DRN-5323362

The complaint

Ms M complains, on behalf of the estate of her late father Mr R, that The Welfare Dwellings Trust Limited (WDT) is not acting fairly in seeking to recover the amount of a home reversion plan by requiring the sale of the late Mr R's property. Ms M also complains about how the plan has been administered by WDT, and about the circumstances in which the plan was transferred to it.

What happened

In 1998 the late Mr and Mrs R took an annuity with a firm I'll call H. The purpose of the annuity was to provide them with an income for the remainder of their lives. Rather than purchasing the annuity with cash, it was purchased in return for an interest in their property via a reversion plan.

Under a reversion plan, the plan provider takes ownership of a share of the property. The title at the Land Registry was amended to show that the property was jointly owned by H and by Mr and Mrs R. There was also an agreement between H and Mr and Mrs R that H would take 67% of the beneficial interest in the property and Mr and Mrs R would retain 33%; that Mr and Mrs R would be able to live in the property for the remainder of their lives; and that on death the property would be sold and the proceeds of sale split as above between H and the estate of the last survivor of Mr and Mrs R. Mr and Mrs R were given a lease over H's share of the property.

Mrs R passed away in 2010, and her interest in the property reverted to Mr R. In 2021 H transferred the reversion element of the annuity, and its beneficial interest in the property, to WDT. WDT asked Mr R to consent to it replacing H on the legal title. However, as Mr R did not agree to amendments to the property title, legal ownership remained split between Mr R and H. H appointed WDT as its attorney to manage H's legal interest in the property alongside WDT's beneficial interest.

WDT appointed another firm, RB, to administer the plan on its behalf. But that other firm was acting as its agent, and WDT remains responsible for its actions. So in this decision I'll refer to WDT when talking about its own actions and the actions of its agent.

Mr R passed away in July 2023. Shortly afterwards WDT contacted Ms M and her family and told them that the lease had been terminated and the property would need to be sold, and that they should remove any belongings from it within the next six weeks.

This led to a dispute between Mr R's estate and WDT, resulting in this complaint. On behalf of Mr R's estate, Ms M complained about the original sale of the plan and about its transfer to WDT. She also complained about the actions that WDT had taken since Mr R passed away in taking steps to sell the property and the price it obtained.

WDT said that we couldn't consider the complaint, because this was an unregulated home reversion plan, taken out before such plans became regulated in 2007. I issued a decision explaining that we could consider the complaint, because an unregulated plan taken out before 2007 becomes a regulated plan on transfer to a new provider, and in acting as

reversion transferee WDT is carrying on a regulated activity that falls within my jurisdiction. But I said that we could not consider anything that happened before the transfer to WDT, and I said that we could only consider what happened afterwards in terms of its impact on Mr R's estate, not its impact on Ms M personally – because it is the estate which is the eligible complainant here. That means that we could consider, for example, whether WDT caused financial loss to Mr R's estate – but not whether it caused upset and distress to Ms M in how it acted.

Ms M has set out her complaint to us very clearly and in detail, for which I am grateful. Following my jurisdiction decision, she confirmed that she was content for the merits investigation to focus on the following key parts of her complaint:

- The transfer from H to WDT, and in particular WDT's assertion that the plan remained unregulated.

- The process for selling the property following Mr R's passing, with the difficulties caused to the estate, the delays that resulted and financial loss caused by the property being sold for less than it would have been had WDT not caused delay and not prevented Ms M being involved in the process.

Our investigator considered the merits of the complaint. Ultimately she concluded that it should not be upheld, so Ms M asked for an ombudsman to decide it. What follows is my conclusion on the merits of the complaint.

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 appreciate that this has been a very difficult time for Ms M and her family. In the aftermath of the loss of her father, and while grieving for him, she had to deal with the arrangements for the sale of his property and the payment of a share of the proceeds to his estate, over which she is executor. I hope that she and her family will accept my condolences on their loss and my sympathy at the situation they've found themselves in.

This was always going to be a difficult time – bereavement always is – and it's in the nature of equity release products that the deceased's estate, generally represented by family members, has to deal with the equity release provider, and the sale of the property, against that background.

I've explained in my jurisdiction decision that we can't consider the circumstances in which the plan was taken out. By 2021, the then plan provider – H – transferred the reversion plan to WDT.

