

## **The complaint**

This complaint has been brought by Miss B in her capacity as Administrator of the estate of her late father, Mr B. Her complaint arises out of a lifetime mortgage taken out by Mr B in 2003 with Dudley Building Society (DBS).

Miss B says that DBS unilaterally altered the terms of the mortgage by forbidding family members to take personal possessions to the property. Miss B says that, as a result, DBS also excluded carers and denied Mr B the right to be cared for in his own home.

Miss B also says that, after Mr B passed away in February 2021 DBS refused to freeze interest on the mortgage pending a sale of the property.

Miss B had also complained that the mortgage taken out in 2003 and further advances taken out in 2007 and 2008 were mis-sold and unsuitable for Mr B. On 14 November 2023 I issued a decision in which I explained why those matters were outside the jurisdiction of the Financial Ombudsman Service.

## **What happened**

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr B or Miss B being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

In 2003 Mr B took out an equity release mortgage with DBS, after receiving advice from his own independent financial advisers. The original advance was for £280,000. Mr B took out further advances in 2007 and 2008, so there were in total four sub-accounts on the mortgage with a total balance of around £536,000 in February 2021.

I am sorry to note that Mr B passed away in February 2021. Miss B was appointed Administrator of his estate, and raised a complaint with DBS about the mortgage.

Miss B told DBS that she had seen a letter sent by DBS to Mr B stating that family members were prohibited from bringing personal possessions into the property. Miss B had been unable to locate the letters amongst her father's paperwork. DBS said that no such letter was sent and didn't uphold her complaint about this.

Miss B also thought it was unfair of DBS not to freeze or suspend interest on the mortgage after Mr B passed away in February 2021. DBS said that it had had no request to freeze interest.

Dissatisfied with DBS's response, Miss B raised a complaint with our service on behalf of the estate. An investigator looked at what had happened. He found no record of any letter sent by DBS to Mr B forbidding family members from bringing personal belongings into the

property. He also noted that Miss B had not been able to provide a copy of this letter either. On balance, the investigator was not persuaded DBS had sent such a letter.

The investigator also noted that the Terms & Conditions (T&Cs) that applied to the mortgage did not specify that interest would be frozen after Mr B passed away. In the circumstances, he didn't think DBS had acted unreasonably in continuing to charge interest on the mortgage.

Miss B asked for an ombudsman to review the complaint.

### **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 will start first by explaining the extent of our powers in relation to this matter.

Under our rules, we can consider a complaint from a consumer. Mr B was a consumer and so met the definition of an "eligible complainant" set out in our rules. For the purposes of this complaint, the rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant or authorised by law. In this respect, Miss B as Administrator of Mr B's estate, is bringing the complaint on the estate's behalf, and as such she is authorised by law to do so.

But I must explain that, although Miss B is representing the estate, it is Mr B who was DBS's customer. Miss B's role is to bring the complaint on the estate's behalf, in the same way that other consumers might instruct a relative, solicitor or accountant to represent them in a complaint. But this does not entitle Miss B to air her own grievances about DBS, because she is not its customer; her role is limited to putting forward the estate's complaint.

I note from the detailed correspondence that Miss B has expressed her own opinions about what she perceives to be DBS's failings – and I do not doubt her strength of feeling about this. But because Miss B is not DBS's customer, her concerns about DBS don't form part of this complaint.

I will now address the issues in this complaint.

#### **DBS unilaterally altering the mortgage terms**

I've noted what Miss B has said about this – that she saw a letter in Mr B's home from DBS which specifically prohibited family members from bringing personal belongings into the property. However, she's been unable to find this letter.

I've looked at the detailed contact notes, and there is no record of any such letter being sent by DBS. There is, however, a letter from DBS dated 24 July 2007 which says (amongst other things):

#### **"Occupation of the property by you and family member/members during your lifetime**

*The Society [DBS] has no objection to allow a family member or members to occupy the property with you during your lifetime and possibly activate a business from your premises, provided the structure of the property is not altered to accommodate business activities..."*

This letter says the exact opposite of the letter Miss B says she saw, but of which there is no record in DBS's detailed account history, and which letter cannot now be found by Miss B.

I think it is unlikely that if DBS later changed its stance on allowing family members to occupy the property (which, by necessity, would include bringing personal possessions with them), there would have been some record of this in the contact notes. I say this because DBS specifically confirmed in writing (as set out above) that Mr B *could* have family members living with him.

In all the circumstances, and in the absence of any documentary evidence in support of what Miss B has said about this, I am unable to uphold this part of the complaint.

#### DBS refusing to freeze interest on the account after Mr B passed away

I have reviewed the mortgage and further advance T&Cs, and there is no provision in them for interest on the mortgage to be frozen on the death of a borrower. There is no requirement for DBS to do this, and although Mr B passed away during the pandemic, there was no obligation on the part of DBS to freeze interest for the benefit of the estate.

In the circumstances, I'm unable to find that DBS has acted unfairly in continuing to charge interest on the outstanding balance.

#### Conclusion

I know this isn't the outcome Miss B was hoping for, but after careful consideration, I'm unable to find that DBS has done anything wrong.

#### **My final decision**

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B on behalf of the estate of Mr B to accept or reject my decision before 14 December 2023.

Jan O'Leary

**Ombudsman**