

## **complaint**

Ms G complains in her capacity as administrator of the estate of her late mother (who I will call Miss G, for the sake of clarity). Ms G is also the sole beneficiary of the estate. She is assisted in bringing the complaint by solicitors.

Ms G's complaint is about a loan taken out in 2004 by Miss G with a lender which was later taken over by GE Money Home Lending Limited. In particular, Ms G has complained about the following:

- that the loan should never have been approved;
- GE Money failed to provide evidence to prove Miss G paid off other debts from the proceeds of the loan;
- unfair fees and charges were added to the account;
- GE Money showed a lack of consideration in its handling of the complaint and in its insistence that the full amount of the outstanding loan balance should be paid out of the funds held in the estate.

A complaint about Payment Protection Insurance (PPI) sold with the loan is being considered separately to this complaint.

## **background**

In January 2004 Miss G took out a secured loan with GE Money Home Lending Limited. Including PPI, she borrowed a total of £20,240 over a period of 12 years. Sadly, Miss G died in July 2005.

In May 2015 solicitors on behalf of the estate complained about the loan. They said it shouldn't have been granted to someone in Miss G's position. They also asked for evidence to show the debts Miss G had said she was going to consolidate had been repaid. A complaint was also made about PPI and about administration of the account generally.

A further complaint was made that, in insisting on the full amount outstanding to close the account, GE Money hadn't acted fairly. After the property was sold, the first mortgage paid off and all other debts of the estate paid, the amount remaining in the estate was about £39,000. GE Money was owed £22,000.

Ms G's solicitors asked GE Money to accept £8,000 in full settlement of the debt. It declined to do so, as there were sufficient funds in the estate to settle the debt in full. The solicitors complained that this was unfair, as it would deplete the estate even more. They said Ms G had been through enormous emotional distress and wanted to make a better life for herself. GE Money's decision would leave Ms G with less than she would otherwise receive from the estate if a reduced amount had been agreed.

GE Money didn't uphold the complaint.

The complaint was brought to us. Our adjudicator explained that we couldn't consider anything that had happened prior to 6 April 2007, when GE Money became subject to our jurisdiction. So we weren't able to look at the granting of the loan or any distribution of the money borrowed by Miss G.

He noted that GE Money hadn't been aware until October 2012 that Miss G had died in 2005. GE Money had confirmed that in October 2015 it had refunded all the arrears fees – a total of £751 – applied to the account.

The adjudicator was satisfied GE Money hadn't acted unfairly when it asked for settlement of the loan out of the funds held in the estate. He also didn't think GE Money had treated Ms G unfairly or unreasonably.

The solicitors acting for Ms G asked for an ombudsman to review the complaint. In summary they make the following points:

- if the estate had not paid off the first mortgage on Miss G's property, there would not have been sufficient equity in the property for the amount claimed by GE Money to be paid out of the proceeds of sale.
- Miss G left many other debts – all of which have been paid out of the estate;
- in refusing to accept £8,000 in full settlement of the debt, GE Money has failed to take account of Ms G's personal circumstances.

### **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've reached the same conclusion as the adjudicator, for largely the same reasons.

**pre-6 April 2007 matters:** Because GE Money wasn't subject to our jurisdiction before that date, I can't consider a complaint about any issues that happened before then.

**fees and charges:** I'm satisfied that GE Money has refunded all arrears fees and charges applied to the account – a total of £751. I don't require it to do anything further in this respect.

**reduced settlement:** I don't think GE Money has acted unfairly in asking for the outstanding debt to be settled in full out of the funds held in the estate. The estate settled all other debts, and I've seen no evidence to suggest there were negotiations with other creditors to accept a reduced amount.

In the circumstances, I'm satisfied GE Money is entitled to be paid the full amount of the outstanding debt out of the estate.

**fair treatment:** I've read what Ms G's solicitors have said about her personal circumstances. I have no doubt that the loss of her mother at such a young age has been a significant and distressing event for her, with implications that have lasted for a number of years.

But I'm not persuaded that this means GE Money has treated Ms G unfairly. I take on board what her solicitors say – that the estate has been depleted by the number of debts left by Miss G on her death. As a result, there is not going to be much left over for Ms G once the estate is settled.

The solicitors also say *"She is anxious to be able to make a better life for herself and she will be VERY severely restricted in this if she is further penalised financially..."*

From what the solicitors have said the implication is that Ms G has gone through significant emotional trauma over the years and as a result her future prospects have suffered. Accordingly they argue GE Money should take this into account and agree to accept a reduced amount in order to alleviate her distress. In all the circumstances of this case, I can't see that it would be fair or reasonable to expect GE Money to do this.

Payment of a debt which is properly owed to GE Money by the estate is not a penalty. It may well be an unwelcome expense that the estate has to bear. But – particularly where it appears all other creditors have been paid in full – I can see no basis upon which I could find GE Money has acted unfairly here or that it is penalising Ms G.

I know this is not the outcome Ms G was hoping for. I appreciate her solicitors feel strongly about this; they have represented her interests for many years, while she was a minor and also now Ms G is administrator of the estate. They have 'fought her corner' vigorously – and I do understand the points they have made on her behalf. But in all the circumstances, looking at this matter impartially, I don't think GE Money has acted unfairly.

### **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 Ms G on behalf of the estate of the late Miss G to accept or reject my decision before 2 December 2016.

Jan O'Leary  
**ombudsman**