

The complaint

Mr U complains about a Home Purchase Plan (HPP) he agreed with Al Rayan Bank PLC (Al Rayan) for the purchase of his flat. He says he was charged £2,600 more than had been agreed for Al Rayan's legal costs. He also complains that he was required to provide Al Rayan with gift letters from his parents and that he had to purchase environmental indemnity insurance, which he says his own solicitor didn't think was necessary.

What happened

In January 2019, Mr U spoke to an adviser at Al Rayan about arranging a HPP agreement with it for the purchase of a new build flat, which Mr U had already reserved off-plan. I understand that Mr U was made aware that he would be responsible for paying Al Rayan's legal costs, which Mr U says he was told would be a maximum of £1,000, including Value Added Tax (VAT).

In June 2019, Mr U's application was approved and he was sent an offer, which he accepted, and he proceeded with the purchase of the flat. However, just days before the purchase was due to complete, he was told that due to additional legal work required, Al Rayan's legal costs would be £3,600 including VAT.

Mr U says he was shocked that Al Rayan's legal costs would be more than £1000, and when he queried this with Al Rayan, he was told that would need to pay the increased amount, otherwise completion would be delayed. Mr U says the prospect of having to source an additional £2,600 at such short notice resulted in him experiencing significant stress and despair. He says he was forced to borrow money from friends and use a high interest rate credit card.

Mr U also says Al Rayan told him on the day of completion that it wouldn't release the funds agreed unless he purchased environmental indemnity insurance at the cost of £142. Further, he was told that Al Rayan required a gift letter from each of his parents, and he would have to cover the cost of obtaining these documents. He says he wasn't told about this until late into the process.

Mr U complained to Al Rayan. In its Final Response letter dated 21 August 2019, Al Rayan explained that its solicitors charged additional fees because they received a partial legal pack from Mr U's solicitors, with a deadline to complete within six days. It said their solicitors had to undertake additional due diligence, including consulting its planning team, which it wouldn't usually do.

Al Rayan also explained that it needed gift letters from Mr U's parents to show they were aware they have no legal rights to the property. It also explained that an indemnity was required because the environmental search had highlighted a contamination risk, which it felt should have been dealt with by Mr U's solicitors before exchanging contracts.

Unhappy with Al Rayan's response, Mr U referred his complaint to our service. He told us that the matter had resulted in him becoming depressed and caused an existing medical condition to flare up. Further, he'd been struggling to repay his friends and credit card debt.

Following our most recent review, the investigator upheld Mr U's complaint. In summary, he didn't feel Al Rayan had provided sufficient information to justify the increase in its legal costs and he felt the additional costs Mr U was charged should be refunded to him. He also felt Al Rayan should pay Mr U £200 for failing to inform Mr U that its legal costs could change.

Al Rayan didn't agree with the investigator. It said felt it was the role of Mr U's solicitors to complete the due diligence in full. However, it felt much of the work hadn't been completed and its own solicitors had to do this work, which resulted in additional fees being charged.

As agreement couldn't be reached, the complaint has been passed to me for a decision.

More recently, Al Rayan has offered to pay Mr U £1,000 to reflect his strength of feeling. However, Mr U didn't accept this.

What I provisionally decided – and why

I issued a provisional decision setting out my thoughts on the case. I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Did Al Rayan make it clear that its legal costs could be more than £1,000 inclusive of VAT?

Mr U says he was told by an adviser at Al Rayan that its legal costs would be a maximum of £1,000, inclusive of VAT. And he referred to an email exchange that had taken place between him and an adviser at Al Rayan on 26 February 2019.

I've carefully reviewed the email exchange and I can see that in response to Mr U's query about Al Rayan's legal costs, he was told:

"The banks solicitors fees are between £500-£1,000 inc VAT".

There was no reference to this being a maximum amount. But I also couldn't see any mention of any possibility that the costs could be higher than this. So, based on this communication alone, I can appreciate that Mr U may not have realised that Al Rayan's costs could be higher.

However, I've also taken into consideration other communication that took place between Mr U and Al Rayan, before Mr U agreed to the HPP agreement.

