

## **The complaint**

This complaint is brought by Ms Z in her capacity as Administrator of the estate of her late brother, Mr Z. The complaint is against Age Partnership Limited (AP). Ms Z says:

- AP harassed Mr Z in an attempt to get him to take out an equity release mortgage;
- AP's actions were driven by sales staff trying to earn commission;
- Mr Z was vulnerable and the harassment affected his mental health;
- AP has failed to answer her questions, particularly those about commission paid to sales staff.

To settle the complaint, Ms Z wants AP to be reprimanded and for it to pay compensation to the estate for the distress caused by AP's harassment.

In a separate jurisdiction I have explained why I am only considering in this decision events that took place after 10 March 2017.

## **What happened**

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. I've noted the timeline of events, and because this is detailed in the correspondence between the parties, I don't need to replicate it here.

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

In addition, our decisions are published, so it's important I don't include any information that might lead to Mr Z or Ms Z being identified.

Briefly, after Mr Z passed away in February 2023, Ms Z discovered that over a period of years he'd been discussing equity release with AP. Ms Z says that the level of contact from AP amounts to harassment. Ms Z says that Mr Z, who had numerous health issues and was vulnerable, was targeted by sales staff who were trying to earn commission.

Ms Z initially raised her complaint with AP on 14 June 2023, but in the absence of a response from AP that she considered satisfactory, brought it to our service on 17 July 2023.

We were unable to progress the matter until Ms Z was granted Letters of Administration. This happened on 12 September 2023.

Ms Z was unhappy about the way AP dealt with her complaint. After the complaint was first raised with it on 14 June 2023, AP asked Ms Z to provide a Grant of Probate and a copy of the death certificate in order that it could be satisfied she was the representative of the estate. AP said *“These documents would only be required should you wish for your concerns to be logged as a formal complaint and treated in line with the FCA’s dispute rules...”* It appears Ms Z saw this as obstruction of her complaint, and I can see from her emails to AP that she became increasingly frustrated and angry that AP wasn’t responding in the way she wanted it to.

On 6 November 2023 our Investigator explained that AP was within its rights to request sight of the Letters of Administration. On 7 November 2023 Ms Z refused to agree to this, but the Investigator explained twice more that the investigation into Ms Z’s concerns couldn’t go any further until AP had received the Letters of Administration. Until that point, AP wasn’t able to register the complaint, but the Investigator explained that, once AP received the documentation, the complaint could be investigated. Under FCA rules AP would then have eight weeks to respond. On 15 November 2023 Ms Z consented to AP being sent a copy of the Letters of Administration, and the final response letter was issued on 14 December 2023.

AP didn’t uphold the complaint, explaining that it was Mr Z who had instigated contact over a number of years. AP set out the timeline of contact with Mr Z. AP was satisfied it had acted appropriately. AP said it had also offered to take Mr Z off its mailing list, but he’d declined this offer. AP confirmed it had since removed Mr Z’s details from its database, after Ms Z informed AP of Mr Z’s death.

An Investigator looked at what happened, but didn’t think AP had done anything wrong. She was satisfied the level of contact was appropriate, and that it had been largely at Mr Z’s request.

Ms Z didn’t agree with the Investigator and asked for an ombudsman to review the complaint. Ms Z said that AP was *“in it for the money”* and that, because her brother didn’t have a computer or a smart phone, there is no evidence to support the Investigator’s contentions that Mr Z contacted AP, rather than the other way round. Ms Z provided information from the internet about various health conditions as evidence of how these may have impacted Mr Z. In addition, Ms Z sent reviews of AP she’d found online. Ms Z also said that her brother had confirmed on one of AP’s medical questionnaires that he smoked, which cuts down life expectancy.

Because the matter is unresolved, it falls to me to issue a 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’ll start with some general observations, because it is important that Ms Z is aware of the extent of our powers and the limitations of our role. We’re not the regulator of financial businesses, and we don’t “police” their internal processes and systems, or how they operate generally; that’s the role of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers.

We have no power to sanction, reprimand, punish or fine businesses – that’s the role of the FCA. Nor do we have the authority to determine whether or not a business has breached

legislation, broken the law, or is in breach of contract, and we don't award damages – all of those matters fall within the remit of the courts.

