DRN-3396168

The complaint

The estate of the late Mr B complains that rebuildingsociety.com Ltd ("ReBS") has unfairly charged fees to a crowdfunding account Mr B held and made investments following his death that they did not have the authority to make. It also raises concerns about the administration of the account since Mr B's passing.

What happened

Over a number of years Mr B invested through ReBS's peer to peer lending platform in crowdfunding opportunities.

In July 2017, ReBS introduced a new large lender fee. This fee was to be charged to lenders on the platform who met a criterion that defined them as a large lender. Mr B met this definition. The charge amounted to 1% per month or put differently 12% per year on all invested loans. The fee was first charged to Mr B's account in July 2017.

In August 2017, sadly Mr B passed away. In December 2018, a personal representative (PR) for Mr B's estate was appointed. In November 2019, ReBS were formally informed of Mr B's passing by a solicitor and the appointment of a PR. Shortly after this the PR made a complaint to ReBS.

In summary the complaint covered concerns relating to:

- The unfairness of the large lender fee and lack of acceptance of the fee by Mr B.
- Unhappiness with the default charges being introduced to loans in Mr B's account.
- Unagreed discretionary management of Mr B's account leading to investment into new loans on the account after his death.
- A failure to provide information on existing loans as required by the estate.

ReBS responded to the complaint – in summary it said:

- Mr B was consulted in the 'product' design phase of the introduction of the large lender fee. He was also aware of when the fee came into force, prior to his death.
- The decision to introduce the fee was done in anticipation of onboarding several large lending accounts both from individual lenders as well as institutional investors.
- As a regulated firm, the fair treatment of lenders is a top priority, the firm fully considered the principles of treating customers fairly in the introduction of the product and has received independent advice regarding this fee.
- It didn't intentionally delay any part of the wind down of the account. Any delays in providing access to the account were done in line with internal due diligence and know your client processes.
- When making investments on behalf of Mr B's account it ensured that they were spread across a wide variety of loans and that the account participated in loans to a similar level as had been done by Mr B, during his active management of the account.

As no agreement could be reached between the parties, the PR of Mr B's estate referred the complaint to our service for independent review.

I issued a provisional decision in February 2022 – upholding the complaint. This is what I said:

"The complaint brought by Mr B's estate is multifaceted and many different issues have been raised through the complaints process. But having reviewed all of the submissions, I'm satisfied the crux of the issues relate to two main issues - the introduction of the large lender fee and the management of the investment after Mr B passed away. So, I will concentrate the focus of my findings on these two issues.

In reaching my decision, I've considered the wider regulatory principles that are relevant to the situation. The Financial Conduct Authority's (FCA) Principles for Business ("PRIN") set out the overarching requirements which all authorised firms are required to comply with. The most relevant principles here are:

- *PRIN 2.1.1R (2) "A firm must conduct its business with due skill, care and diligence."*
- *PRIN 2.1.1R (6) "A firm must pay due regard to the interests of its customers and treat them fairly."*
- *PRIN 2.1.1R (7) "A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading."*

ReBS is also required to act in accordance with the rules set out in the FCA's Conduct of Business Sourcebook (COBS). And the most relevant obligations here are:

- *COBS 2.1.1R (1) "A firm must act honestly, fairly and professionally in accordance with the best interests of its client."*

Large lender fee

Mr B had been an active member on ReBS platform for a number of years and made significant investments. In June 2017, ReBS first sought to introduce a new fee that would be effective from July 2017. This fee essentially meant customers who invested the most (as per a set definition) on the platform would pay an additional fee – called a large lender fee (LLF).

ReBS say Mr B was consulted and aware of the fee before he passed away. From the evidence I've seen, I accept that Mr B was aware of the fee. The email correspondence between Mr B and ReBS in June 2017 indicates the intention to introduce a new fee and the date it would be applicable from was set out. It isn't obviously clear to me from the emails provided that Mr B gave explicit agreement to the fee but equally I haven't seen anything to suggest that he objected to the fee.

