complaint

B, a limited company, complains about Skipton Building Society's decision to demand repayment of the mortgage used by B to buy a commercial property. Mr W, a director, assists B in bringing its complaint.

background

In 2007, B took out a loan with Skipton to buy a commercial property.

In October 2014, the property was closed for business by the local authority. Skipton was told about this and, at the end of October, it contacted B for more information. The building society says it understood the local authority had done this because the electricity had been cut off. Skipton told B that it'd demand repayment if B didn't respond.

In early November, Skipton demanded repayment of the loan to B. It also wrote to B on 17 November to explain that it needed information from it. And, if this information wasn't given, it'd appoint a Law of Property Act (LPA) receiver within the next 7 days '*due to the concerns over the condition of the property'*. Skipton says Mr W phoned in response to this letter and was told that Skipton needed a response within the time given to B otherwise it'd appoint a LPA receiver. But Skipton says that it didn't hear back so it appointed a LPA receiver on 27 November.

B was unhappy with what happened. So it complained to Skipton. In response, Skipton explained that it took the action it did – demanded repayment and appointed a LPA receiver - because B breached the terms of the business loan. This was because:

- the event of the closure by the local authority, reduced the value of the security; and
- B failed to keep the property in a good and substantial state of repair.

As a result of this, Skipton says it had the right to '*demand immediate repayment of all or any of the sums owed to it'*. And it did.

B's complaint to this service

B was unhappy with Skipton's response. So it brought its complaint to this service. B's key complaints about Skipton are that:

1. it was wrong to demand full repayment when it did.

2. the legal charge signed in 2007 is invalid. This is because:

    a. the mortgage application is for B but it was signed by Mr W as an individual;
    b. there's no signed application form or offer of advance which breaches the Law of Property (Miscellaneous Provisions) Act 1989 (LP(MP)A);
    c. the default terms aren't in the mortgage;
    d. some of the terms in the mortgage are in breach of the Unfair Contract Terms Act 1977 (UCTA);
    e. the charge document was signed before B was the owner of it and it was dated after it'd been signed; and
    f. the legal charge hasn't been signed in the right place.

B is also unhappy with Skipton's appointment of the LPA receiver, and says that the receiver's failed to follow the terms and conditions of the loan agreement.

B wants Skipton to return the property to it, compensate B for its losses and renegotiate the agreement.

our adjudicator's initial view

In July 2015, our adjudicator looked at B's complaint. He said that, from the evidence he'd seen, he didn't agree that Skipton Building Society was wrong to apply the default and demand repayment of the business loan. This is because as he thought things which would breach the loan were clearly set out in it. And the events which happened did breach the terms of the loan. He also thought Skipton gave B time to send in its proposals before it appointing a LPA receiver. So he didn't uphold this complaint. Finally, he explained that our service couldn't look at complaints about LPA receivers.

my initial view

In August, I wrote to Mr W to explain that I'd propose issuing a decision along the lines of what the adjudicator had already said because I thought he'd reached the right outcome. I also made some comments on B's complaints:

- The charge document refers to a schedule which sets out, amongst other things, what B needed to do to comply with the charge. As well as the things that Skipton would consider a breach of the terms of the loan and what it could do about them. The charge has been signed by Mr W, as a director of B.
- I didn't see a problem with the charge document being signed for B and then dated later, on completion, or with the fact that Skipton hadn't signed it.
- Having looked at the agreement, I hadn't seen anything which strikes me as being likely to fail the unreasonableness test under UCTA.