On 9 January 2019, a telephone conversation took place between Mr U and an adviser from Al Rayan. I've listened to a recording of this conversation, and I've noted that when Mr U asked the adviser what Al Rayan's legal costs would be he was told:

"...typically around £1,000, but if substantially more, we'll obviously advise you as early as possible".

Further, Mr U was sent a tariff list document with the offer letter dated 4 June 2019. I've carefully reviewed this document, and under the heading 'solicitor fees and expenses' it refers to Al Rayan's legal costs usually being around £500 excluding VAT. However, it goes on to say:

"Due to the level of administrative work required, the legal costs incurred for newbuild properties could be substantially more."

Having considered all of the information that Mr U received before agreeing to the HPP agreement, I think Al Rayan did enough to make it clear, that whilst its costs are typically between £500 to £1,000 including VAT- they could be substantially more. And specifically, where the property concerned was a newbuild property - which was the position here for Mr U.

Has Al Rayan acted reasonably by charging Mr U £3,600?

I've thought carefully about whether Al Rayan has acted reasonably by charging Mr U £3,600 for its legal costs.

I've noted that point 1.5 in the Offer Letter dated 4 June 2019 states:

"You will be responsible for paying ... any costs payable to us as detailed on the tariff list enclosed".

In the tariff list document, under the heading 'Solicitors fees and expenses,' it states:

"The cost of both sets of solicitors is covered by you".

Further, point 1.6 in the Offer Letter also states:

"You will need...to pay our solicitors prior to completion of the purchase of the Property...all our fees and expenses plus Value Added Tax (if applicable)."

In addition to this, the Key Facts document enclosed with the Offer Letter states:

"You will be responsible for the full cost of our solicitor, unless it is otherwise indicated in your offer letter."

So, as a starting point, by agreeing to the terms of the HPP agreement, I'm satisfied Mr U had agreed to cover the cost of Al Rayan's legal costs and to pay these before the completion of the purchase of the property.

I understand that due to the nature of HPP agreements, The Law Society recommends that two sets of Solicitors are involved – one to act on behalf of the customer, and one to act on behalf of the bank. This is different to the standard conveyancing process where often only one firm is needed to represent both the customer and the lender.

I also understand that Al Rayan has its own panel of solicitors, who it says are experienced in the conveyancing process for Islamic finance transactions. And it recommends that its customers select a firm from its panel because it believes the conveyancing process will proceed more smoothly than if they choose their own solicitors. And if a customer does select a firm from its panel, it contributes £400 towards the cost of its own legal fees.

However, Mr U decided to instruct his own solicitors, who weren't on Al Rayan's panel, which he was entitled to do.

It's clear from the information provided that Mr U's solicitors and Al Rayan's solicitors don't agree on who was expected or was responsible for completing certain parts of the conveyancing process.

Al Rayan says that with a HPP agreement, the solicitors acting on behalf of the customer have two roles. The first is the usual conveyancing which will allow them to report to their client and the second is to report to the solicitors acting for the home purchase firm. It believes to report to the home purchase firm, matters need to have been fully reviewed by the solicitors acting for the customer. It says its current process requires a report on title, which requires an in-depth review of everything. And its solicitors' role is to ensure its security is protected, rather than instigating and completing the usual conveyancing.

Al Rayan has explained that Mr U's solicitors provided its solicitors with a partial legal pack, which meant its solicitors had to raise 80 initial queries, and this very quickly increased as and when it received the remainder of the legal pack.

In addition to providing a list of the matters it says its solicitors completed to ensure completion could take place on time, it has highlighted a number of examples of when it felt its solicitors had to complete work that Mr U's solicitors should have completed. This includes Mr U's solicitors forwarding documents it had received from the developers to Al Rayan's solicitors to review, without reviewing these first.

It has also explained that Mr U's solicitors didn't provide full information regarding the discharge of planning conditions, including pre-commencement planning condition (which it says should be discharged by developer prior to commencing works on the development site). It said its solicitors had to refer this to its planning department as a specialist matter, which resulted in additional fees being charged.

