

The complaint

Mr L complains that Allied Irish Banks Plc won't move his mortgage into his sole name following the death of the joint borrower.

What happened

Mr L and his former partner, who I'll call Ms M, took out a joint mortgage with AIB, secured over the property they lived in at the time.

In around 2009, Mr L and Ms M separated. They reached a separation agreement in 2015, in which (among other things) Mr L agreed to transfer his interest in the property to Ms M, subject to the outstanding mortgage. However, the property was never transferred, and remained in joint names.

In 2024, Ms M passed away. Mr L notified the Land Registry and the property title was changed to his sole name in October 2024.

Around the same time, solicitors acting for the estate of Ms M asked Mr L to transfer ownership of the property to the executors of Ms M's estate relying on the 2015 separation agreement. The executors said that their plan was to sell the property to repay the outstanding mortgage balance, and then distribute the remaining proceeds of sale in accordance with Ms M's will.

Mr L did not agree to the transfer. He says that he and Ms M asked AIB to agree to it in 2015, but AIB did not agree. The transfer agreement broke down as a result, and Mr L and Ms M remained joint owners as joint tenants of the property and jointly agreed to a re-mortgage in 2016. Mr L says that as a result full ownership of the property passed to him under survivorship rules following Ms M's death.

Mr L now complains that employees of AIB had accessed information about him and his account and passed it to Ms M's executors without his consent. He also complained that he had asked AIB to send correspondence to him at his new address rather than the mortgaged property many times over the years but it had failed to do so. And he said that following Ms M's death he had asked AIB to put the mortgage into his sole name but it refused to do so and wouldn't explain why – he said he understood that joint accounts reverted to the survivor on death and didn't form part of probate, so this was now solely his mortgage and Ms M's executors should not have access to it or be given information about it or him. He said that this situation had had a big impact on him, causing him to be worried about the security of his personal information. He said AIB was chasing him for mortgage payments but wouldn't comply with its own legal obligations.

AIB said that the mortgage did not automatically revert to Mr L on Ms M's death. It said it was aware that there was a dispute over ownership of the property and it would not make any changes to the mortgage until that was resolved. It said there had been no unauthorised access to Mr L's details or the mortgage account. It said it had not received any formal instructions from Mr L to change his correspondence address over the years. It said that it had given Mr L all the information he was entitled to in a subject access request.

My provisional decision

Having considered all the evidence, I issued a provisional decision setting out my thoughts on the complaint. I said:

“I’ve looked at the terms and conditions of the mortgage. The “General Conditions of Offer” say:

In the case of a mortgage advance in joint names, you will all be jointly and separately liable in respect of all conditions and obligations.

The Mortgage Conditions say:

If there is more than one of you these Conditions, the Conditions contained in an offer made to you and the terms of the mortgage deed apply to all of you together and each of you separately so that we can claim back all of the money you owe us from any of you or all of you.

This means that Mr L and Ms M borrowed the mortgage on what’s known as joint and several terms – meaning that they are both liable for the full borrowing individually and jointly. In effect, there are three obligations:

- Mr L and Ms M jointly agreed to repay the full mortgage;
- Mr L agreed that the full mortgage would be paid by either him or Ms M; and
- Ms M agreed that the full mortgage would be paid by either her or Mr L.

This doesn’t mean that AIB can be repaid three times. But it does mean that it can call on Mr L, Ms M, or them both jointly to repay. A joint liability means that they agree to pay jointly. A several obligation means that they each agree to pay separately. A joint and several liability means that they both agree to both things.

The law says that where there is a joint liability, and one of the joint borrowers dies, their joint liability passes to the other borrower, who then becomes solely liable. And where there is a several liability and one of the borrowers dies, their liability does not pass to the other borrower – it remains a liability of their estate.

Where there’s a joint and several liability, both of these things happen. What that means is that when she passed away, Ms M’s joint liability passed to Mr L and therefore sits outside her estate. But her several liability does not pass to Mr L, and her estate remains liable for her several (but not her joint) liability.

