

The complaint

Mr and Mrs R complain about their lifetime mortgage with Aviva Equity Release UK Limited. They say that it failed to communicate with them about the mortgage for many years, which means they forgot about its existence and missed the chance to pay it off.

What happened

Mr and Mrs R took out a lifetime mortgage in 2004. The lender was Aviva, but under its former brand name of Norwich Union.

Mr and Mrs R say they received annual mortgage statements for the first few years. In 2007 they were concerned about how much the loan balance had increased. They say they considered repaying it then, but decided to wait a further year before making a final decision.

Mr and Mrs R say that after 2007 they didn't receive any further annual statements, or any other communication from Aviva, until it sent them their 2022 statement. They say that as a result they forgot about the existence of the mortgage. Had they been reminded by the annual statements they would have paid it off in 2008 – Aviva's failure to communicate with them means they lost the chance to do so. They suspect that the problem was related to the change to Aviva around this time. And they think that Aviva has since fabricated its records to show that the statements were in fact sent – they don't believe that they were.

Aviva says that it did send out annual statements every year between 2007 and 2022. It has copies of the statements and its systems show they were sent. If for any reason there was a postal problem which meant Mr and Mrs R didn't receive them it can't be held responsible for that. In any case Mr and Mrs R knew about their mortgage and could have got in touch with Aviva at any time to discuss it, including to discuss making a repayment. It offered £100 compensation for a delay in sending copies of the statements to Mr and Mrs R at the time of their complaint.

Mr and Mrs R weren't happy with that and referred their complaint to us. They said that Aviva's failure meant they still had a mortgage they could have paid off years ago, with a much higher balance because of the passage of time. To resolve matters they wanted Aviva to write their mortgage off. Our investigator didn't think their complaint should be upheld, so Mr and Mrs R asked for an ombudsman to make a final decision.

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.

According to Aviva's records, the annual statements were sent each year. They were sent to Mr and Mrs R's correct address, the address they've given us for use in this complaint. I don't think it's likely Aviva would fabricate its records to show that statements were sent when they weren't. On balance I'm satisfied that it's more likely than not that Aviva sent statements to Mr and Mrs R each year, and sent them to the correct address.

It's possible that all the statements between 2007 and 2022 were lost in the post. Items do occasionally get lost in the post. But I think it's very unlikely that every statement for fifteen years would go astray, when Mr and Mrs R haven't reported problems with their post more widely. On balance, I think it's more likely than not that Mr and Mrs R did receive the statements but didn't keep copies of them or – as they weren't required to make any regular payments to it – give their mortgage much thought. And so they don't now remember receiving the statements, didn't keep copies, and have come to believe – honestly, but mistakenly – that they never arrived.

Even if the statements were never delivered to Mr and Mrs R – which, as I have said, I don't think is likely – it wouldn't be fair and reasonable for me to find that they were unaware of their mortgage as a result.

Mr and Mrs R clearly knew about the mortgage when they took it out and received the money. They've still got copies of their annual statements from before 2008, so those statements would have told them about it too. I can also see that Aviva sent them questionnaires about their property in 2009 and 2014 – Mr and Mrs R completed the questionnaires and sent them back. And there's a record of Mrs R calling Aviva in 2012 to find out the loan balance and property value, and to ask whether further borrowing might be available. Finally, when Mrs R entered into an individual voluntary arrangement in 2014 Aviva was notified by the supervisor of the arrangement – who must have been told about it by Mrs R. All of that evidence persuades me that Mr and Mrs R were aware of the existence of their mortgage throughout.

So even if they didn't receive the statements, I'm satisfied Mr and Mrs R knew about their mortgage. If their plan was to repay it in 2008 there was nothing to stop them contacting Aviva at that time to make the arrangements to repay. I don't think it would be fair to expect Aviva to write off the balance now because they didn't do so.

My final decision

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 R and Mr R to accept or reject my decision before 18 December 2023.

Simon Pugh
Ombudsman