it to her solicitor so it could provide a copy to Aviva's solicitor before completion took place. The document is included on the list as it is something that is needed before completion. As I said, that is as I would expect to see and I'm surprised Miss F's solicitor hadn't come across this before, and thus have been able to reassure her in his emails that it is entirely normal.

The other point relates to Aviva's solicitor saying "*Reinspection special condition (this may relate to the structural engineer report noted as required in the valuation report). We will ask our client, however please can you advise if the reinspection has been done and the date if know [sic]?*"

Miss F's solicitor said in an email to her "... *it is quite ridiculous that they are asking when their own client had the re-inspection completed especially as it was over a month ago.*" But if the request is read in its entirety Aviva's solicitor said it would be asking Aviva, however also asked if Miss F's solicitor had any further information. I can't see any grounds for saying that is a ridiculous question as surely, due to the urgency of the situation as had been put to Aviva's solicitor, it makes sense to ask the question of all interested parties at the same time to try to obtain the answer. It may be Miss F's solicitor would have been able to provide a full answer sooner than Aviva, and surely it would have been in Miss F's interests to have checked what the reinspection had said as it related to some works undertaken to the property she was buying so it may be she (and/or her solicitor) held the information that was needed.

I don't think it was unreasonable that Aviva didn't agree to extend the mortgage offer. I do understand Miss F's frustration, but I've looked at everything that happened, and I don't think I can fairly find that Aviva (or its solicitor) is to blame.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 15 January 2024.

Julia Meadows
Ombudsman