

complaint

Mr K complained about the solicitors provided by Virgin Money plc for his remortgage.

The solicitors told him there was a problem with a pipe across his land, so they couldn't do the work for free, and he'd have to pay for his own solicitor. Mr K says the pipe wasn't even on his land.

Mr K wants Virgin to pay for the legal fees he incurred unnecessarily, and compensate him for the inconvenience.

background

Mr K applied through a broker for a remortgage with Virgin. As part of the deal he had free legal services.

Virgin issued an offer on 14 February 2018. Section 12 had a section headed "*Incentives*" which said:

"Free Standard Remortgage Legal Services - Virgin Money plc will pay for the legal work involved in a standard remortgage. Virgin Money plc have appointed a Solicitor to undertake the legal work. The Solicitor will be acting for Virgin Money plc and not for you.

You will be responsible for paying the costs of any additional or non-standard legal work that may be required or that you request, for example

- Transfers of equity*
- Landlord's registration fee*
- Land Registry first registration fee*
- Money transmission charges (e.g. CHAPS)."*

The solicitors appointed by Virgin to undertake the legal work for Mr K's mortgage looked at some of the title information for Mr K's property. They said that a pipe ran through the land, with a lease on it to a water authority. So the solicitors said they couldn't provide a free service for Mr K after all, because the situation was complicated. It told Mr K he had to instruct his own solicitor.

Mr K did so. He has told us the solicitor he appointed said that there wasn't a pipe on Mr K's land at all and it was on a neighbour's land. By then Mr K had incurred £1,185 of costs with his own solicitor. He wasn't happy and complained to Virgin, asking to be reimbursed for these costs.

Virgin said that the solicitors it had appointed were independent from Virgin. So Mr K would have to complain direct to the solicitors. Mr K did, but the solicitors said there had been a lease noted against the title so it hadn't been able to proceed under the free scheme.

Mr K had some further correspondence with Virgin. He said he had no direct contractual relationship with the solicitors, only with Virgin. Virgin explained that under the service agreement between Virgin and the solicitors, the solicitors didn't have to obtain plans, check leases or services – do conveyancing work. Virgin said that the solicitors were under a limited retainer and weren't required to carry out a full title check.

Mr K believed his remortgage was a simple transaction and should have been standard. He said the issue about the pipe was very clear from the title documents and the solicitors had simply been wrong. He remained unhappy and complained to this service.

The adjudicator didn't uphold Mr K's complaint. He said that although "*standard*" work wasn't specifically defined in the mortgage offer, there was a clear indication of the type of work that wouldn't be covered. The solicitors appointed by Virgin were regulated by the Solicitors' Regulation Authority (SRA) so Virgin hadn't been wrong to appoint them. So Mr K would have to take any complaint about the quality of their work to the SRA.

Mr K remained unhappy. He said that:

- the examples in the offer of what wouldn't count as legally "*standard*" didn't make reference to his situation. They were only about fees etc;
- he believed his transaction was standard. The solicitors had made a mistake and had looked at the adjacent property, not his own;
- as a result, he'd had to instruct his own solicitor, to whom it quickly became apparent that the solicitors Virgin had appointed had made a mistake. But by then it was too late, as Mr K had incurred costs with his own solicitor.

my findings

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

I think that it would firstly be appropriate to explain the situation in relation to the solicitors appointed by Virgin. When the solicitors were doing part of a regulated activity on behalf of Virgin, then Virgin would be responsible for their actions. However, what is considered normal conveyancing work – including making sure that the title is fit for the lender's use – would not be work done on behalf of Virgin. The consumer would be responsible for the actions of the solicitor in those circumstances.

I appreciate why Mr K is upset, because he believes that the solicitors made a mistake about which property was affected by the lease, and that as a result all of the legal work required should have fallen within a definition of "*standard*."

But when commenting on whether additional work was needed in this case, the solicitor was advising on conveyancing work. Virgin wasn't responsible for anything to do with any conveyancing work that was or might have been needed, including any advice to have it done. As such, I can't look at whether or not the solicitors did make a mistake which led to them saying conveyancing work, which wasn't standard was needed. Mr K can complain about the solicitors, but he'll have to do this through the Solicitors' Regulation Authority.

What I can consider is the bank's role – in other words, whether Virgin set out the situation clearly, and whether it acted wrongly when it appointed the solicitors it did.

The mortgage offer did make it clear that there might be circumstances under which the free legal service might not happen. The examples quoted as non-standard in the offer are indeed mainly about fees matters, but the offer does clearly state that they're examples, not a comprehensive list.

And the solicitors appointed by Virgin were professionally regulated, so I don't find that the bank made a mistake in appointing them.

my final decision

My final decision is that I don't find that Virgin Money plc acted wrongly, so I do not uphold Mr K's complaint against the bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 March 2019.

Belinda Knight
ombudsman