

complaint

Ms A complains that Mortgage Compare Limited trading as Mortgage and Insurance Professionals ("MIP") acted unfairly and unreasonably when acting as her mortgage broker. She wants a county court judgment ("CCJ") removed from her credit records.

background

Ms A wanted a mortgage and used MIP as her mortgage broker. She said that it unfairly and unreasonably failed to tell her that her own solicitor wasn't on the lender's panel and she needed to use one which was until four weeks before completion. Ms A also said that MIP got a CCJ against her when she didn't pay the broker fees, and it was recorded on her credit records despite her then paying the amount claimed.

Ms A complained to MIP. It said that it wasn't told by the lender that Ms A was trying to use non-panel solicitors until about two months before completion, and it explained the position to her when she asked about it (earlier documents had said that Ms A had to pay two sets of legal fees). MIP said that Ms A chose to use two solicitors, and her solicitors should've reduced their fees to reflect the fact that the lender was using its own solicitor. MIP also pointed out that it carried out extra work for which it didn't charge Ms A and agreed to give her extra time to pay its fees. Ms A didn't pay, so it issued legal proceedings against her. MIP said that it did tell the court that the case had been settled when payment in full hadn't been made to avoid the court recording the CCJ in Ms A's credit records.

Ms A complained to us. The investigator's view was that MIP told Ms A in advance about its fees if she used its services. The services were provided so it wasn't unfair or unreasonable for MIP to take legal action. He noted MIP told the court that it had been paid when it hadn't been paid in full, so it hadn't treated Ms A unfairly or unreasonably. The investigator also said that MIP did tell Ms A about the non-panel solicitors in good time for her to change, but it couldn't do so until the lender told it that Ms A was using non-panel solicitors. He didn't uphold the complaint.

Ms A disagreed. She said MIP should've told her immediately not to use her solicitor, and the court has said MIP didn't say the debt had been settled in full, but if it did, the CCJ could be removed. The investigator said MIP wasn't at fault as it had told the court that the claim had been settled. Ms A still disagreed.

my findings

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

Brokers are entitled to charge fees for work done, provided they set out their fees to the consumer in advance. MIP did this with Ms A, and carried out the work. It even agreed that she could have extra time to pay, but she didn't make a payment. I don't think it was unfair or unreasonable for it to issue legal proceedings and get a CCJ. Once a CCJ is obtained, it's for the court to register it, not MIP. MIP tried to help by telling the court that it had been paid when it hadn't, but ultimately it isn't responsible for the registration of the CCJ; Ms A is responsible for the CCJ's existence by failing to pay the debt in time. Ms A has said that it was a condition of her paying anything that the CCJ was removed, but MIP did tell the court the next day that the debt was settled, which would be all that's required if Ms A is correct. MIP isn't responsible for the actions of a court office.

And I note that Ms A was notified of the need for two solicitors more than once in the various documents she was given. She didn't ask about the two fees until about five weeks before completion, when MIP answered her questions. There was still time to change solicitors, though I accept this would've involved making some payment to the original solicitors. I also note that the original solicitors were recommended to Ms A by the estate agents according to her account, not MIP. MIP can't reasonably have known which firm of solicitors are on a particular lender's panel, and the information about the two sets of legal fees was set out in the mortgage documents given to Ms A. MIP couldn't have known that Ms A didn't fully understand that information until she asked about the position. It also isn't the role of a broker to advise about solicitors and their fees – brokers advise on mortgage products.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 10 February 2019.

Claire Sharp
ombudsman