

The complaint

Mrs H complains that Capital Home Loans Limited (CHL) didn't treat her fairly in dealing with arrears on her buy to let mortgage. She says it refused to agree to an arrangement to repay. And then it sold her property at auction for less than it was worth, disregarding a higher offer for sale she had in place, leaving her with a substantial shortfall debt.

What happened

Mrs H had a mortgage with CHL. She borrowed £261,000 on interest only terms over 25 years. It was a buy to let mortgage and the property was let out.

Over the years the mortgage has fallen into arrears. The balance has also increased because CHL has paid substantial sums to cover ground rent and service charges to prevent the lease being forfeited, as well as because of interest on those charges and on the arrears. For example, around £13,500 was added to the balance in January 2021. By then the mortgage balance was around £330,000.

During 2021 Mrs H kept up with the mortgage payments. But she didn't pay the full amounts due in January and February 2022. Mrs H offered to pay £3,000 from the proceeds of a sale of a property abroad to reduce the arrears. CHL asked for evidence of where the funds had come from – such as a redemption statement – and when Mrs H didn't provide that it said it couldn't accept the payment.

By then the arrears balance was over £4,000, and in addition Mrs H owed around £19,000 in fees that had been added to the loan (such as ground rent and service charge payments). CHL said that it had agreed many arrangements in the past, but that it was no longer prepared to agree any further arrangements and required the arrears and fees balances to be cleared in full – or it would sell the property to clear the mortgage.

There were further discussions between CHL and Mrs H, but no agreement could be reached. In September 2022 CHL wrote to Mrs H saying that it was going to exercise its power under the mortgage terms and conditions to sell the property.

CHL obtained auction appraisals for the property. It didn't obtain valuations because the property was tenanted and it intended to sell with sitting tenants in place.

CHL put the property up for auction with a reserve price of £375,000 but it didn't sell. After the auction CHL received an offer of £352,000 which it accepted. Following enquiries the offer was reduced to £340,000. CHL rejected that reduced offer and instead accepted an alternative offer of £350,000, but that buyer withdrew.

CHL re-listed the property for auction with a lower reserve of £340,000. Again it didn't sell. CHL received an offer of £320,000 which it accepted. That buyer reduced their offer to £290,000. Another buyer offered £300,000, which CHL accepted. Contracts were exchanged on 6 March 2023.

Meanwhile, Mrs H had put the property on the market herself with an estate agent. Also on

6 March, Mrs H contacted CHL and said that she'd had a cash offer of £375,000 for the property. CHL said it spoke to Mrs H's estate agent and the estate agent confirmed that the offer had been received, but that it had not completed its checks on the buyer. CHL said that there was no confirmation of the offer or that the buyer had the funds available. It said that other prospective buyers had also made higher offers only to reduce or withdraw those offers having made further checks on the property. It said that in those circumstances, it couldn't consider withdrawing from the contracts for sale that had already been exchanged.

The property was sold. This left Mrs H with a shortfall of around £56,000.

Mrs H complained. She said she'd obtained her own valuation in March 2023, which showed the property was worth £480,000. She didn't consider CHL had sold the property for a fair price. She also said it wasn't fair that CHL wouldn't agree to an arrangement to repay the arrears. It had told her in October 2022 that it could do so – only to go back on that the next day.

Our investigator didn't uphold the complaint, so Mrs H asked for it to be reviewed by an ombudsman.

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 don't think I can fairly uphold this complaint. I'm sorry to hear of Mrs H's situation, and I hope she'll accept my condolences on her bereavement. But I don't think CHL has acted unfairly in all the circumstances.

It's important to note first of all that this is a buy to let mortgage. That means it's not a regulated mortgage, and so the rules of mortgage regulation don't apply. It also means that it's not Mrs H's home – it's essentially a business venture on her part.

It seems the property was tenanted throughout this period, with the tenant paying rent. It's generally expected that rental payments will cover the cost of a buy to let mortgage, so it's not clear why the arrears and unpaid service charges built up in the first place.

By 2022, the arrears and unpaid fees had been outstanding for some time. Mrs H had been maintaining the mortgage payments since taking a payment deferral in 2020, but hadn't made any inroads into the outstanding amounts. And then the arrears began to rise again in the early months of 2022.

Mrs H offered to pay £3,000 from the sale of a property abroad. CHL said that as the funds were coming from abroad it needed to see evidence of their source – such as a memorandum of sale or solicitor's letter. I don't think that was unreasonable. Mrs H didn't provide this, and it seems no payment was made.

Although Mrs H continued to maintain the mortgage payments during 2022, there were no payments towards the arrears or fees outstanding.

CHL said it wasn't prepared to agree further arrangements, and required the outstanding amounts to be cleared in full. I don't think this was unreasonable – the arrears and fees had been outstanding for some years and the mortgage balance was substantially higher than it had originally agreed. If the rental income was enough to repay the sums due, including the ground rent and service charge as well as the mortgage payments, then it's difficult to see why that hadn't happened. And if it wasn't, then the situation wasn't sustainable. It did give

Mrs H contradictory information about that at one stage – telling her on 11 October that it would consider an arrangement, and then on 12 October that it wouldn't. That shouldn't have happened, but I don't think it made any difference to the overall outcome, and it didn't mean that CHL should have agreed an arrangement.

In the circumstances, I don't think CHL acted unfairly when it decided to exercise its power of sale. There were no formal repossession proceedings, but as this was a buy to let mortgage there didn't need to be – and CHL proposed to sell with the tenants remaining in place.

In normal circumstances I would expect CHL to obtain a valuation from a qualified surveyor as well as auction appraisals. But I accept this was more difficult with tenants in place. And I don't think this resulted in detriment to Mrs H. Ultimately a valuation is only an estimate; the true value of a property is what someone is willing to pay for it. The repeated attempts to sell at auction show that there were no willing buyers at the initial estimate price – when offers were made, they were later reduced or withdrawn once the prospective buyer carried out further enquiries or managed to gain access to the property. I think the difficulties completing a sale show that the eventual price was the best that could realistically be obtained.

Mrs H obtained her own valuation, for £480,000. But I'm not persuaded this shows that CHL sold the property for less than it was worth, for several reasons. Firstly, no prospective buyer offered anywhere near that amount – including the cash buyer she found. Second, that valuation doesn't appear to have been based on a sale with sitting tenants. Third, there were several other properties in the same block for sale at the same time as the auctions – meaning there was an over-supply at that time, which would affect demand and price. Fourth, one of the auction appraisals noted that the block of flats including the property was notorious in the local area for criminal activity – if that was the case, it wasn't commented on by the valuer. Fifth, the valuation was carried out in March 2023 but gives a retrospective valuation as at January 2022 – which wasn't the date CHL sold the property, and so may not have coincided with the glut of other properties on the market at that time.

Overall, I think the evidence of the sales process shows that CHL sold the property for the best price it could obtain. In saying that I've taken into account that Mrs H found a prospective cash buyer for £375,000 – but by the time she told CHL about that it had already exchanged contracts. CHL did consider withdrawing to accept that offer, but Mrs H's estate agent said that the buyer hadn't provided proof of funds. Given the number of previous sales which had fallen through, and that contracts had already been exchanged, I don't think it was unreasonable that CHL didn't want to risk losing the agreed sale.

I appreciate all this has left Mrs H in a very difficult position. Her property has been sold, and she owes a substantial shortfall. CHL will need to act fairly, and consider any proposals she makes, in recovering the shortfall. But I don't think it acted unfairly in not agreeing to further arrangements and then selling the property.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 7 March 2024.

Simon Pugh
Ombudsman