

## **complaint**

Mr M brings this complaint as Administrator of the estate of his late wife, Mrs M, who died (without leaving a will) in 2007. I understand that Mr M is the sole beneficiary of the estate. At the time of her death Mrs M had a mortgage with Lloyds Bank PLC (trading as Cheltenham & Gloucester Plc). Mr M is unhappy that Lloyds is asking for the mortgage to be repaid. He says he has repaid it by presenting Lloyds with a promissory note.

## **background**

After Mrs M passed away in December 2007, Mr M remained living in the property, and for a while made payment towards the mortgage. He has now stopped making payment and presented Lloyds with a promissory note which he claimed discharged the mortgage debt.

Lloyds has explained that, because Mr M isn't the mortgage account holder, he's not obliged to make payments. But Lloyds disagreed with Mr M that his promissory note was a valid method of payment.

Mr M complained to us. A casework manager looked at the complaint but didn't think it should be upheld. Mr M has asked for an ombudsman to review the complaint.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not upholding the complaint. These are my reasons.

I'm aware that Mr M is in dispute with various insurance companies about insurance policies which he believed Mrs M had taken out before her death. Those are the subject of separate complaints to our service so I can't comment on them here. But what I am looking into is whether Lloyds has acted reasonably in relation to the mortgage account.

It's correct that Mr M isn't the mortgage account holder – he is the Administrator of the estate of the mortgage account holder. As such he is under a duty to settle the debts of the estate. This includes the mortgage debt owed to Lloyds.

In his capacity as Administrator, Mr M is responsible for paying the mortgage out of the assets of the estate. Mr M isn't personally liable to make payment. But a mortgage is considered a priority debt of the estate and so should be settled as soon as possible. In this case, it is more than twelve years since Mrs M passed away, yet the mortgage account hasn't been repaid.

I note Mr M considers his promissory note to be a valid method of payment. But it is not. It is simply a promise by the person who gives the note that they will pay the amount owed when it is called upon. Lloyds isn't required to accept this because Mr M, in his capacity as Administrator of Mrs M's estate, is already under a legal obligation to repay the debt.

I've noted the arguments Mr M has made about securitisation, the creation of money, and why he thinks his promissory note is valid, as per the Bills of Exchange Act 1882. I'm familiar with all the arguments Mr M has made. But he is incorrect about all these matters. It seems likely to me that Mr M has been misled by incorrect information he's found online.

Mr M has also misunderstood what Lord Denning said about promissory notes. It is correct that Lord Denning said that a promissory note is as good as cash. But he then went on to say (and I paraphrase) that if a creditor agrees to accept a promissory note (and there is no obligation to do so), then the debtor (that is, the person who has given the note to the creditor) is required to pay the full amount stated on the promissory note when they are called on to do so by the creditor. So Lord Denning actually said the opposite of what Mr M believes he said.

In this case, Lloyds hasn't agreed to accept a promissory note, it doesn't have to, and the note is not 'cash' in any event.

I can understand that, having come across (probably online) the mistaken and erroneous theory that one can use self-created promissory notes to pay debts, Mr M might have thought this was a way to pay off the mortgage. But it is not. Mr M is under a legal duty as Administrator of the estate to repay the mortgage debt out of the assets of Mrs M's estate. For every month he doesn't do so, the balance on the account increase if the monthly repayment isn't made. Arrears are now about £17,000.

If Mr M isn't willing to settle the debt owed to Lloyds (despite his duty as Administrator to do so), then Lloyds is entitled to ask the court to grant possession and sell the property itself to recover the debt. This is usually a last resort, but I'm satisfied Lloyds has shown Mr M considerable forbearance for more than 11 years by allowing the mortgage account to continue.

This isn't a situation where the borrower is in arrears and the court can suspend possession if an arrangement to clear the arrears is reached. Instead it is a situation where the mortgage is repayable immediately in full – and has been since 2007 – but the debt remains outstanding because the estate hasn't settled it.

I appreciate that this is Mr M's home and he wants to stay there. But in his capacity as Administrator of the estate, he has a duty to pay off the mortgage. In this regard, I think Mr M might benefit from taking legal advice from a specialist probate solicitor about his obligation as Administrator to pay the debt to Lloyds. He can find details of a specialist local to him from the Law Society's website at:

<http://solicitors.lawsociety.org.uk/>

In all the circumstances, I'm satisfied Lloyds has acted fairly and reasonably. It is now over 11 years since the debt became payable to Lloyds. I can see no basis upon which it would be fair or reasonable to expect Lloyds to continue to wait for the debt to be settled, particularly as the balance is continuing to increase every month.

### **my final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M, on behalf of the estate of the late Mrs M, to accept or reject my decision before 19 March 2019.

Jan O'Leary  
**ombudsman**