Furthermore, we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint. So although I've noted the questions which Ms Z would like answered to her satisfaction, it's not my role to put those questions to AP or act as a representative or go-between on this case.

Under our rules, Mr Z was a consumer, and so fell within the definition of an "eligible complainant" set out in our rules. That eligibility vested in his estate when he passed away. The rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant (if they are still living), or authorised by law. In this respect, because Mr Z is deceased, Ms Z is authorised by law under the Letters of Administration to bring the complaint on behalf of his estate.

But I must explain that, although Ms Z is representing the estate, it is Mr Z who was the potential customer of AP at the time of the events complained about. Ms Z's role as Administrator of the estate is to bring the complaint on behalf of the estate, but this does not entitle Ms Z to air her own grievances about AP because she is not its customer; Ms Z's role is limited to putting forward the complaint on behalf of the estate.

Following on from this, because Ms Z is the representative of the estate, she has no entitlement to be compensated for any distress or inconvenience caused to her personally whilst carrying out her duties in that capacity. I also note that Ms Z is asking for the estate to be compensated for what she says is the harassment Mr Z was subjected to by AP. We can award compensation for distress and inconvenience to an eligible complainant (which in this case would have been Mr Z when he was alive). But the estate of a deceased consumer can't experience feelings of distress or inconvenience because an estate isn't a "person" in its own right and so can't suffer distress or inconvenience.

I note from the detailed correspondence that Ms Z has expressed her own concerns about what she perceives to be AP's failings – and I do not doubt her strength of feeling about this. But because Ms Z is not AP's customer, this final decision is limited to consideration of the estate's complaint about the contact between Mr Z and AP between 10 March 2017 and the date of his death.

Mr Z fell within the category of 'potential customer' in our rules. He enquired about, and received, advice and information about the products offered by AP, but didn't go ahead with completing an application for an equity release mortgage.

Mr Z hadn't complained to AP about its contact with him before he passed away. Therefore, without a specific complaint from Mr Z made during his lifetime, I have considered generally whether AP did anything wrong.

Ms Z argues that, because Mr Z didn't have a computer or smart phone, there is no evidence of him contacting AP as AP has alleged. However, AP has its contemporaneous records of the contact it had with Mr Z. In addition, the correspondence shows that it was Mr Z who was enquiring about, and pursuing, various aspects of equity release with AP. I'm satisfied the contemporaneous documents are an accurate record of what happened, because they were compiled at the time of the events now being complained of.

The available evidence persuades me that AP acted appropriately, responding to Mr Z's enquiries, compiled information from him about his needs, wishes and circumstances and

providing him with the information he requested, including Key Facts Illustrations. Although there were prompts for Mr Z to return documentation, when he didn't do so, AP let things drop until Mr Z next made contact with AP. The timeline of what happened from 10 March 2017 onwards satisfies me that Mr Z was not harassed, put under pressure or taken advantage of due to his illness and vulnerabilities.

I note that AP recorded that it had asked Mr Z if he wanted to be removed from its mailing list, but he said no. Whilst Ms Z disputes this, she hasn't been able to provide any evidence to persuade me that Mr Z made it clear he wanted no further contact with AP, or that AP deliberately disregarded any such request. Overall, I don't think the contact between Mr Z and AP from 10 March 2017 onwards was inappropriate, unwelcome, or constituted harassment.

Ms Z is also unhappy at the way AP dealt with the complaint. Under our rules I can consider complaints about regulated activities, or activities that are ancillary to a regulated activity, such as account administration or arrears-handling. However, complaint-handling isn't a regulated activity in its own right, nor is it ancillary to a regulated activity. This means that I don't have any power to investigate Ms Z's concerns about AP's request to see the Letters of Administration before looking into the complaint, or the way AP handled the complaint once it was in a position to do so.

I know this isn't the outcome Ms Z wanted. I can tell from the correspondence how strongly she feels about this matter. But I'm unable to find that AP has done anything wrong or that its contact with Mr Z was inappropriate.

### **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 Z to accept or reject my decision before 20 June 2024.

Jan O'Leary  
**Ombudsman**