

The complaint

This complaint is brought by Mrs O in her capacity as Executor of the estate of the late Mr O. Mrs O in turn is represented in the complaint by a relative, Miss C.

Mrs O's complaint is that TSB Bank plc told her that, after the death of her husband, Mr O, she could continue to pay the mortgage on the property indefinitely. However, three days later, TSB said that this was an error.

To settle the complaint, Mrs O wants TSB to transfer the mortgage into her name, pay compensation and stop harassing her.

What happened

This complaint arises out of unhappy circumstances – the death of Mrs O's husband, who passed away in January 2022. He owned a property in his sole name, which had an interest-only mortgage on it with TSB.

Mrs O was named as the executor and beneficiary of his estate. The title to the property has been transferred into her name. In error, TSB told Mrs O that she could continue to pay the mortgage indefinitely, but very quickly realised that this was an error and informed Mrs O of this.

The mortgage term has expired, and the capital balance remains due and payable. Mrs O has applied for a mortgage in her sole name, but that application has been declined. (A separate complaint has been made about this, which is also with me for a final decision.)

Miss C says that the bank's promise to allow Mrs O to continue to pay the mortgage has created a binding contract. Mrs O therefore disputes that TSB is entitled to ask for payment of the mortgage balance, or that she is required to take out a mortgage in her own name. Miss C says that she considers the bank's attempts to contact Mrs O to be harassment, contrary to the provisions of the Protection from Harassment Act 1997.

After TSB issued its final response letter confirming that it would not deal with Miss C any further, Mrs O raised the complaint with our service, authorising Miss C to speak for her.

An investigator looked at what had happened but didn't think the complaint should be upheld.

Miss C said that Mrs O wanted a final decision on 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 O 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, Mrs O 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 Mrs O is representing the estate, it is Mr O who was TSB’s customer. Mrs O’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. Indeed, Mrs O has herself asked Miss C to represent her in this complaint. But this does not entitle Mrs O or Miss C to air their own grievances about TSB, because they are not its customer; their role is limited to putting forward the estate’s complaint.

I also note from the case file that Miss C has expressed her own opinions about what she perceives to be TSB’s failings – and I do not doubt her strength of feeling about this. But because she is not TSB’s customer, her concerns about TSB don’t form part of this complaint.

I’ve noted the points Miss C has made about her belief that there is a legally-binding contract between Mrs O and TSB that Mrs O can pay the mortgage indefinitely. Only a court can determine if a contract exists and so I don’t have any power to decide whether there is a contract or not. However, I will explain that, although Mrs O has inherited the property on which the mortgage was secured, a mortgage itself cannot be “inherited”, so there is no automatic transfer of a mortgage to the beneficiary of the estate.

In addition, we have no powers to investigate criminal matters. If Mrs O believes the bank has committed a criminal offence under the Protection from Harassment Act 1997, that would be a matter for the police or the courts.

Mrs O’s role as executor of Mr O’s estate is to administer the estate – which includes payment of the debts of the estate. The main debt of the estate is the mortgage owed to TSB. I know Mrs O wants to stay in her home, but her application to TSB for a new mortgage has not been successful. Therefore Mrs O will need to make other arrangements, either to arrange a mortgage with another lender, or otherwise the only option will be for her to sell the property in order to repay the mortgage.

I know this is not what Mrs O wants to hear, and I am sorry if my decision causes her any distress. But there is no basis on which TSB is required to allow the mortgage to continue now the term has expired. The full amount is due and payable to TSB, and arrangements need to be made to repay the outstanding mortgage balance. In this regard, Mrs O might find it helpful to speak to an independent financial adviser to discuss her options. Given her age, Mrs O might qualify for an equity release mortgage, or a ‘Later Life’ retirement mortgage. TSB does not offer these types of mortgage.

TSB had previously made an offer of compensation of £1,000 for its error in telling Mrs O that she could continue with the mortgage. Under our rules, we can make awards of compensation for distress and inconvenience to an eligible complainant. Mr O would have been the eligible complainant, as he was the mortgage account holder. Mrs O as Executor is representing his estate, but has no entitlement to be compensated for any distress and inconvenience incurred by her personally. Miss C, as a representative of a representative has no entitlement to compensation either. In addition, the estate of a deceased consumer can’t experience feelings of distress or inconvenience.

I therefore have no power to make any award of compensation to Mrs O as Executor and so am unable to order TSB to pay the £1,000 it had previously offered. If the bank wants to do this as a gesture of goodwill, then it can do so, but I cannot order TSB to make this payment.

I know this isn't the outcome Mrs O was hoping for. But it would be remiss of me to give Mrs O false hope that she can continue with the mortgage indefinitely when the opposite is the case.

In all the circumstances, I am unable to find that TSB is obliged to allow the mortgage to continue to run, now that the term has expired and the balance is due to be paid to the bank out of the estate of the late Mr O. Mrs O is, of course, under no obligation to accept my decision, and if she doesn't want to she will be free to pursue her grievance against TSB in court. If Mrs O decides to take legal action, I would strongly suggest she takes legal advice from a qualified solicitor.

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 discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O, on behalf of the estate of Mr O, to accept or reject my decision before 8 January 2024.

Jan O'Leary
Ombudsman