I have some concerns about how the fee was introduced. But at this stage I'm not going to comment further as making a finding on whether the introduction of the LLF was fair or not as it won't have a significant impact on the overall outcome I currently intend to reach. The fee was in place for less than two months before Mr B passed away. Considering the reasons given by ReBS for the need for the fee, I have significant concerns about it continuing to charge the fee after Mr B's passing – I'll explain why.

ReBS says, in early 2017 it was seeking to develop a suitable account type and fees for institutional and high net worth investors – called large lender accounts. ReBS has said in July 2017, Mr B was the only lender at the time who met the criteria to pay the fee. In its

response to the complaint it said the introduction of the fee was due to the way Mr B was using his account. It said as a large lender account, Mr B would enjoy direct access to senior management and would be able to make suggestions and recommendations about changes to the platform and that would be carefully considered and acted on. Also Mr B had unrestricted and frequent access to senior management and would often have weekly contact. Mr B would also regularly request that the firm make bids on loans on his behalf, on occasions when he was unable to login whilst travelling.

In 2019, ReBS took some retrospective third-party advice on the fairness of the LLF. This identified some potential unfairness - including concerns raised about the arbitrary amount charged and the inability to quantify the exact cost of delivering the added execution service for large lenders. In summary the advice concluded, if ReBS delivers an optional premium service (especially to high net worth customers) that provides genuine and added benefits to customers, and the fees are explicitly disclosed and accepted by the customer, then the fee may be justified. So, while this third-party advice identified potential unfairness it suggested ReBS may be able to justify the fee if it was delivering a premium service that has genuine benefits for those that paid the fee.

ReBS has provided some evidence to support that it did provide Mr B with an enhanced service between the introduction of the fee on the 1 July 2017 and his death. I have noted all the information it has provided. This is largely evidenced through exchanges of emails between senior management and Mr B discussing products. And it has also described the close relationship Mr B held with senior management.

But after Mr B passed away the premium service described and access to senior management was no longer applicable. There is some dispute about when ReBS became aware of Mr B's passing. I've seen evidence that it received an email the week after Mr B died from a close friend of Mr B's (who incidentally ReBS has provided evidence from to support the strength of its relationship with Mr B). While it didn't receive formal notification of death until late 2019 (when it was contacted by a legal representative of the estate), I'm satisfied that ReBS and its senior management were aware of Mr B's passing not long after he died in August 2017.

Bearing in mind the justification ReBS has given for introducing the fee and also the advice it received about the fairness of the fee, I don't find it fair and reasonable for it to have continued to charge the fee after Mr B's death. It is apparent that Mr B's account could no longer benefit from the enhanced service described. This was a key finding about the fairness of the fee from the third-party advice. And obviously the interaction with senior management ceased when Mr B passed away. ReBS has explained that following the informal notification of Mr B's death it effectively suspended Mr B's account. So again, further information to support that no enhanced service was being provided that could justify a significant fee that was continuing to be charged. I note activity did recommence on the account more than six months after Mr B's death – I will cover this issue later in my findings. So, having considered the available evidence, I'm not persuaded ReBS should have continued to charge the LLF after Mr B's death. So, I'm currently minded to direct it to repay all LLFs charged after Mr B died.

Management of the account after Mr B's death

The second key issue relates to the activity on the account after Mr B passed away. As mentioned above – ReBS were first informed of Mr B's passing around the time of his death but didn't receive formal notification until a year later. And initially there was no activity on the account for several months. ReBS has explained by the start of 2018, it still hadn't received formal notice of Mr B's death – so it did a periodic review of his account and found due to the lack of new investments and the associated fees, the net return of the account

was reducing. It believed, if left unmanaged, this would result in a lower return for the estate. So it decided to actively manage the account, entering it into new loan arrangements with an aim of generating further money for the estate. In its management of the account it says it took into consideration Mr B's previous investment habits. But with one main difference being that it entered into the arrangements at the highest possible interest rate, where as Mr B would often invest below the maximum rate.

I've considered whether ReBS acted in a fair and reasonable manner in its decision to start managing the account after Mr B's death. I currently do not think it has – I'll explain why.