Mr U's solicitors reviewed the list of matters that Al Rayan's solicitors say they completed, and Mr U's solicitors felt the majority of the work listed shouldn't be considered to be additional work.

Having reviewed the all of the information available to me, whilst I'm not in a position to determine who was responsible for completing certain matters involved in the conveyancing process here, I'm satisfied that Al Rayan's solicitors completed more work than they expected and had anticipated when considering their standard legal fees.

I'm also not in a position to determine an amount that Al Rayan's solicitors should have charged for the additional work completed. But I'm satisfied that Al Rayan's legal costs were what it says they were, and it was entitled to charge Mr U for its legal costs in line with the terms of the HPP agreement, which Mr U had agreed to.

Al Rayan has also confirmed that the amount of work required only became apparent once its solicitors reviewed the uncompleted pack it received from Mr U's solicitors on 19 June 2019, six days before the expected completion date. It says it notified Mr U's solicitors the same day that its fees would be higher and would be £2,500 plus VAT. It then sent an email the next day (20 June 2019) to say this had increased to £3,000 plus VAT.

Whilst I acknowledge this was a very tight timeframe for Mr U to source the additional funds, it seems to me that Mr U's solicitors were informed very soon after Al Rayan's solicitors say they became aware of the amount of work that would be required and I can't see that they were in a position to provide this information earlier than this.

In summary, considering everything, I don't think Al Rayan has acted unreasonably by requiring Mr U to pay for its legal costs, and before completion, in line with the terms of the HPP agreement that Mr U had agreed to.

Gift letters

Mr U says he wasn't informed that he'd need to provide gift letters in relation to money gifted to him by his parents to use towards the deposit.

It is usual for a bank to require evidence to confirm money obtained from a third party is a gift and not a loan and that the person gifting the money accepts that they have no interest in the property. I understand that a gift letter is also known as a deed of gift.

Al Rayan has explained that Mr U had initially said only £15,000 would be gifted to him, but later informed the underwriter that his circumstances had changed and much more was being gifted, which resulted in Al Rayan requiring gift letters from Mr U's parents.

I've also noted that in the offer letter dated 4 June 2019, under point 6 entitled 'Special Conditions' it states that:

"Your solicitor is to put in place a Deed of Gift ... You will be responsible for any costs incurred."

Taking everything into account, I don't think Al Rayan has acted unreasonably by requiring Mr U to provide it with gift letters from each of his parents and for Mr U to pay the cost of this.

Environmental indemnity

Mr U is unhappy that Al Rayan told him that he'd need to take out environmental indemnity insurance and cover the cost of this before it would agree to release the funds. He says his own solicitor didn't think this was necessary.

Al Rayan has explained this was required because an environmental search highlighted a contamination risk. In the circumstances, I don't consider Al Rayan's actions to be unreasonable.

Summary

Whilst I appreciate this has been a very difficult and stressful time for Mr U, having reviewed everything, I'm not satisfied that Al Rayan has acted unreasonably in the circumstances.

Al Rayan has offered to pay Mr U £1,000 to reflect his strength of feeling and I don't intend to ask it to do anything further. If Mr U decides to accept this offer, he should contact Al Rayan directly.

My provisional decision

For the reasons I explained, my provisional decision was that Al Rayan had made a fair and reasonable offer to settle this complaint. Beyond that offer, I didn't intend to require it to take any further action.

Responses to my provisional decision

Al Rayan confirmed its acceptance of my provisional decision.

Mr U responded. He felt I'd only relied on Al Rayan's terms and conditions when reaching my provisional decision. He also asked whether Al Rayan's offer was still available to accept.

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.

After reviewing everything, I see no reason to depart from the findings in my provisional decision, which is that Al Rayan's offer to pay Mr U £1,000 is fair and reasonable in the circumstances.

Putting things right

Should Mr U now wish to accept Al Rayan's offer, he should contact Al Rayan directly to arrange payment.

My final decision

For the reasons I've explained, my final decision is that Al Rayan Bank PLC has made a fair and reasonable offer to settle this complaint. Beyond arranging the payment of this offer should Mr U wish to accept it, I don't require it to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 6 October 2021.

Michelle Griffiths
Ombudsman