

## **The complaint**

The estate of Mr W is bringing a complaint about how Bank of Ireland (UK) Plc have dealt with a request to repay the mortgage in full.

The estate is being represented by Miss T, so any reference to Miss T in this decision should be taken to mean her acting in that capacity where appropriate.

## **What happened**

Miss T is the Executor of the estate, and the late Mr W was her partner.

She has explained that Mr W passed away in September 2022 and she contacted Bank of Ireland to inform them of this. She said she received a letter on 30 November 2022 which explained that as the mortgage was in Mr W's sole name, the mortgage needed to be repaid in full. She said this letter was addressed to her and sent to her home address.

Miss T said she contacted Bank of Ireland on 23 June 2023 to ask for the bank details in order to repay the mortgage but she was told that before anything could happen, she needed to obtain grant of probate which Bank of Ireland wanted to see. Miss T has explained that she had the funds available in her business account so wanted to use this to repay the mortgage as she was concerned about the increasing mortgage interest rates. She said the delay in her being able to repay the mortgage has cost the estate around an additional £4,000.

Miss T explained there were delays in getting the grant of probate and she was granted this on 3 August 2023 but as she was away, she wasn't able to get this sent to Bank of Ireland until 7 October 2023 and asked for a redemption statement at the same time. She said there was also some delay in Bank of Ireland dealing with her complaint about this too.

Miss T said she had to chase Bank of Ireland on 27 October 2023 and she then received a redemption statement on this day, for redemption on 3 November 2023.

Bank of Ireland responded to Miss T's complaint on 27 October 2023 and they said it's their policy to request grant of probate prior to redemption funds being received as they need the legal document to confirm to them who the Executor dealing with the estate is.

Miss T, on behalf of the estate didn't agree with this so she brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator didn't think that Bank of Ireland acted fairly and didn't think the grant of probate was required seeing as Miss T wanted to repay the mortgage. She didn't think that Bank of Ireland have provided enough evidence to show why this was their process. So she asked Bank of Ireland to rework the mortgage account as if the estate of Mr W had met the contractual monthly payments for the period between his death and the redemption of the mortgage. She also awarded Miss T – who was also the beneficiary - £200 for the inconvenience caused to the estate.

Bank of Ireland didn't agree with this. They said that for an Executor/administrator to deal with an estate they are legally required to have a grant of probate to give them the power and the authority to do so. They also said they would not be obliged to provide information about the mortgage to someone that isn't connected to the estate.

Bank of Ireland said in this case, Miss T was not acting on behalf of the estate as what she wanted to do was pay off the mortgage using her own personal funds. They said this is not acting for the estate but it was Miss T acting personally. They said that Miss T could not act on behalf of the estate prior to obtaining grant of probate and that when she did obtain it, the mortgage was then paid off soon after.

As Bank of Ireland disagreed with the investigator, they asked for the complaint to be reviewed by an Ombudsman, so it's been passed to me to decide.

### **My provisional decision**

I issued a provisional decision on 17 October 2024. I said:

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having reviewed everything very carefully, I've come to a different conclusion to that of our investigator and I'll explain why.

I'd firstly like to pass on my condolences to Miss T for her loss. I can appreciate that this has been a very difficult time for her.

Having read the information that Miss T has provided, she has given us a lot of information as to why she believes that Bank of Ireland didn't act fairly by not allowing her to repay the mortgage.

She has made the following comments:

- The repayment of the mortgage was made in her capacity as the Executor of the estate and not in a personal capacity.
- Executors are appointed and granted power to administer the estate via the will of the deceased and not via grant of probate. Bank of Ireland were provided a copy of the will.
- An Executor has a duty to preserve the value of the estate and protect the value of assets prior to the grant and can be held personally liable for liabilities if they are deficient in their duty.
- As the Executor, she had the opportunity to borrow funds from her company on behalf of the estate at 0% interest and discharge an estate debt that was attracting interest of over 9%.
- Executors are permitted to borrow funds prior to probate to discharge liabilities and a number of financial institutions offer this service.
- Bank of Ireland already had her details so she could support where the funds were coming from in order to meet their anti-money laundering requirements.
- Putting the estate aside she is unaware of any legislation which prevents someone from discharging a debt on behalf of somebody else.

While I've considered what Miss T has said, Bank of Ireland have acted correctly in asking for the grant of probate before allowing her to repay the mortgage debt.

Probate is the legal right to deal with someone's property, money and possessions (their estate) when they die.

I appreciate that Miss T was Mr W's partner and that she was in fact the Executor who would be dealing with the estate, but Bank of Ireland have an obligation to check the grant of probate prior to allowing the mortgage debt to be repaid.

Although Miss T had the funds in her business account and was able to repay the mortgage prior to obtaining the grant of probate, she would have been doing so in a

personal capacity and not as the Executor of the estate. She would not be acting in this manner until grant of probate had been issued and this wasn't granted until 3 August 2023. It's at this point that the Executor is legally permitted to deal with the estate of Mr W and not beforehand.

Prior to grant of probate being issued, Miss T was using her own funds to repay the mortgage and it would not be deemed that she was acting on behalf of the estate, until she was granted the grant of probate which legally names her as being the person that can act on behalf of the estate.

The letter that Bank of Ireland sent Miss T on 30 November 2022 confirmed that they had received the death certificate for Mr W and they did provide some information on the mortgage account. The letter explained that as the mortgage was held in the sole name of Mr W, that it would need to be repaid in full. It explained that payments didn't need to be made towards the mortgage until Miss T had access to the estate funds.