ReBS has provided a copy of its bereavement policy. This says:
"Until a personal representative (the executor or administrator) has been appointed for the estate of the deceased, rebuildingsociety.com will temporarily stop access to the investor account in question. In order to grant access to the account and begin the window of a deceased lender's account, we will require a copy of the death certificate and/or grant of probate; upon receipt, we will stop the account from lending more funds by turning Bidpal off (if applicable). We will then need a certified copy of the Grant of Probate or Grant of Letters of Administration, as applicable. rebuildingsociety.com will continue to recover payments and interest earned on these outstanding loans until given further instruction by the personal representative. The above action will be taken for all normal lender accounts. Additional services may continue to be rendered on accounts where an account administration fee is applicable."

This suggests the account of a deceased consumer will be left untouched until a representative for the estate has been appointed. As I've explained I'm satisfied ReBS was aware of Mr B's death and the initial actions it took were in line with its bereavement policy. I'm satisfied this was a fair position to take. I acknowledge that there was no contact from any personal representatives of the estate in the months following Mr B's death, so there was uncertainty around how the estate would be settled. But when ReBS decided to start actively managing the account, it seems at odds with its own policy and the initial action it took to suspend the account. I find the justification it has given for this decision to be weak. While it may be true that by investing funds could lead to higher returns for the estate, equally it could lead to losses as cash funds were being put a risk. I'm also very concerned it had no clear agreement to invest on behalf of Mr B's estate and specifically not after his death.

ReBS says it did on occasion invest on Mr B's behalf when he was alive. But has provided little in the way of evidence to support there was a formal agreement to do this - and in its submissions it has indicated, Mr B would normally actively invest himself. It has provided some screenshot evidence to support Mr B activating a setting on its account called Bid/Pal, which is an automatic investment tool. It says Mr B's account was set to allow ReBS to invest £20,000 in any industry on his behalf. It says this shows it had permission to invest for Mr B. From the evidence ReBS has provided, it is difficult for me to establish if and when this setting was applied to Mr B's account. Also the other evidence it has given around the situations when Mr B requested ReBS to invest on his behalf were on an adhoc basis – rather than being linked to using the Bid/Pal tool. So, I'm not persuaded this supports that auto investment was something that was operated regularly on Mr B's account when he was alive. In addition, it appears some of the investments made on the account after Mr B's death were for more that £20,000 including over £100,000 into a single loan – which is at odds with the settings ReBS say were in place anyway. And I don't think the explanation given by ReBS for making these large investments gives justification for its actions, which it admits were different to how Mr B had run his account when alive (e.g. Mr B regularly bid well below the maximum rate available). All of this leads me to the conclusion that ReBS didn't have authority to invest on Mr B's behalf – and most importantly this includes after he died. So it shouldn't have transacted on the account after Mr B's death.

In assessing what would be fair compensation, I consider that my aim should be to put the estate of Mr B in as close to the position it would be in if the account was left untouched after he died. I understand the current position of the account is that all performing loans (aside from less than £100) have now been paid out to the estate – and the only remaining funds in the account are on defaulted loans that are not expected to provide any return. So effectively everything that can be withdrawn now has been. If this is incorrect the parties should let me know in response to my provisional decision.

To put things right, the account would need to be reconstructed as if no further transactions took place after Mr B's death. To do this ReBS should:

- *Compare the actual value of the account – this will include all the withdrawals that have now been made by the estate (actual value) – with the position had no transaction taken place after Mr B's death (the fair value).*
- *In calculating the fair value, 8% simple interest per year should be added to any funds that should have been available to the estate when formal notification was given (in November 2019) – but weren't available because they'd been invested.*
- *Interest should be calculated up to the date the monies were eventually paid to the estate. This interest is to recognise that the estate didn't have access funds it should have had.*
- *If the estate has received less as a result of the transactions that took place after Mr B's death, then this loss should be paid to the estate.*

I acknowledge ReBS say that it has generated positive net returns on the account as a result of its decision to actively manage it in March 2018. If this is correct it will result in no further compensation being due - as the estate will have benefited from the management. I also think it would be fair for ReBS to deduct any positive return from the refund of LLF. But this can only be established after the comparative calculation has been completed.