This is different to the rules of survivorship. The rules of survivorship apply to the ownership of the property, not to liability for the mortgage. Where a joint tenant dies, ownership of the property automatically reverts to the surviving joint tenant and does not form part of the deceased’s estate.

Where there’s a joint mortgage secured over property owned as joint tenants, what this means is that where one party dies their joint tenancy reverts to the survivor, who becomes the sole owner of the property. And their joint liability for the mortgage also falls away – becoming a sole liability of the survivor. But their several liability for the mortgage does not fall away and remains a liability for their estate to deal with.

In practice, where there is a joint mortgage and one of the borrowers dies, in most

cases the surviving joint borrower now owns the property on a sole basis and is also the executor and beneficiary of the estate of the deceased, and so agrees with the bank to take over the mortgage too – with the bank therefore agreeing to release the estate from its several liability and convert the mortgage to a sole mortgage going forwards.

However, in this particular case things are not so straightforward. There is a dispute between Mr L and Ms M's estate. Mr L says that the settlement agreement was set aside and he and Ms M agreed to continue as joint tenants when AIB refused to transfer the mortgage to Ms M, so the property reverts to him – and so should the mortgage. But Ms M's estate says that the settlement agreement remains in place but was never executed by Mr L – therefore that at the time of her death the property ought to have been legally owned on a sole basis by Ms M, Ms M solely owned the beneficial interest, and legal ownership should pass to her estate not to Mr L.

This is not a dispute I can resolve. I have no power to consider it – my remit only extends to complaints about financial businesses, not to disputes between their customers. And it's not a dispute AIB can resolve either. Ultimately, if Mr L and Ms M's estate can't reach an agreement only a court can decide which of them is entitled to the property.

In the meantime, I think it was fair and reasonable in all the circumstances for AIB to refuse to convert the mortgage to a sole mortgage in Mr L's name. As I've explained, it's not the case that on her death Ms M or her estate automatically ceases to be liable for it and it reverts to Mr L. Ms M's estate remains severally liable for the mortgage even if it's not jointly liable.

If AIB were to transfer the mortgage to Mr L's sole name, that would mean removing Ms M's estate's liability for it. If Ms M's estate was successful in claiming ownership of the property, then – unless it was sold – the property would go into the name of her beneficiaries, but with a mortgage in Mr L's sole name which the beneficiaries would have no liability for. That would make recovering the mortgage balance much more difficult.

If Mr L is successful in claiming ownership of the property, he can ask AIB to agree to remove Ms M's liability at that point. He would then have a property and a mortgage in his sole name.

But until that dispute is resolved, I agree with AIB that it's not appropriate to make any changes to the mortgage. Doing so means that AIB would be pre-empting the outcome of the dispute between Mr L and Ms M's estate. And – if Ms M's estate ends up being awarded the property – that would put both Mr L and AIB in a worse position; making Mr L solely liable for a mortgage secured over a property he would not own, and if it is unpaid leaving AIB trying to enforce against a property not owned by its borrower.

I appreciate Mr L is strongly convinced that he is the legitimate owner of the property. But the fact is that this is in dispute. Whether Mr L or Ms M's estate is entitled to the property is not a judgement either AIB or I can make. Transferring the mortgage into Mr L's sole name would be to pre-empt the outcome of that dispute. In these circumstances, it's fair and reasonable that AIB awaits the outcome of the dispute before making changes to the mortgage.

As I've explained, until such time as AIB agrees to its release, Ms M's estate remains on the mortgage account and remains severally liable for the mortgage. It therefore

requires information about the mortgage to, among other things, finalise her estate – and it's not unreasonable for AIB to give information about the mortgage to the representatives of the estate. This is not a breach of Mr L's data rights. Finally, I've not seen evidence that Mr L has formally instructed AIB to change its correspondence address for him, so it's not unfair that it hasn't done so – but it remains open to Mr L to make that request at any time. AIB can explain what he needs to do to meet its requirements."

