

The complaint

The estate of Mrs F complains about an equity release mortgage provided by Yorkshire Building Society trading as Chelsea Building Society (Chelsea).

The complaint is brought on behalf of the estate by Mrs F's daughter, who I'll refer to as Ms F.

What happened

Mrs F took an equity release mortgage with Chelsea in 1989 following the death of her husband. She borrowed £70,000 over a term of 25 years. This was set up on the basis that no payments would be made to the mortgage, so long as the loan to value of the mortgage remained below 70%. The term was extended by a further 25 years in 2016.

Sadly, Mrs F passed away in 2021. Ms F informed Chelsea of Mrs F's death in March 2021.

Ms F raised a Data Subject Access Request (DSAR) to obtain documents for Mrs F's mortgage in February 2022. Ms F again requested documents from Chelsea in August 2022. But Chelsea didn't provide the documents requested.

Chelsea sent a final demand for repayment of the mortgage in July 2022. And in September 2022 Chelsea informed Ms F that it had instructed solicitors to recover the outstanding mortgage balance.

In November 2022, solicitors acting for Ms F requested further documents from Chelsea. This was to potentially challenge the provision of the lifetime mortgage, and the term extension in 2016. And to enable Ms F to execute her duties as executor of the estate. Chelsea didn't provide the documents. So, the solicitors, on behalf of Ms F, raised a complaint in December 2022.

Chelsea didn't uphold the complaint. It explained a DSAR couldn't be requested once a person had passed away. And it said the account had now been passed to its litigation team to recover the mortgage debt.

Unhappy with this response, Ms F referred the complaint to us. She complained that the documents still hadn't been provided. And that the mortgage balance now exceeded 70% of the property value but the mortgage offer said it shouldn't. Upon referral to our Service, Chelsea agreed to put litigation proceedings on hold, and they currently remain on hold.

One of our Investigators spoke to Chelsea, and it agreed to provide the documents to Ms F. Our Investigator set out her opinion to Ms F. She explained that a DSAR didn't apply to Mrs F as she had passed away. She said that the request for documents should've come from Ms F's solicitors. But that Chelsea had now agreed to provide the documents requested.

With regards to the fact that the mortgage balance now exceeded 70%, our Investigator

explained that this was the point that Mrs F would've needed to start making payments towards the mortgage. But she noted that Mrs F had never made payments to the mortgage and didn't want to sell the property, so it wasn't unreasonable that Chelsea had allowed the mortgage balance to exceed 70%.

Ms F didn't accept this. She said she was pleased she'd finally be receiving the mortgage file. But she thought that mortgage should never exceed 70% of the property value and Chelsea shouldn't be able to change the terms when it suits. Ms F asked for the complaint to be considered by an Ombudsman. So, it was passed to me to review and make a decision.

I issued a provisional decision on 16 March 2024. I explained I was planning to uphold the complaint and invited both parties to respond before I issued a final decision. In my provisional decision, I said:

The provision of documents to Ms F

Our Investigator said that Ms F hadn't raised the request through the correct channels via her solicitors. I don't agree here. Ms F was acting as the executor of Mrs F's estate. If she needed documents to help her execute her duties, then I think Chelsea should've provided her with these documents. Or, if the request needed to be raised via different channels, Chelsea should've done more to explain this to Ms F. I think Chelsea could've done more to explain to Ms F how she could get the information she was requesting.

Chelsea is correct that Ms F can't raise a DSAR for Mrs F as she'd passed away. But I think Chelsea could've explained better to Ms F how she could've obtained these documents sooner. I'm pleased to see that Chelsea has now agreed to provide these documents to Ms F as I think it should do.

I'd normally consider the impact customer service and delays such as this had on a consumer. However, under our rules, Mrs F is the eligible complainant, not Ms F. This means that, whilst I've not doubt Ms F has been caused distress and inconvenience by Chelsea in this regard, I can't make any award of compensation for the impact it has had on her. Put simply, she's not the complainant here so I don't have the power to make an award to her in this regard.

I can consider if any financial loss had been incurred as a result of these delays to the estate. However, I note that Chelsea took the decision to stop applying interest to Mrs F's mortgage from May 2022 and has backdated and repaid any interest charged after this time. I can't see that had it not been for Chelsea's actions, the property would've been sold any sooner. So, based on this, I'm not persuaded any financial loss has been incurred as a result of these delays.

The mortgage balance exceeding 70% of the property value

I've reviewed the initial mortgage offer provided to Mrs F in 1989. This doesn't guarantee that the mortgage balance will never exceed 70%. Instead, it says that payments will not need to be made while the balance remains under 70% of the mortgage balance. It follows that, once the mortgage does exceed 70%, monthly payments should be made.

It's unclear exactly when the mortgage balance did exceed 70% of the property value. This would've been the point when Chelsea could've asked Mrs F to start making payments. Because of the nature of equity release mortgages, the balance is now significantly higher than Mrs F first borrowed. This is because of the fact that all interest is added to the mortgage and compounded each year.

I've thought carefully about this point. But, I agree with our Investigator that it's likely Mrs F wouldn't have wanted to start making payments towards the mortgage. I say this because she hadn't made any payments to the mortgage since it started in 1989. And I've seen nothing to suggest Mrs F would've been able to maintain monthly payments in the long term, just to keep the balance of the mortgage below 70% of the property value. Furthermore, Mrs F extended the term by 25 years in 2016. So it seems that her long term plan was to stay in the property.