My earlier finding that no LLF should have been charged during this period also needs to be taken into account when completing this comparison. As I've made a finding these fees should be refunded, this means that when calculating both the actual value and fair value this fee shouldn't be included - and be removed from the comparative calculation to avoid duplicating the refund.

Additional points

I have noted the additional points made by the PR – including delays in access being provided to the account and provision of information when it was attempting to settle the estate. I also understand the PR is claiming its costs of raising complaints and representation to the Financial Ombudsman Service, as it believes these should be covered by ReBS, otherwise they will be the liability of Mr B's estate. I don't find that it would be fair for ReBS to cover the professional fees charged by the personal representative. I also don't find that I have the power to make an award for any inconvenience caused to the PR when obtaining information about Mr B's estate. The PR is not an eligible complainant – they are the representative of the eligible complainant, Mr B."

ReBS responded. In summary it said:

- The fee was introduced principally because the firm had only recently gained its FCA authorisation, and it was facing increased compliance costs, which it felt that the largest beneficiaries should pay the most. Mr B was in agreement with this strategy for introducing fees. The access to management is true, but it was not the reason for introducing the fee.

- Mr B wanted to help the firm, this is an important point which should not be ignored.
- It was made aware of Mr B's death by a friend and not an authorised representative, so it was not possible to follow the bereavement policy, consequently it needed to treat the information as 'hearsay' until it was confirmed.
- It didn't suspend the account. It acted to de-list the loans from being on sale on the secondary market. Mr B would often 'flip' the loans by selling them. This action allowed the account to continue earning interest income.
- It decided to review the suspension of the account after being informed Mr B had died intestate, it anticipated that sufficient time had elapsed for a beneficiary to come forward and that if someone was to claim probate, that this would take considerable time. It is really important to understand that the firm was acting in the genuine interest of its largest customer and it is disappointing that this is not obvious.
- In respect of the issues relating to the management of Mr B's account after his death, while not accepting the provisional determination, it accepts the suggested methodology to 'put the account back as it was on 23/8/2017'. But asks for the calculation date for when the funds first being accessible be noted as 24 February 2020 as this was the point it had received the relevant bereavement form and had time to process to process the account (owing to the size and circumstances it took six weeks to process the form). This meant the first date that the funds would have been accessible to the estate was 24 February 2020. It requests that this date is used as the first day of the calculation of interest on inaccessible funds.

ReBS also asked to withdraw the statement it made to Mr B's PR in the response to the complaint about Mr B having direct access to senior management and being able to make suggestions and recommendations about changes to the platform. It says, while this is true, it believes that the ombudsman perceives this statement as the justification for the fee, which is not actually the case. ReBS reiterate that the fees were being introduced in connection to the firm's increased costs owing to becoming a regulated and authorised firm earlier in the year. Mr B was aware of this situation and willing to shoulder the costs as the firm's largest beneficiary.

The personal representatives of Mr B's estate responded. In summary, they accepted the basis of the decision in the provisional decision. It has provided its understanding of the figures of investment on the account and the fees charged. It has asked for a figure too for the LLF refund. It believes the compensation payable should be in excess of the £160,000 award limit and asks that the ombudsman recommends that compensation plus interest from 1 December 2019 to date in addition to the £160,000 is awarded.

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.

ReBs has provided further information and comments for me to consider, so I will respond under the same headings used in my provisional decision.

Large lender fee

In response to the provisional decision ReBS say the purpose of the introduction of the fee has been misunderstood. It has explained the firm gained its FCA authorisation in February 2017 and was faced with increased compliance costs. And it needed to introduce a fee, so felt that the largest beneficiaries should pay the most. It says the access to management is true, but it was not the reason for introducing the fee.

I note this wasn't what ReBS explained to Mr B's representatives when it responded to the complaint. In an April 2020 letter it explained that *"The fee was not created to target only Mr B's account. As a large lender account, Mr B would enjoy direct access to senior management and would be able to make suggestions and recommendations about changes to the platform etc that would be carefully considered and acted on. As a large lender Mr B had unrestricted and frequent access to senior management and would often be in contact with senior management on a weekly basis. Mr B would also regularly request that the firm make bids on loans on his behalf, on occasions when he was unable to login whilst travelling."*

I note ReBS has now sought to withdraw this statement.

