



complaint

Ms T complains about the administration of her mortgage account after Oakwood took over her mortgage in 2005, and after repossessing the property in 2009. Ms T also says that Oakwood Homeloans Ltd ('Oakwood') misrepresented facts to the Land Registry to make a fraudulent financial gain.

background

The adjudicator who investigated Ms T's complaint did not recommend that it should be upheld. He found no evidence that Oakwood had knowingly provided the Land Registry with incorrect information, and recommended that Ms T speak to her solicitors about this matter. Nor did he find any evidence that the terms and conditions had been altered when Oakwood took over the mortgage.

Following repossession, he was satisfied that Oakwood had achieved the best sale price possible in accordance with its regulatory requirements. He also disagreed that Oakwood was not entitled to pursue Ms T for the resultant shortfall, even though she had raised a complaint about the matter.

Ms T disagreed with the adjudicator's findings saying, in summary:

- When she had bought the property in April 2005, her solicitors had failed to correctly register the charge secured over the property by the original lenders. This was noted after Oakwood had taken over the mortgage, but as Ms T's solicitors had gone into liquidation, her consent was needed to release her file so that the matter could be rectified. As she did not provide this consent, Oakwood had misrepresented the position when telling her that it didn't need anything from her.
- The adjudicator had said that the property was sold for approximately £13,000 more than the final sale price she had been told was achieved. The property also appeared to have been rented to the eventual buyer for some months before it was sold.
- The property had been sold for a price so far below its original valuation, it had to be considered breach of the required regulations. Oakwood could have contacted her solicitors about the sale of the property, even if it couldn't locate her personally.
- The mortgage contract allowed for the interest rate to be varied, not the actual terms of the mortgage. And Oakwood had charged her £40 to insure the property in January 2008 when it knew that the property was a new-build, so was already insured.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

misrepresentation to the Land Registry

Ms T says that it was Oakwood who initiated liaisons with the Land Registry to correctly register the charge, once it had received the file. But whilst Oakwood will have lodged an application to correct this matter, this appears to have been initiated by the firm appointed by the Law Society as agents of intervention into Ms T's solicitors' practices. It had noted that the original registration had not been recorded correctly by the solicitors.

The letter Oakwood received from these agents in September 2005 said that her authorisation would need to be obtained if Oakwood wanted the file. I note that Ms T says that this was neither asked for by Oakwood, nor provided. And that Oakwood therefore misrepresented the position by telling her that it didn't require anything further from her at that time. But I would not consider this to have had any material effect on the corrected registration made to the Charges Register the following year. Nor could I overturn the ultimate possession order made by the courts in 2008.

sale of the property at an undervalue

I have noted Ms T's comments as to the property's value, and the sale price that it achieved following repossession. Oakwood obtained an independent valuation and appraisal from a qualified surveyor and estate agent. It was entitled to rely on the opinions of the professionals it instructed, and marketed the property at a price in line with that suggested by those professionals.

I appreciate that the price eventually achieved was considerably lower than its original marketing value. But Oakwood's records show that there were no buyers willing or able to pay anywhere near that price. I have not seen any evidence to suggest otherwise, or that the property was rented out first. Whilst an offer of £180,000 was received in the months leading up to the eventual sale, the prospective buyer later pulled out. I apologise if this was not previously made clear.

Oakwood had a duty to act in good faith and to obtain the best price reasonably available for the property in the market at the time. Having reviewed the information provided, I am satisfied that it met this requirement and acted in line with regulatory requirements and industry guidance. I can, of course, understand why Ms T feels that the property should have sold for more. But for the reasons I have already explained, I am not persuaded that Oakwood sold it at an undervalue.

contacting Ms T following the sale

Oakwood has explained that its solicitors were unable to trace Ms T directly after the property was sold. Its solicitors say that a number of traces were completed, but only the final trace some two years later was successful. Oakwood has confirmed that it had no authority to liaise with Ms T's solicitors about the matter – but even if this were not the case, Ms T could also have got in touch with Oakwood at any point to find out what had happened to the property, and the potential shortfall owed.

terms of the mortgage contract and the charge for buildings insurance

When Oakwood took over Ms T's mortgage in August 2005, it confirmed that there had been no change to the previous lender's terms and conditions. I have reviewed the documents in question and like the adjudicator, cannot see that there has been any variation to the contract terms. Any change to the tariff of charges made by Oakwood could also have been made by the original lender, under the original terms.

Ms T's comments about the premium charged by Oakwood in respect of adequate buildings cover have been noted. But as this issue did not originally form part of the complaint I have been asked to review, I am unable to consider it here. Ms T will need to raise a new complaint with Oakwood (in the first instance) if she wishes to pursue the matter further.

my final decision

I am sorry to disappoint Ms T, but my final decision is that I do not uphold her complaint.

Katherine Wells
ombudsman