

The complaint

This complaint is about an equity release mortgage held by the estate of Mr S with more 2 life Ltd (M2L). Mr S' estate is represented here by the executor, who also lives in the mortgaged property (which is configured as two discrete residences) with his family. The executor says M2L should not have taken a legal charge over the entire property. He and his family face losing their home if M2L enforces its security over the mortgaged property.

What happened

The details of this complaint are well known to both parties so I won't repeat them again in detail here. Instead I'll give a brief summary (in my own words and rounding the figures involved) and then focus on giving the reasons for my decision.

Mr S took the mortgage out in 2019, on the advice and recommendation of a broker company I'll refer to here as K. Although both are part of the same wider business group, M2L and K are separate legal entities. Sadly, Mr S died in March 2023, and the executor was appointed by grant of probate in October 2023. Before then, however, the executor had complained to K that the mortgage had been mis-sold. K rejected the complaint and it was referred to us.

On bringing the complaint to us, the executor explicitly referenced the fact that the mortgaged property was two households, albeit they couldn't be sold separately, and that he and his family lived in the other household. This means that if the property was sold to clear the mortgage, he and his family would lose their home. We passed the details to M2L and it provided its file of papers to allow us to look into the complaint as it relates to M2L taking a legal charge over the whole property.

Our investigator explained that our rules only allowed us to consider whether and how M2L's actions affected its customer – i.e. Mr S and subsequently his estate – not the executor and his family. In that context, the investigator wasn't persuaded M2L had done anything wrong. The executor asked for the complaint to be reviewed by an ombudsman.

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.

If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts. We're impartial, and we don't take either side's instructions on how we investigate a complaint, or when we have enough information on file to decide it.

If the available evidence is incomplete and/or contradictory, we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

Under our rules, we can consider a complaint from a consumer. Mr S was a consumer when he was alive, so met the definition of an "eligible complainant" set out in our rules. That eligibility now vests solely in the estate of Mr S, which is represented here by the executor.

Our rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant or authorised by law. In this respect, the executor is bringing the complaint on behalf of the estate of Mr S, under the grant of probate. I must explain that, although the executor represents the estate of Mr S, it is the estate that is M2L's customer. It's the executor's role is to bring the complaint on behalf of the estate, in the same way that other consumers might instruct a solicitor or accountant to represent them in a complaint.

But this does not entitle the executor to consider it his complaint or to air his own grievances about M2L, because he is not its customer. This is the estate's complaint, and his role is limited to putting it forward on the estate's behalf. It also means that I cannot order M2L to pay compensation to the executor for any adverse impact on him of M2L's actions or any distress and inconvenience he has experienced whilst dealing with the business on behalf of the estate.

When a lender agrees to lend money secured by a mortgage over property, it first satisfies itself that the property is suitable security for the money it's being asked to lend. There are two broad stages to that; a valuation of the property by a qualified surveyor and a check on the legal title of the property by a solicitor.

The executor has alleged the surveyor was negligent in not noticing that the property was configured as two households. However, the surveyor in question wasn't M2L's agent but an independent professional whose expert opinion M2L was entitled to rely on. If there were shortcomings in the surveyor's valuation (and to be clear, I make no finding either way – I have no remit to do so) M2L would not be liable for them.

The solicitor was acting as M2L's agent when checking the title, but I've seen nothing that would cause me to think the search of the title at Land Registry would have given the solicitor any reason to think that the property would not be suitable security for the proposed loan. The property is registered as a single title, which itself is the reason it can't be sold in parts. Aside from that, the solicitor's role in checking the title was to assess whether there was anything that might be prejudicial to M2L, not Mr S.

Simultaneously, the solicitor had a second role, acting for Mr S and ensuring he knew and understood the transaction he was entering into. The solicitor provided a signed certificate confirming he was satisfied that was the case. If the executor has any reason to think the solicitor shouldn't have certified Mr S' understanding of the mortgage transaction, that is something the executor can raise separately with the solicitor if he wishes to. It's not something we can consider because it isn't something the solicitor did on behalf of M2L.

I'm not unsympathetic towards the executor's situation; it must be a truly horrible shock to be facing the potential loss of one's home. But I can't act outside the rules of the ombudsman service; and the rules say I can only consider this complaint in the context of how M2L's action have affected the estate of Mr S. For all the reasons set out, I can't fairly and reasonably conclude that M2L is guilty of acts or omissions that are prejudicial to the estate of Mr S.

My final decision

I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 4 June 2024.

Jeff Parrington

Ombudsman