Bank of Ireland confirmed that during the probate process, Miss T may be asked for the amount outstanding on the mortgage at the point that her partner passed away and Bank of Ireland confirmed what the balance was on that date. This is the normal process in order to give someone the information they require so that they can apply for grant of probate. This did not mean that they knew that Miss T was the Executor of the estate or that she was acting in this capacity at any point prior to obtaining it.

The letter then explained that Bank of Ireland would need the original grant of probate and once they had done so, they would amend the correspondence address on the mortgage account to that of the named Executor.

Even though Miss T was the Executor, and she would have known that at the time, Bank of Ireland needed the grant of probate to confirm this. I understand that Miss T provided them with the will, but this is not the same. It's the grant of probate that confirms who the Executor of the estate is and it's at that point, that Bank of Ireland would then deal with the Executor in order to redeem the mortgage.

I appreciate that Miss T has said she had the funds available to repay the mortgage which meant the mortgage wouldn't have accrued as much interest as it did, but this is a legal process and Bank of Ireland have acted responsibly and reasonably in not allowing Miss T to make any changes to the mortgage, such as redeeming it, until grant of probate had been received.

I know that this will come as a disappointment to Miss T, but I am satisfied that Bank of Ireland have acted as they should have done so I won't be upholding this complaint.

## **Developments**

Bank of Ireland responded to the provisional decision and accepted what I had said.

Miss T however didn't agree. In summary, she made the following comments:

- She disagrees that the mortgage payment would have been made in her personal capacity. Her company would have loaned funds to the estate, which would have been repayable to her company on realisation of the estates assets once probate had been granted. The estate would then have used these funds to repay the mortgage. This is what happened once probate had been granted.
- Miss T disagrees that an Executor does not have the power to deal with an estate prior to probate. She would like to see links/supporting evidence and or case law that says this as this is not what she has found legislation to say. Miss T also made a note to say that small estates do not require a grant of probate yet the Executor still holds the responsibility of collecting assets and discharging any liabilities. She said the Ombudsman's conclusions can therefore not be correct in law.

Miss T has then provided some extracts below:

#### Administration of Estates Act 1925

- Part I S1 (1) *“Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition devolve from time to time on the personal representative of the deceased”*. Miss T said to note that this says ‘on his death’ and not on grant of probate.
- Part II S5 *“Where a person appointed executor by a will”*. The inclusion of this statement if the Act shows that an Executor is indeed appointed by the will and not by the grant of probate. This paragraph goes on to explain that if the executor dies prior to probate, renounces probate or does not appear to the citation then *“his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his real and personal estate shall devolve and be committed in like manner as if that person had not been appointed executor”*. Miss T says this demonstrates an Executor does have rights prior to probate or they would not be able to cease, the statement Miss T has highlighted shows the Executor represents the estate. The grant of probate acts of proof of title which is required if assets are to be sold to pay debts. A grant of probate is not required to discharge debts or to borrow funds as Executor on behalf of the Estate.
- Part III *“The personal representatives shall pay....Such funeral, testamentary and administration expenses, debts and other liabilities as are property payable”*.
- Miss T has proceeded to send an extract from the government website under probate estate which says in summary that, a personal representative is legally responsible for the money, property and possessions of the estate. And that this person is responsible from the date of death until the date that everything has been passed to the beneficiaries – which is called the administration period. And during this period debts can be paid which have been left by the person who has passed away.

#### 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've thought very carefully about the comments that Miss T has made but my outcome remains the same.

I've taken a look at Bank of Ireland's terms and conditions and they say:

*Section 15: When the total amount you owe must be paid off;*

*You must immediately pay us the total amount you owe if any of the following events happen (in which case we will have no further commitment to lend any money).*

One of the reasons listed says:

*(xii) if you (if you are the only borrower) die, or the last borrower dies.*

I think this makes it clear that the mortgage had to be repaid immediately. I accept that Miss T wanted to pay this off prior to obtaining grant of probate, but I think it was fair to point out that the mortgage did have to be repaid.

I have thought about Miss T's comments about relevant law. While we take relevant law into consideration, I also have to think about what is fair and reasonable in the circumstances of the complaint. I am still of the opinion that Bank of Ireland have been reasonable in taking a risk-based approach and due to this they no doubt have a set process in asking for the grant of probate.

Miss T is the Executor and sole beneficiary of Mr W's estate. The grant of probate was dated 3 August 2023 and names Miss T as the Executor of the estate. As I said before, Miss T only sent this to Bank of Ireland in October 2023 and the mortgage was then redeemed the following month so there does not appear to be a delay with the redemption of the mortgage.

Miss T would have been acting in her capacity as an Executor in paying off the mortgage as it is part of the responsibilities of the Executor to gather in the assets, pay the liabilities including the mortgage and then distribute the estate. An Executor named in a will alone is not acceptable as until the will is proved and a grant issued, it's not possible to confirm that the will is a valid one.

A valid will which names Executors does authorise those Executors to act in the estate, and the deceased's assets vest in the Executor at the date of death. Whilst there may be the vesting assets at death to the Executor named in a will, title itself is not proved until a grant of probate is obtained. This is where the risk-based approach of Bank of Ireland takes precedence in my opinion and why they can insist on a grant of probate.

I thank Miss T for the submissions she has made since the provisional decision, but my conclusion is the same. It was not unreasonable for Bank of Ireland to request the grant of probate for the reasons I have given above. Even taking into account what Miss T has said, Bank of Ireland were allowed to ask for this before allowing Miss T to redeem the mortgage.

I understand that Miss T will be disappointed with my decision, but I am satisfied that Bank of Ireland have acted reasonably in the circumstances of this complaint.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr W to accept or reject my decision before 16 January 2025.

Maria Drury  
**Ombudsman**