In its initial file submission to this service, also sent in April 2020 – ReBS explained "*As part of a strategic decision, in early 2017 the firm sought to start attracting larger institutional investors and account managers. Previously the firms focus was on individual retail investors. Mr B consulted closely with the firm in developing a suitable account type and fees for institutional and High Net Worth investors. This account type, Large Lender Accounts, were introduced to the platform in June 2017. Mr B was aware and agreed to his account being classified as a large lender account, and for it to incur the related fee."*

As part of our investigation ReBS was asked "*Please could you let me know what the fee was for specifically"*. The response provided by ReBS was:

"The fee was applicable to certain types of lender accounts on the platform. See terms and conditions. Clients to which the fee applied would have direct and frequent access to senior management within the firm, would benefit from services during periods of absence or inactivity on their accounts. The account management services would ensure that the accounts were managed in line with the investment habits and preferences of the investors, providing a 'hands-off' service for the investors, albeit that investors would still be able to manually invest should they so choose. The fee is akin to an account management fee applied by other investment and account management services such as IFA's and was introduced at a time when the firm sought to onboard more high net worth and institutional investors via fund managers, and modelled this fee on industry fees."

ReBS has also provided evidence of how it first told Mr B about the LLF. It has sent an email dated 1 June 2017. This is the first written evidence I've seen that shows Mr B had awareness of the new fee. This email says:

"We had a board meeting Thursday pm. The 'savings like' account may be designed and implement, we would charge 1% per month to lenders with large accounts for the value of their portfolio. That's an annual fee of 12%pa, while this will affect your returns, it will allow us to significantly improve the service we provide. I'll call you to discuss it."

A further email was sent on 9 June that says:

"We had a board meeting Thursday, in which we discussed the idea of offering account management for large accounts to provide a managed service to free up their time and part of the funds would be used to find desirable & suitable loan opportunities as well as to finance operations. For it to be worthwhile, it would be quite an expensive service, eating into the majority of the margin. We are considering to charge 1% per month to lenders for the value of their portfolio. That's an annual fee of 12% but we can periodically review the service and lenders may revert to an un-managed service."

And another email was sent on 12 June that says:

"We have tried to hold of introducing fees for as long as possible, but recent visits from the FCA have added to the compliance costs for running the business. However we are making significant improvements too."

So there is a lack of clarity with the information that has been provided by ReBS about the true reason and justification for introducing the LLF. This isn't helped by ReBS seeking to withdraw a statement it made in response to the complaint. While ReBS says it can provide evidence of the increased costs it faced after gaining regulated status, it is surprising this wasn't information it provided already if this was the main defence it had for the needing to introduce the fee. But I also note that the report ReBS received from a third party on the fairness of the fee indicates ReBS *"..is unable to exactly measure the cost of providing services to each customer or a group of customers.* The report also notes the amount of the fee *"…does seem an arbitrary figure, especially since the Firm is unable to quantify the exact cost of delivering the added execution service for large lenders."* So, it isn't clear that ReBs would be able to clearly demonstrate exactly how the fee is proportionate to the cost of running Mr B's account.

I do accept that it is plausible that ReBS faced increased costs in 2017. I can also understand why a business would seek to develop new products to help increase its profitability. The evidence indicates when establishing whether it was treating customers fairly, ReBS was justifying the LLF by proposing to provide a specialist account for large lenders – and not just passing on its costs to one large lender (that being Mr B). The wider evidence and submissions to this service indicate this that the proposal of providing a specialist account was a key justification for the fee. The emails to Mr B telling him about the LLF, also indicate that he would be receiving an improved service for the extra fees he will have to pay. There is a clear demonstration that the fee is linked to a specialist account – and one even says lenders could revert to an unmanaged account service. This all gives the impression that the specialist service was paramount to the justification for the LLF – and it wasn't just passing on compliance costs.

Even if I accept the key purpose of the fee was to cover additional compliance costs, there is evidence that ReBS own third-party advice indicates that there was potential unfairness in how it was being applied. This doesn't suggest that passing on compliance costs to one lender, would be fair anyway, so the fee should never have been charged, let alone after Mr B died.

