

## **The complaint**

Miss C, the executor of the estate of her late mother Ms C, complains about Ms C's lifetime mortgage which is now with Phoenix Group Management Services Limited. In particular, she's unhappy that the mortgage was secured over the titles of two separate plots of land owned by Ms C without Ms C's consent. Miss C brings this complaint with the consent of the other executor.

## **What happened**

The late Ms C took out a lifetime mortgage with the then Northern Rock bank in 2004. The mortgage was registered with the Land Registry against her home, and also against an adjacent plot of land which had its own separate title.

Following the collapse of Northern Rock during the financial crisis, much of its business was transferred to the nationalised successor company, which is now a firm known as Landmark Mortgages. But some lifetime mortgages, including Ms C's, were transferred to another lender. The mortgage was later transferred on again to Phoenix.

When the mortgage was transferred, the charge over Ms C's property was amended to be in the name of the new lender. But the charge over the adjacent land was not amended, and it remained in the name of Landmark.

Sadly Ms C passed away in late 2023. Miss C was appointed executor of the estate and asked Phoenix for information about the mortgage. Having reviewed the information Phoenix provided, she says she discovered that the mortgage was secured not only over Ms C's property but also an adjacent plot of land, and that this wasn't compatible with the valuation based on which the mortgage was lent. Miss C also says that Phoenix didn't provide a copy of the signed mortgage deed or solicitor's certificate from the time of the lending.

Phoenix said that when it acquired the mortgage, only one of the charges was transferred. The other remained with Northern Rock, later Landmark. It was aware that Landmark had discharged its charge in February 2024. It said that the original lending decision had been based on both parcels of land being included in the security.

Miss C said that the mortgage had been applied for based on only Ms C's home being included. But she was later told that both plots of land were subject to the mortgage. Landmark removed its charge in February 2024, shortly after Ms C passed away, without Miss C's knowledge, and has refused to answer questions from Miss C about this. Miss C said that if the mortgage was based on two plots of land, but now included only one, then that suggested that interest still being charged was inflated. Miss C had not been given a copy of the mortgage deed signed by her mother. Further interest of £2,000 a month was still being added – this was unfair, because Miss C wasn't in a position to discharge the mortgage until her questions had been answered and she was able to establish that there was a valid mortgage and the balance was correct.

Our investigator didn't think the complaint should be upheld, so Miss C asked for it 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.

I'm sorry to hear of Miss C's bereavement, and I hope she'll accept my condolences on the loss of her mother. And I can understand why she is concerned about what happened and wants to make sure that there is a valid mortgage her mother's estate is liable to repay.

With that in mind, I've considered everything very carefully. Having done so, I'm not persuaded to uphold this complaint.

I've seen documents from the original lending file. It shows that as part of title enquiries it was discovered that Ms C's home was in fact split over two titles. The house was on unregistered land, with a garden on a separate registered title which had been bought later.

The original valuation in 2004 was based on valuing both the house and surrounding land, and it was on that basis that Northern Rock agreed to the lending. It wasn't apparent that there were two titles at this time. It was only later, after the mortgage offer had been issued and when the legal requirements were being complied with, that it was realised that there were in fact two titles not one covering the house and land. This was investigated at the time. The lender's solicitor made clear that the lender required both titles to be included in the security for the lending. Ms C's solicitor confirmed this to her in a letter dated 16 August 2004, before the mortgage completed. The mortgage completed on that basis.

I'm not therefore persuaded that there was any issue with the original lending. Having what is in effect a single residence – house plus land – split over two titles is relatively unusual. But the evidence I've seen shows that it was always the intention that the mortgage would be secured over Ms C's entire property. It was relatively late in the process that it was discovered that this would mean taking a charge over two titles not one. But that was something the lender required for it to lend, Ms C's solicitors explained that to her, and the lending completed on that basis. At the same time, the formerly unregistered land including the house was registered with the Land Registry.

I don't think there's anything sinister in the charges over the two properties being registered on slightly different dates. That simply reflects when the respective forms were sent to the Land Registry and recorded by it. It's not unusual for the date a charge is recorded on the Land Registry title entry to be slightly different to the date the mortgage completed. It's not evidence of a retrospective change having been made without Ms C's consent.

