

complaint

Mr and Mrs K complain – through their solicitors - that Capital Home Loans Limited ('CHL') (1) wrongly appointed Law of Property Act ('LPA') receivers over their property and (2) applied unfair charges under that appointment.

background

In August 2007 Mr and Mrs K took out an interest-only mortgage for £258,100 from CHL in order to purchase a property for £290,000. They were to fund the rest of the purchase price from their own resources. The property was a first-floor flat (Flat A), which was to be let. Two other purchasers had jointly bought the ground floor flat (Flat B), also with a mortgage from CHL.

For some reason (possibly due to a mistake by Mr and Mrs K's solicitors, who acted in both the transactions for the respective purchasers and for CHL) the properties were wrongly registered at the Land Registry – so Mr and Mrs K were shown as owning Flat B instead of Flat A. They only learned this when they later bought the freehold from the freeholders who had gone into liquidation. They may have since made a complaint to those solicitors about the wrong registration. It is not clear whether the correct registration has now taken place, though I note that Land Registry may have rejected their first attempt to do so. One of the correct Flat B purchasers later became bankrupt.

It later came to CHL's notice that Mr and Mrs K had made misrepresentations over the price of their purchase and they did not pay £290,000 for it. Indeed they may have received a payback of £20,000 within the transaction. In September 2011 CHL therefore instructed LPA receivers to manage the property. The LPA receivers instructed their own solicitors, and CHL engaged separate solicitors to advise on the misrepresentation and registration issues. CHL would not have granted a mortgage to Mr and Mrs K if it had not known of the true financial arrangements of the proposed purchase.

The property was entered for auction in August 2014, but the sale did not proceed because Mr and Mrs K redeemed the outstanding mortgage for £311,000 (which included legal and LPA receiver fees exceeding £53,000). The funds are being held with CHL's solicitors pending the outcome of the dispute as to those fees.

The adjudicator did not recommend that the complaint be upheld, because CHL was entitled to instruct LPA receivers in the light of the misrepresentation in the mortgage application. Mr and Mrs K accept CHL's right to apply costs and charges under the mortgage agreement, but challenge the amount and whether those charges relate to their property alone or include Flat B or generally. The adjudicator thought that costs issues should be better considered in court proceedings.

In my provisional decision of 27 November 2014 I took careful note of the further information received from both parties since the adjudicator's letter, including the invoices relating to the £53,000 costs.

I agreed with Mr and Mrs K's solicitors that some of the charges (exceeding £11,000) appeared to relate to Flat B rather than Mr and Mrs K's property and there was an invoice relating to 'Carter'. I noted that Counsel's fees from both solicitors exceeded £8,000 and copies of these should be provided. There was a suggestion on behalf of Mr and Mrs K that the Flat B invoices may have been directed to them because the Flat B owners (one of

whom became bankrupt) was unable to meet the costs. If 'Carter' was a general file, CHL (or through its solicitors) should confirm that those costs had been properly shared amongst all the parties. I did not then know whether Flat B had been sold (at auction or otherwise) and whether that mortgage had been redeemed – but I have now heard (since my provisional decision) that Mr and Mrs K now own that flat also and the mortgage was redeemed in November 2014.

When CHL had supplied the further information as to costs, I agreed with the adjudicator that, unless the parties could reach an agreement as to the proper amount payable, the costs dispute (including the time spent and the hourly rate) should be subject to costs proceedings through the courts. To that extent this aspect of the complaint should be dismissed under DISP rule 3.3.4(10)

My provisional decision, subject to further comments and evidence from the parties by 30 December 2014, was that Capital Home Loans Limited should provide me (and Mr and Mrs K's solicitors) with the further costs information set out above. When it had done so, I would dismiss that part of the complaint under DISP rule 3.3.4(10).

I did not uphold the complaint as to instruction of LPA receivers.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken careful note of the further costs information provided by CHL and/or its solicitors and the further comments by Mr and Mrs K's solicitors. Mr and Mrs K no longer challenge the appointment of LPA receivers.

It now appears that CHL instructed two firms of solicitors and, from the limited fee notes provided, those solicitors may have instructed separate Counsel. One firm dealt with professional negligence issues – under a file named 'Carter', but including Mr and Mrs K – and the other conducted the mortgage arrears/LPA receiver aspects. CHL now accept that £4,800 of the 'Carter' costs have been wrongly charged to Mr and Mrs K – which it will now reverse/refund. It has been unable to explain fully those costs (exceeding £11,000) which appear to relate to Flat B and not to Mr and Mrs K's property.

Now that some further (if incomplete) information has been provided by both parties in accordance with my provisional decision, it is clear that active negotiations need to take place between Mr and Mrs K and CHL on the retained costs of £53,000 (or now reduced by £4,800 to £48,200). I remain of the view that the costs issues are best suited to the courts, as this service cannot provide a technical costs assessment on matters which should be handled in the courts. It is a matter of negotiation between the parties, but it seems to me that a settlement in the region of 50% of the full retention (inclusive of any interest) may be a starting point. I would encourage Mr and Mrs K (through their solicitors) to put forward a realistic offer and CHL to give fair consideration to such an offer.

Otherwise I remain of the view that this complaint be dismissed.

my final decision

My final decision, subject to my observations above, is to dismiss the complaint under DISP rule 3.3.4(10) as being more suited to the courts.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs K to accept or reject my decision before 16 March 2015.

Charles Sweet
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