

The complaint

This complaint is brought on behalf of the estate of Mr M by his executor, who I'll refer to as Mrs D. Mrs D complains about poor service and communication by Mortgage Agency Services Number Five Limited (MAS).

What happened

Mr M died in late 2020. There were delays obtaining the grant of probate, which was issued in January 2022. The mortgage was repaid in September 2022. Mrs D complains that MAS:

- didn't communicate clearly or explain timelines.
- didn't let her access the mortgage account until mid-2022, despite her returning forms and information requests promptly.
- sent a notice of possession to the security property in June 2022, without prior notice. She had to apply to court to allow her time to get a mortgage offer in place.

Mrs D asks that legal costs are refunded and for compensation for the distress caused to her at a vulnerable time.

Our investigator said MAS had communicated with Mrs D by phone and letter and put holds on the account. At the end of 2021 it started to send correspondence regarding possession action. Our investigator said MAS told Mrs D she needed to provide the grant of probate and executor notification form to allow her access to the account. It received the grant of probate in February 2022 and the executor notification form in June 2022. Our investigator said while there were a few days delay in MAS actioning this, the £75 it offered was fair.

Mrs D didn't agree, saying MAS didn't communicate its timelines and processes clearly, or take into account that she was vulnerable or the delays caused by the Covid-19 pandemic. Mrs D provided more details about the difficulty she had dealing with MAS.

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.

This matter has been understandably difficult and stressful for Mrs D, after she'd suffered a bereavement. I must first explain that I can only award compensation to an eligible complainant. Mrs D isn't the eligible complainant here. Mrs D brought the complaint to us on behalf of the estate of Mr M in her role as executor. That means I can't require MAS to pay compensation to Mrs D, or for her time, trouble and upset. I can require MAS to pay compensation to the estate of Mr M if I find it made an error which caused it financial loss.

I should also explain that where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mrs D contacted MAS after Mr M died in November 2020. MAS allowed a grace period of three months, and then agreed interest-bearing holds on recovery action between March 2021 and the end of November 2021. This was to give Mrs D time to obtain probate and start the re-mortgage process.

MAS says it needs to receive evidence of probate before it discusses an account. Before this, it can only discuss processes in general terms. It was unfortunate there were delays in the grant of probate being issued. But MAS needed evidence that Mrs D had legal authority to represent Mr M's estate. I don't think I can fairly find that MAS made an error when it asked to see evidence of probate before allowing Mrs D access to Mr M's account. And I think it did take into account the delays in obtaining probate when it offered a grace period and then holds on action for about 12 months.

No payments were made into the mortgage account and the arrears balance increased. MAS says the mortgage had a history of arrears and it already had a possession order. In late 2021 and early 2022 MAS sent letters to the security property asking the representative to contact it with proposals to repay the mortgage to avoid it instructing solicitors to take action for possession. By early 2022 there were arrears equivalent to 12 monthly payments.

Grant of probate was issued in late January 2022. MAS received a copy in mid-February 2022, with a letter from Mrs D saying she intended to re-mortgage. MAS wrote to Mrs D at her address in March 2022 enclosing an executor notification form and asking her to complete and return it so that it could discuss the account with her.

Mrs D had told MAS she intended to re-mortgage once she had the grant of probate. However, when MAS decided to start recovery action it hadn't been given a clear timescale or strategy for the mortgage to be redeemed. MAS didn't instruct solicitors until mid-March 2022. It noted there wasn't money in the estate to repay the mortgage, the property wasn't being marketed for sale and it hadn't received evidence of a re-mortgage. It wrote to the security property saying it was commencing litigation. It sent further letters, including a letter with an eviction date of 21 July 2022. I do appreciate this was a difficult time for Mrs D. But, overall, I think MAS gave Mrs D reasonable time to put in place, and provide evidence of, a credible proposal to repay the mortgage before it started recovery action.

Mrs D says she sent the executor notification form to MAS in March 2022. While it was unfortunate that MAS didn't receive it, there's nothing to suggest this was due to an error by MAS. When Mrs D called in early June 2022 it sent a new form to her immediately. If Mrs D was surprised not to have heard from MAS after sending the form in March 2022, she could have called MAS before June 2022 – especially if this was holding up her plans to re-mortgage the property.

MAS received the executor notification form on 10 June 2022. MAS updated the account with Mrs D as executor on 28 June 2022. It says it should have updated the account within 10 working days of receiving the necessary documents, so it caused a delay of about two working days. I don't think this delay was significant, given the overall time scales.

Mrs D told MAS she expected a mortgage offer in early July 2022 and completion by the end of July 2022. Mrs D said while there were funds in the estate which could be used towards the arrears, the intention was to re-mortgage. MAS recorded that Mrs D said family members were living at the property. The tenants wrote to MAS asking for two months grace to find another place to live.

MAS told Mrs D it would hold recovery action if the estate paid the arrears and a mortgage offer was provided.

MAS received a copy of a mortgage offer on 7 July 2022. Mrs D says her solicitors had difficulty faxing this to MAS. MAS says there were no problems receiving faxes. MAS's process is for documents to be provided by post or fax rather than email. I don't think it was unreasonable for MAS to ask for this here, although I do appreciate that with an eviction date two weeks away it would have been stressful if there was difficulty faxing documents.

On 8 July 2022 Mrs D's solicitors told MAS they'd applied to court to suspend the eviction, with the hearing scheduled for 11 July. As it had received evidence of the mortgage offer, MAS didn't contest this. Mrs D says she had to get a court order to stop the eviction. In fairness though, MAS only received a copy of the mortgage offer the day before it received notice of the court hearing. And, so far as I can tell, it hadn't received a payment towards the arrears. I don't think MAS had a fair opportunity to cancel the eviction process after receiving the mortgage offer, and the conditions on which it told Mrs D it would hold action hadn't been met.

There were delays in the redemption statement being issued. MAS says this is because Mrs D's solicitors didn't use the correct account name in their request, and it had to check outstanding legal costs with its solicitors. But the re-mortgage wouldn't have completed in late July 2022 anyway. In August 2022 Mrs D told MAS she'd recently discovered there was a second charge loan secured on the property and was waiting for the lender to send a redemption statement. The re-mortgage completed in September 2022, and the mortgage with MAS was repaid.

I don't think MAS made errors that caused financial loss to the estate of Mr M, and I don't think it was unreasonable or unfair in the circumstances to instruct solicitors. It follows that I don't think it's fair and reasonable to require MAS to refund its legal costs, compensate Mrs D for the legal costs she incurred or pay compensation to the estate of Mr M for financial loss.

As I explained, I can't require MAS to pay compensation to Mrs D or for her upset or distress. MAS offered £75 to apologise for any inconvenience caused by it taking longer than 10 days to update the mortgage account and for not calling Mrs D back with an update in mid-June 2022. I leave it to Mrs D to contact MAS if she wants to accept this.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 28 August 2023.

Ruth Stevenson
Ombudsman