Miss C says she hasn't been given a copy of signed mortgage deed with a wet-ink signature signed by Ms C. I've not seen one either. I've seen an unsigned draft version sent to Ms C before completion. And I've seen a photo of a signature page signed by her, but only of that page, not the preceding page with details about the mortgage.

Questions of whether a mortgage is technically enforceable as a matter of law are strictly speaking a matter for the courts, not for me. The fact that I haven't seen a wet-ink mortgage deed doesn't mean one doesn't exist. And in any case, it's my understanding of the relevant law that the absence of one wouldn't mean that a mortgage is unenforceable. I'm satisfied that it's more likely than not that Ms C agreed to borrow the mortgage funds from Northern Rock in return for giving security over her property. The mortgage terms and conditions allow Northern Rock to transfer the mortgage on to a new lender, and Ms C's consent was not required for that. In all the circumstances, I'm satisfied that it was fair and reasonable for Phoenix to expect Ms C's estate to repay the mortgage in line with what Ms C originally agreed to.

As I say, it's relatively unusual – though not unheard of – for a mortgage loan to be secured over two separate titles. I don't know why the charge over one of the titles was retained by Landmark when the other charge was transferred to Phoenix's predecessor. I suspect that it was simply an administrative error, with the fact that there were two charges in this case rather than the usual one being overlooked and only one of them being amended. In any case, if there was any mistake in not transferring one of the charges to Phoenix, that would have been the responsibility of the firm responsible for making the transfer, not Phoenix.

But in my view the transfer of only one charge hasn't ended up making any difference in this complaint. The fact that, for a time, the two charges were held by two different firms wouldn't affect Ms C's liability for the mortgage loan. Her liability for the mortgage loan is a matter of contract, based on the mortgage agreement which was originally between her and Northern Rock and later assigned to successor lenders, most recently Phoenix. The contract for repayment of the borrowing, with interest, is therefore now between Ms C's estate on the one hand, and Phoenix on the other. The estate is liable to Phoenix for repayment of the whole debt, including interest charged on it.

The debt is also secured over Ms C's property. Both charges should have been transferred to Phoenix. That didn't happen. But the fact that it now only has one charge does not affect the amount Ms C's estate owes. The amount the estate owes is governed by the mortgage offer and terms and conditions. The fact that Phoenix now only has a charge over one of the titles, not both titles, weakens its security but has no impact on what is owed. I'm afraid I don't agree with Miss C that the failure to transfer the second title means that the mortgage is somehow unenforceable, or that some or all of the capital or interest must be reduced as a result. It's true that Northern Rock intended to lend on the security of both titles. But the fact that Phoenix now only has one of the charges doesn't affect the amount owed. The amount owed flows from the fact that Ms C agreed to borrow the capital and to repay it with interest, not from the security the lender took for the borrowing.

The existence of two separate charges owned by two separate firms might have caused complications in the administration of Ms C's estate. But that's been avoided because Landmark removed its charge in February 2024. It had no interest in the debt Ms C's estate owes to Phoenix, so had no need to retain the charge. Landmark could, belatedly, have transferred that charge to Phoenix so that Phoenix had both charges (as should have happened when the loan was originally transferred). But it chose to simply remove the charge instead. That means the estate will no longer face any difficulties that might have arisen from the failure to transfer both charges, and that failure has not therefore caused any financial loss to the estate.

For all those reasons, I'm not persuaded that Phoenix has done anything wrong here. As the owner of the mortgage at the time Ms C passed away, it was entitled to expect the mortgage to be repaid as required by the terms and conditions. And it was entitled to continue to charge interest on the outstanding debt, also in line with the terms and conditions, for as long as it remained outstanding. It also retains a charge over one of the titles to Ms C's property, enabling it to enforce the debt if it remains unpaid. I'm afraid I don't see any basis on which I could fairly find that some or all of the interest was no longer chargeable either because of the problems with the transfer of one of the charges, or because of Miss C's complaint about it.

### **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 Ms C to accept or reject my decision before 5 January 2026.

Simon Pugh  
**Ombudsman**