

The complaint

The estate of Ms M, represented by Mr M complains that Topaz Finance Limited trading as Melanite Mortgages has treated them unfairly with poor communication and delays on information needed.

What happened

The late Ms M held a mortgage with Melanite Mortgages. She sadly passed away in September 2020 and Mr M informed Melanite of this and asked what was needed to be provided and done with the mortgage.

Mr M said he was chasing Melanite Mortgages for some time to understand what was required with the late Ms M's mortgage and probate process. During this time he feels there has been a lack of transparency and consistency with the responses.

Mr M feels Melanite Mortgages has acted unreasonably when stating there was an obligation for the balance of the mortgage to be repaid within 12 months. When it was later acknowledged this was not a contractual obligation but an internal policy, he feels it still attempted to enforce this timeline unfairly when there is no contractual obligation. He believes there has been a failure when Melanite Mortgage failed to account for the global pandemic and impact this had on the ability for probate to be obtained – a process that took longer than 12 months with this being granted in December 2021. And a term in the mortgage conditions that requires the balance of the mortgage to be repaid “at once” should be considered an unfair term due to the unreasonable nature of the immediate timeline.

Our investigator looked at this complaint and said that she didn't think Melanite Mortgages needed to do anything else. She felt there was a delay in it providing information requested to demonstrate the terms and conditions of the mortgage as this was not customer specific and could have been provided ahead of the grant of probate being obtained. She was satisfied that Melanite Mortgages has an internal policy for allowing up to 12 months for a mortgage to be repaid and she didn't think this was unreasonable when the terms and conditions set out the debt is payable on demand if the mortgage holder passes away.

She didn't think Melanite Mortgages had forced Mr M to sell the house or repay the mortgage sooner. At the point of the complaint, the mortgage was still in place and being paid by Mr M. But despite not being redeemed, Melanite Mortgages had not taken any further action or commenced proceedings. She didn't think the terms and conditions are unfair and she explained it is not the role of this Service to set the processes or conditions a business works to. This would be the responsibility of the regulator, the Financial Conduct Authority (FCA).

Mr M disagreed with the view. He explained why he felt the misrepresentation of information on policy and the mortgage conditions meant he had been treated unfairly and distress and inconvenience had been added through the actions of Melanite Mortgages.

Our investigators assessment remained unchanged and so the complaint has been referred for 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've decided not to uphold this complaint. I appreciate this will be disappointing for Mr M, but I'll explain why I've reached this decision.

It is not disputed that Melanite Mortgages could have provided Mr M with the mortgage terms and conditions sooner. In doing so, it would have been clear there is no contractual term that dictates the mortgage must be repaid within 12 months of a mortgage holder passing away.

The mortgage terms and conditions set out a number of things that, regardless of any other conditions, would result in the debt becoming payable at once upon demand. This includes the death of the mortgage holder.

I appreciate Mr M is concerned about this being an unreasonable demand as there are a number of things which could reasonably make it difficult for the estate to immediately repay such a debt, not least the successful application of probate. But I don't think Melanite Mortgages has acted unfairly with the inclusion of this term. The term does not state the debt needs to be paid immediately, instead it says, "*at once on demand*". This term simply gives Melanite Mortgages the ability to demand repayment. The FCA is the regulator and it sets out what firms should include and the rules they need to work to. But I don't think the terms and conditions of the mortgage are unfair or unusual and it is common that a lender would require the ability to seek repayment of a debt when a mortgage holder has passed away.

When Melanite Mortgages first acknowledged confirmation of the late Ms M passing away, it explained what it needed from Mr M, this included a copy of the probate documents. It also said the debt was now payable and that this was normally achieved through the sale of the property or a mortgage. Neither of these things can happen until the probate is received and while I can see that distress may have been caused when it wasn't clear what timeframe was expected for this to happen, I don't think Melanite Mortgages was acting unfairly when setting out what needed to happen with the mortgage now. But it would have been helpful to explain its internal policy at this point where it allows 12 months for this.

On 4 June 2021, Melanite Mortgages wrote to Mr M and did confirm it normally gives 12 months from the notification of a death for a mortgage to be redeemed.

Mr M responded to Melanite Mortgages with a number of questions about the 12-month time limit and what action would be taken if this was not met. On 12 July Melanite Mortgages responded. It referred Mr M to the terms and conditions and said:

"We will continue to work with you once the 12 months has passed and will review this case on a month by month basis to come to a resolution"

Melanite Mortgages did not say the 12-month deadline was a contractual obligation, although it did refer to the terms and conditions to answer some of Mr M's concerns. But I don't think it would be fair to say that it falsely said this was a contractual obligation. And at this point it was clear that it would work with Mr M to reach a resolution if the 12-month time limit could not be met.

It took more than 12 months for Mr M to obtain probate for the late Ms M's estate and so I don't think it would be reasonable to say that Mr M could have done anything with the estate before this was received. During this time, I've not seen anything to demonstrate that

Melanite Mortgages acted unfairly in the steps it took. I've not seen that it looked to take possession of the property. And as far as I am aware from the information provided, the mortgage has not yet been redeemed.

I do think there has been mistakes with the handling of Mr M's queries with information not being provided when it could have been. And as I've said above, Melanite Mortgages could have been clearer as to whether it would provide time for the estate to be able to organise the sale or re-mortgage to arrange the redemption when the notification of Ms M's death was first provided to it. Had it done this, it will have provided reassurance to Mr M on the time frames he needed to work towards. But when Mr M questioned the timeframe provided, Melanite Mortgages explained it would continue to work with Mr M if the deadline passed and I've not seen that it hasn't taken the Covid-19 pandemic into consideration when it has allowed the mortgage to continue without redemption for the time it has.

So while I think information could have been provided more quickly, including the 12-month time limit normally applied by Melanite Mortgages limited, I've not seen it has acted unfairly in relation to the redemption of the mortgage and next steps. It follows that I don't think it needs to do anything else now as a result.

My final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms M to accept or reject my decision before 5 February 2024.

Thomas Brissenden
Ombudsman