AIB accepted my provisional decision, but Mr L did not. He said:

- It's not correct to say that it was appropriate for AIB not to make any changes to the mortgage because that would be pre-empting the outcome of the dispute. In fact, not transferring the mortgage to Mr L's sole name is pre-empting the outcome. There may or may not ever be a court decision, and in the meantime Mr L is the only person responsible for the payments and being financially impacted.
- On death, as a matter of law all property held as joint tenants – the entire legal and beneficial interest – passes automatically to the surviving joint tenant. It does not form part of the estate or probate. Therefore the property was not part of Ms M's estate and her estate and its representatives have no legal or equitable interest in it.
- Ms M's joint and several liability for the mortgage also ceased on her death. From then on, Mr L became solely liable for the mortgage. Ms M's estate has no continuing liability and her estate has no interest in the mortgage and no right to participate in it.
- Therefore the property and the mortgage falls outside Ms M's estate. Her executors should not have any access to the mortgage or be given any information about it by AIB. Disclosing any information to them is a breach of data protection and banking confidentiality obligations.
- I quoted the mortgage terms and conditions as applying to the "mortgage advance" – Mr L questions whether this means they only apply to the later further advances and not the initial borrowing.
- Following the separation agreement, Mr L and Ms M asked AIB to transfer the mortgage into Ms M's sole name. It agreed, subject to a test period in which Ms M would need to show she could maintain the payments alone. She failed the test period, the mortgage was never transferred out of joint names, and as a result the separation agreement was frustrated and is no longer valid. Ms M did not become sole owner, the property remained in joint names, and so it sits outside her estate.
- Mr L therefore asks that the complaint be upheld, that AIB be required to transfer the mortgage into his sole name, and that no further information be given to Ms M's estate or her representatives.
- Mr L also said that he has made a new complaint to AIB about further data breaches which should also be investigated.

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 also considered my provisional findings again, but I'm afraid I haven't changed my mind.

As I explained in my provisional decision, the ownership of the property and the mortgage are separate things. When one joint tenant dies, their legal interest in the property passes to the surviving joint tenant (though it's not necessarily the case that the survivor acquires all the beneficial interest as well). But the same is not true of a joint mortgage. As I explained, Ms M's joint liability was extinguished – but not her several liability. That remains a liability of her estate. I'm afraid I don't agree with Mr L about that.

There is a live dispute between Mr L and Ms M's estate about the ownership of, and beneficial interest in, the property. Mr L has provided an evidence bundle which shows this is subject to an active court case. Despite what Mr L says, it's not the case that the mortgage automatically reverts solely to him on the death of Ms M. And in those circumstances, Ms M's estate has not asked to be released from her several liability, and it has not agreed for that to happen. It says it ought to be the true owner of the property, and it proposes to sell it and repay the mortgage from the proceeds.

It's clear that there is in fact a dispute over ownership of the property subject to the mortgage, and that there are current court proceedings in relation to that dispute. Mr L strongly believes that he is in the right, and therefore that the dispute should be resolved in his favour. But the fact remains that there is a dispute.

I don't think it was unreasonable for AIB to refuse to make any changes to the mortgage until that dispute is resolved. I don't agree that refusing to make any changes means it has resolved the dispute in favour of Ms M's estate; it has simply preserved the existing situation until the ownership dispute is resolved. Neither AIB nor I can resolve that dispute. In the meantime, both Mr L and Ms M's estate remain liable for the mortgage, and if payments are not made then it will go into arrears and the balance will increase.

And while Ms M's estate remains a party to the mortgage, it's not unreasonable for AIB to communicate with her estate about it – doing so is not a breach of Mr L's data protection rights. His more recent complaint about information disclosure was made after this complaint was made, and so doesn't form part of it; that's not something I have considered here. I see that is still being investigated by AIB, and if Mr L is unhappy with the outcome of that investigation he can bring that complaint to us in due course.

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 Mr L to accept or reject my decision before 10 December 2025.

Simon Pugh
Ombudsman