

The complaint

This complaint is brought by Mr K in his capacity as executor of his late father's estate. Mr K's brother is joint executor of the estate and has consented to Mr K bringing the complaint.

The complaint is about a lifetime mortgage Mr K's late parents took out with more 2 life Ltd (M2L). Mr K says that, after his father passed away, M2L failed to inform him that interest would continue to accrue on the lifetime mortgage until it was repaid once the property was sold. Mr K says that if he'd known this, he'd have sold the property immediately.

Mr K says that M2L's actions have caused him severe stress, as well as a loss of £15,861.27, which he wants M2L to reimburse.

What happened

In 2015 Mr K's parents took out a lifetime mortgage with M2L. They have both since passed away, with Mr K's mother pre-deceasing his father, who died on 29 January 2021. M2L was not informed of this until 9 August 2021, when Mr K asked for information about the amount outstanding under the mortgage.

M2L explained that it would need a certified copy of the will, death certificate and proof of identity, but the ones Mr K sent weren't certified. They didn't receive these until late September 2023. In October 2023 M2L confirmed the balance at the date of death was £131,132.78.

Mr K and his brother were executors under their father's will and a Grant of Probate was issued on 10 December 2021. It was sent to M2L six months later, on 14 June 2022, almost 18 months after Mr K had passed away.

In August 2022 M2L confirmed that the balance on the account was £144,265.08, and stated that interest would continue to accrue on the loan until redemption.

The mortgage terms and conditions provided that the mortgage had to be repaid in full within a year of the date of death (which had already passed) and so M2L wanted an update on what was happening.

Mr K sent a response to this in which he questioned his late parents' fitness to have taken out the mortgage in the first place. He said that M2L "*should be ashamed of yourselves*" and said that "*if I were you, I would be more than happy with the £131,132.78 as I am more than happy to have this exposed in a court of law and in the press...*".

This was treated as a complaint by M2L and, after investigating what had happened, a final response was issued on 7 September 2022. M2L explained that the provision relating to interest continuing to accrue was contained in the mortgage offer which Mr K's parents had accepted, after being given advice by their own solicitors. However, M2L acknowledged that Mr K wouldn't necessarily have been aware of this particular term if he'd not seen the mortgage offer.

Nevertheless, M2L was satisfied it had followed the correct redemption process and so declined Mr K's request for removal of the additional interest. M2L offered Mr K an ex-gratia payment of £250 for distress and inconvenience.

Dissatisfied with M2L's response, Mr K (with the consent of his brother) brought his complaint to our service. An Investigator looked at what had happened, but didn't think the complaint should be upheld. He wasn't persuaded, given the length of time it had taken to obtain probate and then send it on to M2L, that the property would have been sold any sooner.

The Investigator also explained that it is standard industry practice for interest to continue to accrue on an unpaid mortgage, and that this was covered by M2L's terms and conditions.

Mr K disagreed. He said he was extremely vulnerable and grieving and needed support from M2L, who should have said right from the start that interest would continue to accrue until redemption. Mr K said that, after receiving the Grant of Probate in December 2021, and before sending it to M2L in June 2022, he carried out a lot of work on the house and so that was where his focus lay.

In asking for an Ombudsman to review the complaint Mr K asked how many people in his situation would wake up one day to discover that their entire inheritance had been taken, without them being told. Mr K believes M2L has an obligation of professionalism, responsibility and decency to inform those involved exactly what was going on, rather than offering nothing but silence whilst taking whatever they want in interest – which he says sounds like theft.

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 can see from what he's told us that Mr K feels very strongly about this matter. I don't underestimate his strength of feeling. However, I feel it is important to explain the extent of what I can take into consideration here.

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 K's father 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, Mr K and his brother are bringing the complaint on the estate's behalf, and as such are authorised by law to do so.

But I must explain that, although Mr K is representing the estate, it is his father who was M2L's customer. Mr K'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. But this does not entitle Mr K to air his own grievances about M2L, because he is not its customer; Mr K's role is limited to putting forward the estate's complaint.

I note from the detailed correspondence that Mr K has expressed his own opinions about what he perceives to be M2L's failings – and I do not doubt his strength of feeling about this.

But because he is not M2L's customer, his own concerns about M2L don't form part of this complaint.

At the point when Mr K first contacted M2L, the information M2L was able to provide was very limited. Until a Grant of Probate is issued, M2L isn't able to give out anything other than the most basic information about the mortgage to family members, even if they are named as Executors in the will. It's only when the Grant is issued that M2L will know who is authorised to deal with the estate. There is nothing untoward about this; M2L isn't expected to know who is entitled to represent an estate until Probate is granted. It is not uncommon for there to be family disputes following the death of a relative and so it is standard industry practice to require a Grant of Probate in order to ensure that the business is dealing with the correct parties.

So whilst I accept that M2L didn't tell Mr K in August 2021 that interest would continue to accrue on the loan, I'm not persuaded that M2L was obliged to provide this information, as Mr K hadn't been appointed an Executor by the court at that point.

I'm satisfied that the mortgage terms and conditions provide that interest will continue to accrue on the mortgage until it's repaid. I appreciate Mr K might not have been aware of this, but it's the responsibility of Executors to identify where there are continuing liabilities to the estate, and to mitigate those liabilities.

Mr K has explained that, after Probate was granted in December 2021, he decided to carry out improvements to his late father's house before putting it on the market, so he didn't send in the Grant of Probate or take any steps to engage with M2L about redemption of the mortgage until June 2022, when he was about to put the property on the market. I note the property was sold in November 2022 when the mortgage was repaid in full. I can't see that M2L can be held responsible for the delay in marketing the property, or in Mr K sending in the Grant of Probate.

In all the circumstances, I'm not persuaded that M2L has acted incorrectly. M2L was entitled to apply interest to the mortgage after Mr K passed away. In addition, as detailed above, until it had received the Grant of Probate, M2L wasn't able to provide anything other than basic information about the mortgage.

M2L isn't responsible for the delay in Mr K sending in the Grant of Probate – more than six months after it was issued by the court. There was a short delay of about six weeks before it was acknowledged by M2L, for which M2L has offered Mr K £250 for distress and inconvenience.

Under our rules we can make awards of compensation for distress and inconvenience to an eligible complainant. As explained above, Mr K's father would have been the eligible complainant, as he was the mortgage account holder. However, Mr K as Executor isn't entitled to be compensated for any distress and inconvenience incurred by him. Whilst I would expect M2L to honour this offer if Mr K wants to accept it, I have no power to make any award of compensation for distress and inconvenience to Mr K and his brother in their capacity as Executors.

I know this isn't the outcome Mr K was hoping for. I can tell from what he's told us that losing both his parents over the last few years has been devastating for him and, no doubt, his brother too. I am sorry if my decision adds to his distress, but after consideration of the evidence, I'm unable to find that M2L 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 discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr K to accept or reject my decision before 13 February 2024.

Jan O'Leary
Ombudsman