

complaint

Mr F's complaint is about how Bank of Cyprus UK Limited (BoC) handled an endowment policy it held as security for his borrowing with it.

Mr F is represented in his complaint by a relative, whom I will call Mr A.

background

Mr F arranged a repayment mortgage with BoC in 1998 for £54,000. BoC required the mortgage be protected in the event of his death. So Mr F had to provide and assign to it a life policy for that purpose. Mr F has explained that he had an existing endowment policy in place that provided slightly more life cover than was needed for the new mortgage. Rather than arranging a new policy, he chose to assign the endowment to BoC.

The document that Mr F signed to assign the policy to BoC stated that all current and future lending and accounts arranged by Mr F had to be paid on demand by BoC. It went on to confirm that the policy, or any replacement for it, was assigned to those liabilities. This was the value of the policy, including any bonuses that were paid. It also said that BoC could take the value of the policy if it had demanded payment of the liabilities that it was used as security for.

The mortgage was paid off in 2013, but the endowment policy wasn't released from its assignment. This was because by that time Mr F had other borrowing with BoC.

The endowment policy matured in the spring of 2014. However, the maturity value wasn't released by the policy provider because it wasn't asked for. It doesn't appear that Mr F looked into taking the money until the autumn of 2015, at which time he was told that he would need to have BoC release the assignment before he could be given the money. Mr F asked BoC to do this and it declined because the policy was being used as security for his then current borrowing.

Mr F complained to BoC. He was unhappy that a letter of no further interest hadn't been issued because he didn't consider that there was an account for the policy to be assigned to – the mortgage had been paid off in 2013. He didn't think that the policy and the mortgage had anything to do with the other loans that were in place. He went on to say that if BoC believed that it was entitled to any of the policy proceeds, it should have taken action at the time it matured and paid it off the current loan. He considered that in not doing so, BoC had acted negligently.

Our adjudicator considered the complaint and upheld it in part. She was of the opinion that as the policy had been held as security for any and all outstanding debts Mr F had with BoC, it was not unreasonable in maintaining the assignment. She was also satisfied that due to the purpose of the assignment of the policy, it wasn't wrong to have not cashed it in when the policy matured.

However, when Mr F asked BoC why it hadn't been encashed to reduce his outstanding debt, BoC should have clarified what he wanted to do with the policy. The adjudicator was persuaded that if it had done so, Mr F would have confirmed that he wanted the money from the policy paid off his outstanding debt. As such, if Mr F confirmed at this time that he wanted the money paid off his loan, BoC should take the maturity proceeds from the policy provider. This money should be applied to the loan as at 13 November 2015 (a date that

would have allowed Mr F to respond to the enquiry if it had been made at the correct time and the policy provider to release the money). Any interest on the amount of money paid would be reversed. In addition, BoC was to review the charges and fees that had been applied to the loan to see if any of them wouldn't have been charged had the lump sum payment been made on 13 November 2015.

BoC accepted the adjudicator's conclusions. Mr A, on Mr F's behalf, didn't. I will comment on Mr F's further comments below.

my findings

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

I would firstly explain what is meant by security in the context of Mr F's policy. When a bank lends money, although a loan may be on a repayment basis, if there is thought to be risk associated with that loan, a lender may take assignment of or mortgage of an asset to protect itself. The asset could be of various forms such as an investment, an insurance policy or a property. It's entitled to do so as long as its customer is willing to assign the item to it. The security is not considered to be a means to repay the loan in most circumstances. The only time it would be liquidated to pay all or part of the debt would be in the circumstance where the bank demanded that the loan be repaid in full at a particular point and its customer was either unwilling or unable to do so.

In Mr F's case, he mortgaged his existing endowment policy to BoC. This mortgage gave BoC rights over the policy as security for any and all debts that Mr F had with it. As I have said above, this doesn't mean that if the policy had a value at any point it would encash it, but rather it was there in the event that it needed to do so. When the policy matured, the policy value may have been available to be taken, as it would have been earlier upon surrender, but this doesn't mean that BoC had to take the money. It was allowed to keep it as security for the debts in place at that time and going forwards. The only time that BoC would have encashed the policy, other than in the above circumstances, would have been if Mr F had asked it to do so. This idea was not raised until late in 2015.

I note that Mr A has said that the policy should have been cashed-in when it matured; but BoC didn't have cause to do so at the time. Whilst Mr F does appear to have been in some difficulties at the time, BoC was working with him to resolve the situation. Unless Mr F had asked for the policy to be cashed-in and the value paid off his debt as part of those discussions, or it had called in his entire debt, BoC wouldn't have claimed the value of the policy. I don't think that this is an unreasonable position for it to have taken.

I also note that Mr A considers that as the mortgage only require life cover to be assigned to BoC, it has no right to the value of the policy. This isn't right. The different elements of the policy can't be separated. When Mr F signed the documentation to put up the policy as security for his debt, he mortgaged the entire policy for this purpose. Indeed, the assignment confirms that the value of the policy is also assigned, not just any death benefit as Mr A has put forward.

I have noted Mr A's comments about it being the bank that would need to claim the maturity funds and that Mr F didn't need to give authority for this to happen. In the circumstances there are two parts to this process. It is correct that because of the assignment the life assurance company didn't require Mr F to consent to the policy value being paid out if BoC

requested it. However, because of how it deals with an item held as security (detailed above) BoC required Mr F to ask for the policy to be cashed-in. It hadn't demanded full payment of all liabilities and so, it couldn't under its own terms and conditions take the maturity value.

In his initial telephone conversation with one of our adjudicators Mr A said that Mr F wouldn't have taken out the mortgage had he known that the assignment would not end when the mortgage was paid off. As this didn't form part of Mr F's complaint to BoC or to this service, we didn't look in to it further. We are only able to consider a complaint if the business it's against has had the opportunity to consider it, which it hadn't.

In response to our adjudicator's opinion, a similar point was again raised by Mr A. This being that if Mr F had known that the endowment was to be used as security for the additional borrowing, he wouldn't have taken it out. Again, having reviewed all of the correspondence from before the complaint came to this service I can't see that this was raised with BoC. Nor is this included in the complaint that Mr F initially asked us to look into.

As such, I can't consider the issues of whether Mr F wouldn't have taken out the mortgage/subsequent borrowing if he had known that the endowment policy would be assigned to any and all debts held by Mr F.

Overall, I am satisfied that BoC did have the right to keep the assignment on the endowment policy in place, based on the terms and conditions of the agreement Mr F signed. I also don't believe that it acted inappropriately in not seeking to take the maturity proceeds of the endowment policy in 2014. However, I am in agreement with our adjudicator that when Mr F raised the matter of the maturity proceeds being paid off his outstanding loan at the beginning of November 2015, it should have taken action at that time.

I am also in agreement that had BoC contacted Mr F to ask him if he wanted the maturity value paid off his loan, at it should have, he would have said yes. BoC would then have encashed the policy and paid the money off the loan. A ten day period seems reasonable for this process, so the lump sum would have been credited to the account on 13 November 2015.

my final decision

My final decision is that I uphold this complaint in part. In full and final settlement of the complaint, should Mr F want it to do so, Bank of Cyprus UK Limited should approach the product provider of the assigned endowment policy and take the maturity value. This is then to be paid off Mr F's business loan as at 13 November 2015. All charges and fees added to the loan from that time should be reviewed. If any of them wouldn't have been applied if the lump sum had been paid on 13 November 2015 they should be reversed.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr F to accept or reject my decision before 18 April 2016.

Derry Baxter
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