

## **The complaint**

This complaint is about an equity release lifetime mortgage with Godiva Mortgages Limited taken out in 2008 by Mrs F and her husband, Mr F (who has since passed away). Mrs F says that she wasn't party to the advice given to take out the mortgage, and although she agreed to it, this was under pressure from Mr F.

Mrs F also says that, following the original advance of £40,000, further drawdowns taken over the next ten years until 2018 were made without her knowledge, with Mr F forging her signature on the documents.

After Mr F's death, Mrs F had to sell the property to repay the mortgage, which was then £258,245.37. Mrs F believes Godiva should reimburse her for this, less the £40,000 original advance – so £218,245.37.

## **What happened**

I do not need to set out the full history of the matter. There are several reasons for this. First of all, what happened is set out in detail in correspondence, so there is no need for me to repeat it here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mrs F being identified. I will instead concentrate on giving the reasons for my decision.

## **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 begin by explaining what I will be looking at in this decision. The mortgage was taken out in 2008 by Mr and Mrs F on the advice of their own independent financial adviser (IFA), and after taking advice from their own solicitor. I've noted what Mrs F has said about both the financial and legal advice given in 2008.

However, neither the IFA nor the solicitors are part of this complaint. If Mrs F has concerns about the advice she was given in 2008, she will need to raise those matters separately with the IFA (which is covered by the Financial Ombudsman Service) and the solicitors (which is covered by the Legal Ombudsman).

As far as Godiva was concerned, the documentation provided to it in 2008 showed that, before taking out the mortgage, both Mr and Mrs F had been given independent financial and legal advice. The advice included information about further drawdowns to a maximum of £131,000, and showed how interest would accrue on the amount borrowed.

As I said above, if Mrs F is now saying she wasn't given advice, that's a separate matter. But as far as Godiva was concerned, Mrs F had been fully advised of the nature and implications of taking out the mortgage.

Mrs F says she was aware of the £40,000 advance, but that her husband had used it to pay off credit cards, rather than for the purpose she had believed the mortgage was for – which was to supplement his pension fund. That's not something for which Godiva can be held liable, and indeed Mrs F acknowledges her liability for this original advance.

The crux of this complaint is that it wasn't until after Mr F passed away in December 2020 that Mrs F first became aware that Mr F had used the full drawdown facility on the mortgage to withdraw the maximum amount of £131,000. He had done this over a period of ten years. Mrs F says that Mr F had forged her signature on the documents.

Mrs F says that there was a lack of due diligence on the part of Godiva, as it didn't verify the signatures; if it had done so, it would have realised that she hadn't signed the forms.

The drawdown facility had already been agreed in 2008. As a result, the drawdown process was a straightforward procedure, involving a pre-populated document being issued on request. It didn't require a new application for borrowing, with the additional scrutiny that would come with a fresh application for new borrowing.

I've looked at the forms Mrs F says contain forged signatures. I am not a handwriting expert, so I can't make any judgement on whether the signatures match Mrs F's or not. But I accept what Mrs F has said – which is that she didn't sign these forms. Godiva accepted the forms in good faith – and I don't think the signatures on the forms differed from the original so significantly as to raise any red flags.

I've also seen letters sent to Mr and Mrs F after drawdowns were made, confirming the amounts. Mrs F says it should have been a red flag that these were paid into Mr F's bank account. However, there is nothing untoward about this, because it is a valid instruction, and is in accordance with the payment instruction given to Godiva when the mortgage was taken out.

I also note that the annual statements were addressed to both Mr and Mrs F. I've noted what Mrs F has said – that Mr F controlled the finances (as well as other aspects of their domestic life). But Godiva would not be expected to know this, and it is a reasonable expectation that correspondence addressed to both Mr and Mrs F would be read by them both.

I know Mrs F says she did not give any instructions to Godiva, and so the drawdowns should not have been allowed. As a result, Mrs F believes that the full amount borrowed – including all interest accrued on the mortgage since the original drawdown of £40,000 – should be repaid to her – less the original £40,000.

However, even though there is doubt over whether Mrs F agreed to the further drawdowns, I don't think that means that Godiva should refund the capital and interest (less £40,000) to Mrs F.

There is no dispute that Mrs F was a party to the mortgage in 2008, when she agreed to the roll-up of interest on the borrowing. So there is no basis on which it would be fair to say that Mrs F should be refunded interest on the £40,000 which she knew about and agreed to.

As far as the further drawdowns are concerned, this is not a case where a stranger has committed fraud and stolen money from Mrs F, or where a stranger has taken a loan out in her name that she never knew about. This is a case where Mrs F already had a joint mortgage, secured over a property she jointly owned. Even if I was to conclude that Mrs F hadn't been aware of the additional drawdowns after the original £40,000 advance, there's no dispute that Mr F was, or that Mr F received the money.

This was Mr F's property too, and he had given Godiva security for his borrowing, in the form of the mortgage over the property. So even if I was to find that Mrs F knew nothing about the further advances and shouldn't be held liable for them, this would still be Mr F's borrowing, and would still be secured over the jointly-owned property.

Therefore, even if I were to say that Mrs F wasn't liable for the additional drawdowns, Godiva was still entitled to recover the borrowing when the property was sold – as indeed it did. That's because it is entitled to recover Mr F's debts from Mr F's property, using the security Mr F gave, and no-one disputes this is Mr F's debt (notwithstanding whether or not it is also Mrs F's debt).

In other words, whether or not I find that Mrs F was unaware of the further drawdowns, she would be left in the same position. Either way, when the property was sold the full amount of Godiva's mortgage – the original £40,000 advance and the further drawdowns – needed to be repaid under the terms of the legal charge Godiva had over the property.

## **Conclusion**

This has been a difficult decision for me to write, because I've noted everything Mrs F has said about her family circumstances. I can understand what a shock it was for her after Mr F passed away for her to discover the amount of debt he was in. As a result, Mrs F had to sell the family home to clear his debts, and I am sure this has been a very upsetting time for her. But I have to put aside my natural empathy, and decide the case on the basis of the evidence.

Having done so, I am satisfied, for the reasons given above, that Godiva was entitled to recover the full amount of the mortgage debt when the property was sold. That's because, even if Mrs F hadn't known about the additional drawdowns, Mr F did, and he had the benefit of the funds advanced by Godiva. In the circumstances, Godiva was entitled to be repaid out of the proceeds of sale.

I know this isn't the outcome Mrs F was hoping for, and I am sorry if my decision adds to her distress. But in all the circumstances, I'm unable to find that Godiva 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 Mrs F to accept or reject my decision before 5 September 2023.

Jan O'Leary  
**Ombudsman**