The reversion plan, and property ownership, was structured in such a way that Mr and Mrs R (and later Mr R solely) jointly owned the freehold of the property with H as tenants in common. There was also a separate leasehold interest – whereby Mr and Mrs R (later Mr R) leased the property, giving them the right to continue to live in it.

In 2021, H sought Mr R's consent to transfer its share of the ownership of the property to WDT at the same time as transferring the plan. Mr R didn't consent, so H remained the legal co-owner of the property. But it transferred its beneficial interest in the property to WDT, and appointed WDT as power of attorney to manage its legal interest in the property.

Under the rules relating to property ownership, when a tenant in common dies their share of

the legal ownership transfers to the other tenant in common, who therefore becomes sole legal owner of the property. But the deceased's share of the beneficial interest passes to their estate, not the other co-owner. In simple terms, a beneficial interest is an entitlement to the value of ownership, even though a third party actually owns the property.

When Mr R passed away, therefore, his legal co-ownership of the property did not transfer to his estate – it transferred to H, which became the sole legal owner of the property. This happens automatically on death and is not dependent on the probate process. But Mr R's share of the value of the property – his beneficial interest – did not pass to H, it passed to his estate. The effect was that while H solely owned the property, it did so in trust for its own beneficial interest and Mr R's estate's beneficial interest – their respective shares of the value of the property. In order for their shares to be realised, the property would need to be sold. So the terms and conditions of the reversion plan say that the property is to be sold on death and the proceeds distributed according to the agreed share represented by H's and Mr R's beneficial interests.

Separately, Mr R's leasehold interest in the property – entitling him to live in it for the rest of his life – also came to an end when he passed away. It needed to be formally terminated so that the freehold could be sold without a leasehold interest. Ms M says that WDT acted hastily in ending the lease and only giving her six weeks to clear the property following Mr R's passing, and that it was insensitive to serve notice of the termination of the lease at the time of Mr R's funeral (though WDT says that it wasn't aware of the funeral date and this wasn't done deliberately). I do see why this would have caused her upset, though as I explained in my jurisdiction decision I can only consider whether there were losses to Mr R's estate. And it's fair to say that Ms M ended up with rather longer than six weeks to clear the property, I've not seen any suggestion that she was unable to do so, and there doesn't seem to have been any financial loss to the estate as a result of this.

I don't think WDT sought to mislead the Land Registry. I've explained above what happens to the legal title to a property on the death of a tenant in common, and it wasn't unreasonable for WDT to want to register the new legal title at the Land Registry as part of the preparation for a sale of the property.

Ms M also objected to WDT's appointment of a related company as trustee. As I say, H became legal owner subject to Mr R's beneficial interest being held in trust for the benefit of the estate. In that situation, another person has to be appointed as trustee to ensure the interests of the estate are protected – the remaining sole owner can't act as sole trustee. Ms M didn't agree to WDT's nomination, and wanted to be named as trustee herself. It's not necessary for the beneficiary of a trust (in this case, Ms M as executor of the estate) to be appointed trustee and I don't think there's anything sinister about WDT's intended appointment of a related company to act. I understand that Ms M preferred to be appointed herself, but it was essentially a formality and it wasn't necessary to be appointed as trustee for Ms M's views about the sale to be taken into account – though WDT did in the end agree to appoint Ms M.

Ms M says that in any case WDT didn't have the power to do any of this. She questions the validity of the transfer of the plan and beneficial interest from H to WDT, and questions the validity of the appointment of WDT as attorney for H to manage H's remaining legal interest in the property. But such transfers are not uncommon in the mortgage market and I've seen nothing to suggest that this one wasn't valid or appropriately executed. And while ultimately a decision on whether WDT had legal authority to act would be a matter for the courts, I've not seen anything that leads me to believe the power of attorney wasn't validly executed – it appears to comply with the formalities required of a grant between companies (as opposed to individuals), for example. So I don't think it was unfair that WDT, as the plan owner and owner of the beneficial interest of H's share of the property, sought to deal with the sale on

behalf of H as legal owner of the property.