There are number of statements within this advice that raise real concerns about the fairness of the LFF. The report makes the following comments:

"Although, this fee from just one customer, does make a significant contribution to the overall fee income of the Firm. This fee would increase his overall fees significantly. There is a considerable difference between the total fees paid by large lenders and other customers. On balance, this may raise some concerns about fairness."

"On balance, when imposed on all large lenders, and taking FCA criteria into account, this fee could cause some concerns about treating customers fairly."

"The fact that the fee is compulsory to all large lenders and it is a substantial increase in their fee, could make it an unfair fee. It could be perceived as a tax on large lenders, and therefore is likely to dissuade them away from the platform."

"I have also considered the fact that the Firm has a large base of smaller customers who contribute very little to overall revenue but could end up costing as much as larger customers to service. The firm needs to find revenue to cover these costs, and one way is through discriminative pricing."

"The existence of the fee could cause concerns about fairness. However, what about the level of the fee, i.e. 1% per month of outstanding loan amounts and cash on the account, or 12% per annum, which may be considered as a high fee based on industry norms. Although the firm is unable to exactly measure the cost of providing services to each customer or a group of customers, they justify the LLF by the level of manual intervention needed to execute on the lenders pre-approved investment philosophy. The firm does not have automated processes in place to provide such services."

"On balance, if the Firm delivers an optional premium service (especially to high net worth customers) that provides genuine and added benefits to customers, and the fees are explicitly disclosed and accepted by the customer, then the 1% may be justified.

So, taking this into account and without commenting in any detail on the various points – it is clear the third-party advice to ReBS was that there were issues with the fairness of the LLF. The comment about ReBs having a large base of smaller customers who contribute little to overall revenue but could end up costing to service as much as the single large lender conflicts with the view that it is fair for Mr B to pay the most as he benefits the greatest. This actually suggests as a collective all of the other account holders' cost ReBS more than Mr B. The apparent inability to measure the cost of services to customers also brings up question of whether ReBS can support the argument that it was fair for Mr B to bear a higher proportion of costs. ReBs say Mr B was sympathetic to the business' needs to cover increased costs. The emails ReBS have provided showing that it discussed the fee with Mr B before it's introduction, don't indicate he willingly accepted it. But in any case, I don't find this to be a persuasive argument for charging the fee after Mr B died.

I don't find ReBS' comments in response to the provisional decision persuasive - specifically the point that there has been a misunderstanding about the reason for introducing the fee. Or that this argument supports ReBS' position in saying the fee has been applied fairly. The last point from the third-party advice implies that without a premium service that provides genuine and added benefits to customers, the LLF wouldn't be justified. I acknowledge Mr B had a relationship with the business that meant he did have access and influence on the senior management – so there is some evidence of a premium service being provided when he was alive. So I find that ReBS was justifying the fee by providing a specialist service to large lenders. Unfortunately, due to his is death shortly after the fee was introduced Mr B didn't benefit from this service for very long. This leads me back to the conclusion I reached in my provisional decision that the LLF should not have been charged after Mr B died – as the premium service could no longer exist.

Finally, I have noted the comments from ReBS about Mr B wanting to help the firm and being in agreement with the fee. I have taken this into account. While, I acknowledge that Mr B had a good relationship with senior management, I don't think this means it must have been fair to continue to charge the LLF after his death.

In summary, I've not found reason to change my findings on the large lender fee. For the reasons explained in my provisional decision and those above – I've decided that ReBS needs to refund all LLFs paid after Mr B passed away.

Management of the account after Mr B's death

ReBS have agreed to complete the suggested calculation I proposed in my provisional decision in respect of restricting the account as if no transactions took place after Mr B's death. But it has said that it thinks the date interest should be paid from should be from a later date. It says the date should 24 February 2020 as this was the point it had received the relevant bereavement form and had time to process to process the account.