B was given a further opportunity to make any more comments and let us know if it wanted a decision. B responded to say:

- It doesn't feel that Skipton treated B fairly or gave B the chance to put things right. Mr W says the building society '*should have left me to deal with the problem without interfering. I was not in default of my mortgage payments*'.
- Mr W was actively dealing with the matter and didn't understand at the time what the default was. He says Skipton used a '*catch all'* statement to justify issuing a default notice.
- Skipton and the local authority were in contact with each other and it doesn't understand why – Mr W feels they *'were working together to close me down'.*
- Mr W made a number of requests for information from Skipton but he feels the building society hasn't properly responded.
- Seven days' notice of the appointment of a receiver is unreasonable.
- This service isn't able to look at the complaint without a copy of the legal charge signed by Skipton.
- Mr W thinks the receivers office and local authority had been discussing matters before the LPA reciver was actually appointed.
- Mr W says Skipton won't give him information about its contact with the LPA receivers and local authority.
- The receivers appointed by Skipton are disqualified.

In response, Skipton says that B had its own independent legal representation when it signed the charge documents. And, regarding the claim that the charge isn't valid because Skipton hasn't signed it, the society doesn't agree with what B has said. It says that a lender doesn't need to sign the security document. It says this because a legal mortgage is an actual disposition, not an agreement for a disposition, so it isn't caught by section 2 of the LP(MP)A which requires all parties to sign.

my findings

I've considered B's further comments alongside all the available evidence and arguments already submitted to decide what's fair and reasonable in the circumstances of this complaint.

It's often the case that the evidence isn't complete or there's a dispute about what's happened. And where this is the position, our service makes its decisions based on what we think is most likely to have happened in light of the evidence.

It may be helpful at this stage for me to explain that, although B has raised a number of points in response to my initial view, I'll only be addressing those issues I consider to be materially relevant to the complaint. However, B should note that I've given careful consideration to all of its comments before arriving at my decision.

Having done so, I've reached the same conclusions as set out in my provisional view and for the same reasons. However, I'd like to make some observations.

As we aren't the regulator, I can't make the bank change its systems or processes. Also, we aren't responsible for dealing with data protection and data access requests. We offer an informal dispute resolution service and we have no regulatory or disciplinary role.

I accept what Skipton says about it not needing to sign the legal charge in order for it to be valid.

Even so, our service makes decisions based on what we think is fair and reasonable in the particular circumstances. This means that – while we will take the law into account – the outcome could be different than if a business had taken the matter to court.

Skipton can choose what banking facilities to offer its customers, if any, and the terms of those facilities. B accepted the terms of lending Skipton offered – it signed the legal charge and then used the money from Skipton to buy the property. So, even if some technical formalities hadn't been completed (which I don't think is the case here), I'd still need to consider if it'd be fair and reasonable for me to say that B isn't liable to Skipton for the money leant to it. And I just cannot see that this would be fair, or reasonable.

The legal charge is a commercial arrangement between the building society and a company, B, and it's not for me to rewrite those terms. It's not something that this service would normally become involved in. And I don't think there's any reason for me to do so here. Even so, I note that B had legal representation at the time of taking out the loan.

The terms of the loan to B included a number of things B needed to comply with. This includes, for example, the right of the building society to appoint a LPA receiver, at any time after:

> *'11.1.1 the Society has demanded payment from the Borrower of any money or the discharge of any obligation or liability hereby secured or …*
> *11.1.3 the occurrence of an Event of Default defined in the relevant Offer of Advance…'*

Even though B didn't miss any of its loan repayments, the property was disconnected from the electricity and the local authority closed the property. So I don't think that it's unreasonable that Skipton was concerned and took action to protect its security. These things would've reduced the value of Skipton's security, in breach of the terms of the loan. And, in those circumstances, Skipton was able to appoint a LPA receiver. The breach also gave Skipton the right to demand repayment of the loan. And, once it'd done this, it also had a further opportunity under the terms of the loan to appoint a LPA receiver.

While I understand Mr W feels differently, both Skipton and our adjudicator are right – his dissatisfaction with the receiver's actions is something for him to take up with them, rather than with the building society.

my final decision

My final decision is that I don't uphold B's complaint against Skipton Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W, on behalf of B, to accept or reject my decision before 13 November 2015.

Rebecca Ellis
ombudsman