

The complaint

This complaint is about a bridging loan taken out by Mr and Mrs S through Aura Finance Limited. Mr S, who has dealt with the complaint throughout, says that Aura delayed completion of the sale of his property, incurring an additional month's interest. Mr S also says that Aura imposed a fee of £12,000 without providing either notice that the fee would be charged, or a breakdown of it.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs S being identified. So for these reasons, I will keep my summary of what happened quite brief.

Briefly, in January 2020 Mr and Mrs S took out bridging finance with Aura, secured on their property. They borrowed a total of £1,115,000 repayable by 13 September 2020. The loan wasn't repaid in time and, although Mr and Mrs S had a buyer for their property, they handed the sale over to Aura. The sale of the property completed on 15 January 2021.

Following the sale a complaint was raised by Mr S. He said that completion had been delayed by Aura, which resulted in additional interest becoming due, as this was two days into the next interest-charging month under the contract.

Mr S was also unhappy about a "*Legal Management Fee*" of £12,000 shown on the redemption statement. Mr S said that he'd been given no prior notice of this fee, nor any breakdown of it.

Aura didn't uphold the complaint, saying that completion had been delayed at the request of the purchaser. Aura also said that the contract allowed it to charge fees. Dissatisfied with Aura's response, Mr and Mrs S referred their complaint to our service.

An investigator didn't think the complaint should be upheld. He found that completion hadn't been delayed due to anything Aura had, or hadn't done, but rather this was a request of the buyer. The investigator also thought Aura was allowed to charge the £12,000 fee.

Mr S didn't agree. He said that Aura had postponed completion in order to ensure that additional interest would be charged. Mr S was also unhappy about the £12,000 fee, and reiterated the points he'd previously made about being given no notice of this.

Provisional decision of 29 November 2022

I issued a provisional decision, in which I made the following findings.

Interest charged for January 2021: I've thought carefully about what Mr S has said about this. I've also looked at the timeline of events. It wasn't Aura that requested a delayed

completion, but the purchaser of the property, who had no stake or vested interest in the loan agreement and so wouldn't have been aware of the implications of completion going into the next interest-charging month. Overall, I'm not persuaded Aura made a mistake here. Whilst I acknowledge the delay resulted in additional interest being charged, on the evidence, I don't think it was, as Mr S suggests, a deliberate ploy by Aura to be paid more interest.

The £12,000 Legal Management Fee: Aura says that the loan agreement allows it to charge fees and that Mr and Mrs S are required to pay these.

The loan agreement says, at Clause 14:

The Borrower shall pay to, or reimburse, the Lender and any Receiver on demand all reasonable Costs reasonably incurred by the Lender or any Receiver in connection with:

- (a) this deed or the Charged Property,*
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's or Receiver's rights under this deed, or*
- (c) taking proceedings for, or recovering, any of the Secured Liabilities*

together with interest on those Costs, which shall, in the case of each Cost, accrue and be payable in respect of the period commencing and including the date which is 10 days after the date on which notice of the fact that the Cost has been incurred is given to the Borrower up to and including the date when full discharge or reimbursement of that Cost is made by the Borrower (whether before or after judgment partial payment or bankruptcy of the Borrower) at the rate and in the manner applying from time to time under the most recent Facility Letter or as otherwise agreed in writing between the Lender and the Borrower.

The first Mr and Mrs S knew of the £12,000 charge was when it appeared in the redemption statement. It is described as a "Legal Management Fee". There is no breakdown of the fee, and so, on the face of it, it appears to be an arbitrary amount charged by Aura. I do not find, on the evidence, that the fee is a "reasonable Cost reasonably incurred".

I am also unable to conclude that prior notice of the £12,000 fee was provided to Mr and Mrs S. In the circumstances, I find that the £12,000 fee has been unfairly charged by Aura and should therefore be reimbursed to Mr and Mrs S.

Responses to the provisional decision

Both parties have replied before the deadline in the provisional decision.

Mr S responded to say that the issue in relation to the postponement of completion is that he wasn't consulted about this. Mr S says that, if Aura or its solicitors had told him, he'd have been able to speak to the buyer about this.

Mr S accepted my findings about the £12,000 fee.

Aura responded as follows:

The £12,000 fee is connected to the management of the property post its voluntary surrender to Aura and is used to cover the costs involved in the maintenance and

preparation of the property in order to reach a sale. The charge itself is a percentage of the sale price achieved.

*Prior to January 2021, the firm had engaged with external asset managers to provide these services where and when required. As a result, this had produced an invoice that was submitted to the customer at redemption for payment. The charge was communicated to the customer via the Tariff of Charges under the "Third Party Charges", provided as part of the Mortgage Offer pack, **and the invoice for costs formed part of the redemption pack when communicating with a borrower's solicitor at the end of the loan term.** The contractual terms in the Loan Agreement at Clause 14, that you refer to in your decision letter, covers the legal basis on which the payment of the charge is sought... (my emphasis)*

Aura also sent us a "proposal paper" about a change in its asset management services. Aura says:

"This was agreed and undertaken by the business in January 2021 a month prior to the sale of this property at which point the process to manage the communication to the customer had not been fully embedded within the business. [Aura] included the business proposal on this to show the thought process and rationale behind the change in the provision of these services."