Because of this, I can't say that Chelsea has acted unfairly in not asking Mrs F to start making payments when the LTV exceeded 70%.

Additional points raised

In response to our Investigator's opinion, Ms F has raised a number of other points including:

- Questioning the current balance*
- Whether this mortgage was right for Mrs F when it was provided in 1989*
- The rationale behind granting the mortgage extension in 2016*
- What will happen if the mortgage balance exceeds the amount Ms F is able to sell the property for.*

These points have been raised since the complaint has been referred to our Service. The rules under which we operate, known as the DISP rules and found within the Financial Conduct Authority Handbook, say that a business must be given the chance to respond to a complaint before we can consider it. I therefore can't consider them within this decision. Ms F would need to first raise these points with Chelsea. And, if she remains unhappy, she may be able to refer them to our Service as a new complaint.

I would note in regards to the final bullet point above that Chelsea has confirmed to us that it has a "no negative equity" principle. It's told us that once the property is sold and the mortgage redeemed, the property will be revalued and any monies owed above the valuation will not need to be paid back. Furthermore, we can't know whether this is likely to be negative equity once the property is sold, until it is. And this is something Ms F is now going to need to arrange.

Moving forward

I would hope by now that Chelsea has provided all of the documentation Ms F has needed in order to execute her duties as the Executor of the Estate. I'm aware that legal action has been put on hold pending the outcome of this complaint.

As I've set out above, I do think Chelsea should've responded to Ms F in a more timely manner and provided the documentation requested sooner. Because of this, I'm currently minded to tell Chelsea to give Ms F further time to sell the property before commencing legal action. I think a fair amount of time would be six months from Ms F accepting this decision or providing the documents she's requested if it hasn't already.

I explained that I was currently minded to tell Chelsea to do the following:

- If it hasn't provided to documentation Ms F requires, to do so as soon as possible.*
- To provide Ms F with a further six months from the date of acceptance of this*

decision, or from the date which it provides Ms F with the documentation she needs – whichever is later.

I invited both parties to respond to my provisional decision.

Both Chelsea and Ms F responded. Chelsea accepting the recommendations in my provisional decision. Ms F said, in summary:

- She had now discovered after having sight of Mrs F's mortgage file that it appears Mrs F had a repayment mortgage with special conditions rather than an equity release mortgage.
- Selling the property without knowledge of the terms and conditions of the mortgage had been problematic.
- The thought of having to deal with Chelsea to progress the sale of the property made her feel very anxious and she'd like to have a named contact to support her in progressing the sale quickly.
- Losses had been incurred due to delays by Chelsea such as council tax and this had been increased by the time it's taken for our Service to deal with the complaint.
- She did not wish to, or have the energy to, pursue the further points noted within my provisional decision. So, she proposed that, with the agreement of Chelsea, she sold the property quickly at auction.

The complaint has now been passed back to me to review and 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.

My provisional decision findings, copied above, should be considered part of this final decision.

Ms F says that she has now discovered that the mortgage was repayment rather than an equity release mortgage. However, as explained within my provisional decision, I can't consider the sale of the mortgage or the extension in 2016 as Ms F hasn't yet raised this issue with Chelsea as a complaint. I'm aware Ms F doesn't wish to raise these new points with Chelsea, and I understand why. But I'm not able to address them within this decision.

Ms F says selling the property without knowing the terms and conditions of the mortgage has been problematic, and this has caused losses such as council tax which had to be paid while the property has been empty.

Whilst I can see that Ms F would've liked to have seen the terms and conditions of the mortgage, I'm not persuaded this would've restricted the sale of the property substantially. Furthermore, having reviewed the letters from Ms F's solicitors requesting Chelsea's file, it seems to me that the purpose of asking for the file wasn't in order to sell the property or redeem the mortgage, but instead to challenge the validity and sale of the mortgage. I can't see that this should've held up the sale of the property.

All that would've been needed to redeem the mortgage, as far as I can see, would be a redemption statement. And I can't see this was ever requested from Chelsea by Ms F's

solicitors. And as Ms F has said, selling the property hasn't been easy. So, I'm not persuaded on balance that, even if it weren't for the delays caused by Chelsea in responding to Ms F, the property would've sold sooner.

Ms F has suggested that she should now sell the property at auction with the consent of Chelsea. She'd need to approach Chelsea to discuss this further. Whilst I understand Ms F would sooner not have to deal with Chelsea further, this is a request Chelsea will need to consider and agree with Ms F.

Ms F has suggested that Chelsea should provide her with a named contact to support her through this process. I agree this is a good idea consider what has gone on so far. So it should do so if this is possible.

Having considered everything again, I find myself coming to the same conclusions as I did within my provisional decision.

Putting things right

To put matters right, Yorkshire Building Society trading as Chelsea Building Society must:

- Provide any remaining documentation Ms F requires, as soon as possible.
- To provide Ms F with a further six months from the date of acceptance of this decision, or from the date which it provides Ms F with the remaining documentation she needs – whichever is later.
- If possible, provide Ms F with a named contact who can assist her with the redemption of this mortgage.

My final decision

I uphold this complaint and direct Yorkshire Building Society trading as Chelsea Building Society to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F, on behalf of the estate of Mrs F to accept or reject my decision before 21 May 2024.

Rob Deadman
Ombudsman