I've considered the comments made. The date interest should be applied from is when the estate should have had access to the funds. ReBS say that it only received the completed bereavement form from Mr B's PR on the 10 January 2020. I've seen evidence of a letter dated 6 November 2019 from solicitors representing Mr B's estate to ReBS requesting funds to be transferred. ReBS say it couldn't action the transfer until it had a completed form. The first evidence I've seen of ReBS requesting a completed bereavement form is a letter dated 12 December 2019. The PR has provided emails to ReBS indicating the form was returned on 16 December and again on 20 December. It was sent a third time on the 10 January 2020. This is the date that ReBS says it received a completed form. I have seen a copy of a completed form dated 16 December 2020 – but ReBS say this needed to be returned as it wasn't completed correctly.

So there clearly were some issues in getting the bereavement form completed. But despite these issues, it is unclear why it took over a month for a request complete a form. It was then a further six weeks before any funds were released to the estate. While I appreciate there are administrative tasks and due diligence that needed completing, there does appear to have been delays between first notification from the solicitors and funds being released. In response to my provisional decision the PR has said it believes interest should awarded from 1 December 2019.

Based on the information I've seen; I don't think it would be fair to start the interest calculation from 24 February 2020. While I accept there would have been administrative tasks to complete before the funds were available, I don't think a timescale of over three months between notice from the solicitor of estate requesting funds and payment is reasonable. I'm also conscious that had the LLF not been charged and funds not been reinvested, a significant proportion of the funds in the account would have been in cash – so likely easier and quicker to release. Having considered the evidence available, I'm satisfied that the 1 December 2019 is a reasonable date that is fair to both parties to calculate interest from. It is four weeks after formal notification given and provides reasonable time for administrative processes to be complete.

Compensation calculation

The PR for Mr B's estate has asked that a figure is stated for the amount of compensation. I acknowledge the PR has provided some figures of its understanding of the amount of LLF paid on the account. While, I understand why the PR would like to see a figure, I don't think this is required as the formula I set out for compensating Mr B's estate is sufficient to show what is being awarded. When the calculation is completed, ReBS should set out clearly how it is has reached the figure of compensation.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put the estate of Mr B as close to the position it would now be in if a LLF hadn't been charged after Mr B's death – and also not transactions had taken place on the account after this date.

I am satisfied that what I have set out below is fair and reasonable way of achieving the above.

What must ReBS do?

To compensate the estate of Mr B fairly, ReBS must:

Firstly:

- Refund all LLF payments that were collected from the account after Mr B passed away.

Secondly:

- Compare the actual value of the account – this will include all the withdrawals that have now been made by the estate (actual value) – with the position had no transaction taken place after Mr B's death (the fair value).
- If the estate has received less as a result of the transactions that took place after Mr B's death, then this loss should be paid to the estate.

If a positive net return on the account has been achieved as a result of ReBS' decision to actively manage it in March 2018 - it will result in no further compensation being due - as the estate will have benefited from the management. ReBS can deduct any positive return from the refund of LLF. But it must set out clearly how the comparative calculation has been completed.

As I've made a finding the LLF should be refunded, this means that when calculating both the actual value and fair value this fee shouldn't be included - and be removed from the comparative calculation to avoid duplicating the refund.

Interest should be added to the compensation at a rate of 8% simple per year to any funds that should have been available to the estate – on 1 December 2019 – but weren't available because they'd been invested. Interest should be calculated up to the date the monies were eventually paid to the estate. This interest is to recognise that the estate didn't have access funds it should have had. For clarity this includes the funds that would have been available if the LLF hadn't been charged after Mr B's death.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus the interest payment that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend the business to pay the balance.

rebuildingsociety.com Ltd should provide details of its calculation to the estate of Mr B in a clear, simple format.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that rebuildingsociety.com Ltd pays the estate of Mr B the balance plus any interest on that amount as set out above.

This recommendation is not part of my determination or award. It does not bind rebuildingsociety.com Ltd. It is unlikely that the estate of Mr B can accept my decision and go to court to ask for the balance. The estate of Mr B may want to consider getting independent legal advice before deciding whether to accept this decision.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that rebuildingsociety.com Ltd should pay the estate of Mr B the amount produced by that calculation – up to a maximum of £160,000 plus the interest set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr B to accept or reject my decision before 22 April 2022.

Daniel Little
Ombudsman