

## **The complaint**

Mrs A complains about legal costs added to her second charge mortgage (secured loan) with Elderbridge Limited.

## **What happened**

Mrs A had a secured loan with Elderbridge – it was originally with another lender but later transferred to Elderbridge. She borrowed £15,750 including fees over 15 years, beginning in 2002. Unfortunately the loan fell into arrears. Because of the arrears and additional interest on the missed payments the loan balance wasn't cleared by the end of the term in 2017.

In 2018 Elderbridge began court proceedings to repossess the property. Mrs A defended the repossession claim and so the court listed the case for a full trial. As part of her defence, she contested the broker's fee and legal fees added to the loan balance, the interest rate, and whether the loan had been properly transferred to Elderbridge. The court listed the case for a one day trial. Just before the trial date, it was adjourned to a later date.

Elderbridge says that shortly before the re-arranged trial Mrs A's solicitors served a skeleton argument raising new issues, which led to the trial being adjourned a second time. The trial was re-listed for a two day hearing in February 2020. Just before the trial a settlement was reached and set out in a Tomlin Order.

Under the Tomlin Order, Elderbridge agreed to accept £50,000 in full and final settlement of the loan agreement – including interest, fees, and charges – provided payment was made by 31 July 2020. It says that this represented a substantial reduction in the total loan balance, which was by then around £71,000 – the outstanding capital and interest of £43,000 plus legal costs.

Following the Tomlin Order, Mrs A put her property on the market but sale was delayed because of the coronavirus pandemic and lockdown. Elderbridge agreed to extend the deadline in the Tomlin Order and accept £50,000 in settlement of the loan, with payments made in the meantime used to reduce that figure. The property was eventually sold and the loan repaid in January 2022.

Mrs A said this wasn't fair – she had only borrowed £15,000 to begin with and had already repaid £39,000 in capital and interest payments. Although Elderbridge agreed a reduced settlement offer, she had to sell her property and cash in her pension to pay the amount it demanded. She says this has had and will have serious consequence for her and her family.

Mrs A said that the legal costs were excessive and unfair and it was unreasonable that Elderbridge or its solicitors wouldn't give her a breakdown of the costs or explain how they were made up.

Elderbridge said it had given Mrs A a breakdown of the legal costs when she'd made a previous complaint, in 2021. It and its solicitors couldn't give her more details of the work done by the solicitors or the communications between Elderbridge and its solicitors because that was covered by legal privilege.

Our investigator didn't uphold the complaint, so Mrs A asked for an ombudsman to make a final 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.

Mrs A has previously brought a complaint to us about the amount of legal costs added to the balance, and we explained that it wouldn't be appropriate for us to consider that complaint. That's because the final repayment sum – including legal fees – had been agreed by Mrs A and Elderbridge as part of the court case, and the court had set out that agreement in a Tomlin Order.

Since then, she has made several complaints to Elderbridge about various aspects of the settlement figure and the legal costs, and Elderbridge has issued several final responses. Before our investigator set out her view on the merits of the complaint, another ombudsman issued a jurisdiction decision explaining that Mrs A didn't refer most of those final responses to us within the required six months. That meant those parts of her complaint were out of time and couldn't be considered.

The only part of Mrs A's complaint that was brought in time, the ombudsman said, was that Elderbridge's solicitor had, in a letter in May 2022, refused to provide a more detailed breakdown of the legal costs than was contained in Elderbridge's letter of 24 September 2021 and that Elderbridge hadn't required the solicitor to give a more detailed explanation.

I agree that parts of this complaint have been brought out of time. Our rules require a final response to be referred to us within six months, and where Mrs A didn't do that we can't consider the matters set out in those final responses. Mrs A says that she didn't bring those complaints to us because of exceptional circumstances related to the impact of the pandemic and family bereavements. I'm very sorry to hear of that. But as Mrs A was in regular contact with Elderbridge, including making further complaints, I don't think her circumstances prevented her bringing her complaint to us.

I also agree that it wouldn't be appropriate for us to consider the amount of the legal fees, or the final agreed settlement sum of which they are a part. That's because the settlement balance was agreed between Mrs A and Elderbridge in full settlement of her outstanding loan balance, Elderbridge's claim for possession and Mrs A's defence to the claim. Where a matter has been resolved by full and final settlement it's not appropriate for the Financial Ombudsman Service to re-open it. That's especially the case where the settlement was included in a court order, since we do not have the power to override decisions of the courts. So even if this part of her complaint wasn't out of time it still wouldn't be appropriate for us to consider it. We explained that when considering Mrs A's previous complaint to us, and the same reasons apply to this complaint.

That leaves the complaint about the refusal of Elderbridge's solicitors to provide Mrs A with a more detailed breakdown of the costs incurred.

Elderbridge itself gave Mrs A a breakdown of the costs in a letter in September 2021. Mrs A then asked its solicitors for more information. The solicitors wrote to her in May 2022, giving some more information but also saying they couldn't go into more detail because their actions on behalf of Elderbridge were covered by legal privilege.

This is the legal concept that discussions between a solicitor and their client are confidential and the solicitor can't disclose them to third parties without the client's consent.

Elderbridge had given Mrs A a breakdown of the costs already, in 2021. I don't think it's fair and reasonable to expect Elderbridge to agree to its solicitors disclosing details of the work they did for Elderbridge to Mrs A, because of the principle of confidentiality.

I think Elderbridge gave Mrs A a reasonably detailed breakdown of the costs in September 2021. By then, she had already agreed to pay the costs as part of the settlement figure included in the Tomlin Order. If she didn't think the costs were fair, or were excessive, that ought to have been raised in the discussions leading up to the agreement of the Tomlin Order. I think the information Elderbridge and its solicitors have given Mrs A since then is fair and I don't require it to take any further action.

I appreciate Mrs A feels very strongly about what happened and that repaying the loan led to her losing her house. She feels she's been the victim of an injustice. I do understand her strength of feeling and I'm sorry to hear of the difficulties she's faced in repaying the agreed sum. But because the amount she would have to pay – including legal fees – was set by agreement as part of court proceedings it's not something I can re-open. And I don't think Elderbridge is required to give a more detailed explanation of the costs included than it already has. I know Mrs A will be disappointed by this conclusion, but I hope she understands the reasons for it.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 18 December 2023.

Simon Pugh  
**Ombudsman**