Next, I've considered whether WDT caused unreasonable delay in dealing with the sale of the property. Having considered all the evidence, and everything both parties have said, I'm not persuaded that it did. Shortly after Mr R passed away, WDT wrote to Ms M asking her to clear the property and surrender the keys within six weeks. It also asked for a copy of the death certificate and Mr R's will or a grant of probate. This was a reasonable request, because under the terms of the plan Mr and Mrs R agreed, WDT – as the current plan provider – could only deal with the authorised representative of Mr R's estate. It needed to see the death certificate to begin the process of changing the title registration at the Land Registry, and it needed to see the will to confirm that Ms M was the appointed executor authorised to act for Mr R's estate.

Ms M was unhappy with this request. She contested whether WDT was entitled to take over the property and sell it and wanted to see evidence – such as the transfer document and the power of attorney. But WDT was unwilling to share this information with Ms M until it had seen the will and was satisfied that Ms M was entitled to represent the estate. This led to something of an impasse, until Ms M instructed solicitors who corresponded with WDT's solicitors.

I understand Ms M's concerns here, and why she was unwilling to provide information until reassured that WDT was entitled to ask for it. But I also understand WDT's position – it couldn't share information with a third party until it was sure they were authorised to deal with Mr R's estate. It couldn't know whether or not there was a family dispute over Mr R's estate, for example – there wasn't in this case, but that's one of the risks an equity release provider has to take account of. WDT did tell Mr R that it had taken over the plan a few years earlier, when it asked for consent to the transfer of ownership. So Mr R was on notice that WDT was now his plan provider. I've already said that I'm satisfied that WDT was in fact entitled to take steps under the plan following Mr R's passing. In those circumstances, it wasn't unreasonable that WDT requested the information it did, and that it wouldn't share details with Ms M until it was received.

I don't think it would be fair to require WDT to refund the fees the solicitors Ms M instructed charged to the estate. It was Ms M's choice to engage solicitors, and having reviewed the correspondence the solicitors weren't always accurate in what they said on her behalf in their view of what WDT was and wasn't entitled to do. I think WDT's requests were reasonable, and I'm not persuaded it caused costs to mount unfairly. I understand that Ms M also feels that her requests were reasonable, and I agree that as the executor of her father's estate it was appropriate for her to want to maximise the proceeds of sale and to be sure that WDT was entitled to do what it proposed – though the basis of challenge to H's ownership of the property or WDT's right to sell it weren't correct. But while her requests for evidence of WDT's entitlement were reasonable, so were WDT's requests for evidence of her entitlement. Nor was it unreasonable that WDT's solicitors wouldn't communicate with Ms M directly as well as with her solicitors – it's standard legal practice where a party is represented to deal with their legal representatives. To the extent that either party incurred costs in dealing with the other's requests, I don't think it would be fair to require the other party to pay them. WDT didn't charge its solicitors' costs for this to the estate by deducting them from the proceeds of sale – only the standard legal fees for the conduct of the property sale.

Ms M made clear she was unwilling to surrender the keys to the property, and that she wanted to manage the sale of the property. But the plan Mr and Mrs R agreed to said that the plan provider – by now WDT – would have control of the sale. And, as I've set out above, H (represented by WDT), not the estate, was the legal owner of the property following Mr R's death. I appreciate that Ms M felt that she was acting in the best interests of her father's

estate in not consenting to a sale until satisfied that WDT had authority to act, and wanting to control the sale to reassure herself that the best price was obtained. But WDT also had an incentive to obtain the best sale price that could be obtained on the open market, it was representing H the legal owner of the property, and Mr and Mrs R agreed that the plan provider would be responsible for the eventual sale when they took out the plan. I don't think it was unreasonable that WDT wouldn't agree to Ms M managing the sale of the property.

The plan terms say that

> "the Property shall be marketed by the Purchaser [H, acting through its attorney WDT] and / or by agents appointed by it and the sale of the Property shall be conducted by the Purchaser's solicitors… The Purchaser shall have an absolute discretion as regards the conduct of the sale of the Property but shall have regard to the wishes of the personal representative(s) of the surviving Vendor [Mr R] whenever practical or reasonable".

In other words, WDT was entitled to conduct the sale – it should consult Ms M and take into account what she said, but did not have to agree to it. Having considered the evidence of what happened during the sale process, I'm satisfied WDT did consult Ms M and take account of what she said – it didn't agree to her conducting the sale herself, but it didn't have to. Ms M was consulted on all decisions, including the decision to accept the offer.