Aura also acknowledged:

"In the context of the complaint, the application of this fee, while charged to the customer correctly as a fair cost to provide specialist services to the customer, the method by which we communicated this was lacking both at redemption and at the point at which the customer raised their complaint. Further, we have not addressed this point sufficiently in providing correspondence to you, or the initial adjudicator on the case.

It should be noted that the charging of this fee was not grounded in an objective cost incurred, i.e. in an invoice provided by a dedicated asset management firm as would have been the case if we had outsourced the service at a higher cost. This was due to the transition in process which had not been implemented correctly at the point when the voluntary surrender was made which fed through to the completion of the redemption statement and dearth of explanation provided at the time of the customer's initial requests for information from Aura. The fees were payable by the customer under the Clause 14 stated but our setting out of how these were reasonable fees, reasonably incurred was insufficient."

Aura was asked again to provide a breakdown of the £12,000 charge for this fee, but hasn't been able to do so. Aura maintains its position that this was not an arbitrary fee.

Aura has explained that its process, prior to January 2021, was to appoint an external asset manager who would, under the previous process, have provided an invoice to manage the property, and in an amount that was a percentage of the sale price. But from January 2021 onwards, the process was to perform this activity internally, via the Property Team (as set out in the "proposal paper" Aura sent me).

Aura says that as this asset sale was “*on the cusp*” of the process changing, communication was lacking. However, Aura is keen to emphasise that the external third party would have charged a higher fee for the same services. Aura also says “*there is no defined fee, nor any letter to the borrower’s solicitors...*”

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.

Having done so, I am not minded to change the conclusions I reached in my provisional decision.

Additional interest in January 2021: I’ve noted what Mr S has said about this – that if he’d been told by Aura or its solicitors that the purchaser had asked for completion to be delayed by a couple of days, he’d have had the opportunity to speak to the buyer and ask them to complete on the due date. He would therefore have avoided being charged an additional month’s interest.

I fully understand what Mr S has said, but I’m not persuaded that the solicitors or Aura had any obligation, once voluntary surrender of the property had been given, to liaise further with Mr S about the transaction. I am sure the purchaser would have had no inkling of the implications of delaying completion by a couple of days. I also think it’s unlikely that the solicitors would have been aware of this either, and so I think the additional interest charged was an unfortunate consequence of the purchaser’s request, rather than a deliberate ploy by Aura to get an extra month’s interest from Mr and Mrs S.

I’m not upholding this part of the complaint.

“Legal Management Fee”: I’ve read everything Aura has provided us with about this. Quite frankly, nothing Aura says has helped its case; rather, everything Aura has said has supported Mr S’s contention that the fee was unfair.

Aura is, of course, allowed to charge fees under the terms of its contract. But those fees must be reasonable, charged fairly, and be proportionate to whatever service Aura has provided in relation to those fees.

Aura had the property in its possession for less than a month – 17 December 2020 until it was sold on 15 January 2021. The sale of the property was well advanced with a buyer found by Mr and Mrs S. Yet I am asked to believe that in that time external asset managers incurred fees that were more than £12,000 but that Aura only charged £12,000 as a percentage of the sale price.

Although Aura initially told me that an invoice and letter was provided with the redemption pack (as I have highlighted above), it later said this wasn’t the case. Aura has also accepted that its communication was lacking. Its own terms and conditions say that fees must be fairly charged and will be communicated in advance to the borrower. None of that happened here, and I am glad to note that Aura has accepted its shortcomings in relation to the service provided to Mr and Mrs S.

Despite several requests, Aura hasn't been able to provide this service with a breakdown of how the £12,000 was allegedly spent – yet maintains that this is less than the actual costs and so is not an arbitrary fee. However, given the lack of clarity from Aura about this, and taking into account the length of time the property was within Aura's control, I can find no basis on which a fee of £12,000 charged to Mr and Mrs S without notice, explanation or breakdown can be considered fair or reasonable, or proportionate to any service that asset managers carried out in relation to this particular property sale.

Given this, I am satisfied that Aura has not treated Mr and Mrs S fairly in relation to this fee. I am therefore upholding this part of the complaint.

Putting things right

To settle this complaint I direct Aura Finance Limited to reimburse the £12,000 fee, together with interest at 8% simple per annum*, from the date the fee was charged (15 January 2021) to the date of settlement. I also direct Aura Finance Limited to pay compensation of £300 to Mr and Mrs S for distress and inconvenience.

* If Aura Finance Limited considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr and Mrs S how much it has taken off. Aura Finance Limited should also give Mr and Mrs S a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I partly uphold this complaint. I am ordering Aura Finance Limited to settle the complaint as directed above.

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 correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 3 January 2023.

Jan O'Leary
Ombudsman