WDT arranged for its agents to take possession of the property and change the locks. It then obtained appraisals from local estate agents. Unhappy with their proposed valuations, it arranged an appraisal from a third agent I'll call S. S charged a higher sale fee than the other two agents, but also recommended a much higher sale price. So WDT proposed to instruct S to deal with the sale – Ms M agreed to this proposal. Before WDT took possession of the property, Ms M had herself instructed S to appraise the property. In August 2023, S recommended marketing the property at £350,000 with a view to achieving a sale of £325,000 or above.

When WDT instructed S, in January 2024, it said the property should be marketed at £325,000 with a view to achieving £300,000 to £320,000. In the end, the property sold for £305,000. Ms M says that WDT's delay in marketing and selling the property caused it to be sold for £20,000 less than it would have been sold for had it been marketed and sold by the estate some months earlier. But I'm not persuaded by this. Firstly, as I've said, I don't think WDT did unreasonably delay marketing the property. It acted reasonably in trying to gain possession of and sell the property, and in the information it requested from Ms M before it took possession. Once it had possession, it placed the property on the market within a reasonable time, and the sale completed within a few months of it being marketed and an offer being accepted.

Secondly, even if there was delay – and I'm not persuaded there was – I don't think there's evidence of loss to the estate. I don't agree that S's appraisal from August 2023 is persuasive evidence that the sale price agreed in 2024 was either too low at that time, or lower than it would have been had the sale happened in 2023. An estate agent's appraisal is not a formal valuation by a qualified surveyor. It's an estimate based on local market conditions, carried out – in part – with a view to marketing the agent to the vendor to try and obtain the sale business. Even if it was a formal valuation, property valuation is not an exact science and – in cases concerning disputed valuations – the courts have confirmed that there is an acceptable margin of error in valuations. The difference between the initial appraisal of £325,000 and the eventual sale price of £305,000 is within that margin of error.

In the end, the value of a property is simply what someone is prepared to pay for it. The best evidence of the value is the marketing and sale. The property was marketed at £325,000 but

the best offer that could be obtained was £305,000. I don't think an earlier estate agent's appraisal is persuasive evidence that it's more likely than not that a higher offer would have been obtained had the property been marketed sooner. It follows that even if I were to conclude that WDT acted unreasonably in delaying the sale, or in not allowing Ms M to conduct it – which I don't – I don't think that resulted in financial loss to Mr R's estate.

When the property did sell WDT paid the appropriate share of the proceeds to Mr R's estate. It deducted a share of the costs of sale, as it was entitled to do – but it reduced the amount it deducted to the usual agent's fee rather than the higher fee S charged. It also waived the share of council tax and other costs it was entitled to deduct from the estate's share of the sale proceeds. I think this was fair, as it meant that Mr R's estate eventually received more than, strictly, it was entitled to. I agree with WDT that the leaseholder (Mr R, and then his estate) is responsible for council tax and utilities until the lease was terminated, and then the costs would be split between the beneficial owners.

I appreciate that Ms M is very upset about what happened, and feels that she and her father's estate have been treated unfairly. I'm conscious that she was having to deal with all this at a difficult time. Having to accept that her father had agreed that an equity release provider could take and sell the family home, and this was happening so soon after his passing, was no doubt upsetting. WDT's involvement therefore came at what was already a stressful and upsetting time. I've looked very carefully at everything that happened and considered everything that all parties have said. Having done so, I'm satisfied that WDT was, by and large, doing its best to balance its entitlement to recover its share of the property's value with sensitivity to Ms M's situation. And I'm satisfied that it didn't cause Mr R's estate any loss in the way it handled matters.

Finally, Ms M says that WDT didn't handle the complaint properly – in particular, by telling her that this wasn't a regulated product. I've found, in my jurisdiction decision, that it was. But I don't think WDT was acting in bad faith when it said otherwise – and it did, in any case, tell Ms M that she could contact the Financial Ombudsman Service even though it didn't think we would be able to look at the complaint. Ms M did so, and we have looked at it. So I don't think WDT's mistaken view that we couldn't has caused the estate any prejudice.

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 the estate of Mr R to accept or reject my decision before 20 March 2025.

Simon Pugh
Ombudsman