

complaint

Mr W, Mr M and Mr B agreed to jointly purchase a commercial property using their individual self-invested personal pension (SIPP) schemes. Curtis Banks Limited ("*Curtis Banks*") was the operator of their SIPPs and the administrator for HMRC purposes.

Mr W, Mr M and Mr B complain about the length of time taken by Curtis Banks to complete the purchase. They also complain that they had to pay higher solicitors' fees than stated at the outset.

Further they complain that Curtis Banks:

- misplaced a tenancy deposit;
- delayed producing a completion statement; and
- delayed registering the purchase at the Land Registry.

They say they have lost out financially as a result.

background

Mr W, Mr M and Mr B agreed to jointly purchase a property using their individual SIPPs to fund the purchase. Their financial adviser contacted Curtis Banks about the purchase. Mr W, Mr M and Mr B collectively completed Curtis Banks property form and transfers were made from each of their SIPPs to cover the property purchase costs and fees.

The solicitors firm appointed to deal with the purchase was selected from the panel of solicitors suggested by Curtis Banks.

The property form completed by these three consumers showed that the commercial property was being rented by another company.

The property application form was received at Curtis Banks on 26 June 2017. Curtis Banks property team approved the application on 3 July 2017, and instructions were sent to the panel solicitors selected, Firm A, on 12 July 2017.

A welcome pack was sent to Mr W, Mr M and Mr B's financial adviser on 13 July 2017. The pack gave estimated timescales for each step in the transaction. Details of the solicitors were included in the pack and a Property Guide was also enclosed.

On 29 July 2017, Curtis Banks sent an email to the IFA with confirmation from Firm A that it could act and included details of the fees involved. Firm A asked Mr W, Mr M and Mr B for authority to proceed. The financial adviser wrote back on 7 August 2017 providing this authority.

Firm A received the contract pack from the sellers' solicitor on 7 September 2017.

Curtis Banks chased Firm A for an update on 5 October 2017. Firm A confirmed that the sale contract provided by the seller's solicitor was not compliant. The contract provided by the seller's solicitors stipulated that the property was sold with vacant possession, whereas in fact there were tenants occupying the property.

In early November 2017, there were further email exchanges between Curtis Banks,

Firm A and the IFA, where Curtis Banks provided the IFA with details of the outstanding replies from the sellers' solicitors and asked for confirmation that the members were happy to proceed with the current contract.

On 23 November 2017, Firm A sent an email confirming they were finding the seller un-cooperative. This email was forwarded to the IFA on the same day.

The email said, in part:

"As you will be aware, one of the assumptions in our fixed fees schedule for Curtis Banks is that we have a reasonably cooperative and willing seller - this is not the case in this instance. Therefore, this matter cannot continue to adhere to the standard fixed fee. The time on the clock is now in excess of £4,000 and the fixed fee was £1,700, I obviously do not propose to charge the full time on the clock, but would be irresponsible not to flag that this matter is not a normal transaction and that my fees will exceed the fixed fee stated as the scope of the work has changed."

In early December 2017, there were email conversations about building insurance for the property. Firm A confirmed that the seller's solicitors had not met the requirements needed to complete and therefore it was unlikely that completion would be achieved before Christmas. They explained the insurers had identified flood risks at the property.

On 10 January 2018, the IFA confirmed the members were happy with the contract and the completion date was set for 18 January 2018.

Following the completion, the existing tenants moved out of the property on 27 April 2018. The limited company set up by Mr W, Mr M and Mr B took up occupancy of the premises on 1 July 2018, their company paying an annual rent to occupy the commercial premises.

An email was sent by Curtis Banks to the solicitor dealing with the tenancy on 26 April 2018. Curtis Banks subsequently realised the solicitors had been provided with some incorrect information.

Mr W, Mr M & Mr B first complained to Curtis Banks about the delay and the increased solicitors' costs. Curtis Banks didn't uphold this complaint.

Mr W, Mr M and Mr B later complained to Curtis Banks about the lost tenancy deposit, delayed registration and delayed production of the completion statement. Curtis Banks upheld this complaint and gave each of them a refund of fees in the sum of £100.

One of our adjudicators looked into these complaints. She felt that Curtis Banks had delayed instructing the solicitors by 17 days. She concluded that Firm A then sent confirmation accepting the instructions on 29 July 2017, 12 working days later.

Our adjudicator concluded that Curtis Banks could not be held responsible for the further delays as these arose from the communications between the buyers' and sellers' solicitors. She noted that there had been a lack of updates provided to the IFA, and the consumers, in the early part of the process.

The Legal Instruction form sent by Firm A on 29 July 2017 recorded the fees as:

Purchase £1200

Leasehold Aspect £250
Declaration of trust £250
Disbursements £750
Total (including VAT and money on account) £2,790

[Disbursements are not fees, but expenses incurred.]

The email sent on 23 November 2017, confirmed the fee had exceeded the fees indicated at the outset. This email from Firm A was forwarded on the same day to the consumers' financial adviser by Curtis Banks. Mr M acknowledged receipt of this email.

Our adjudicator was satisfied that Mr W, Mr M and Mr B were aware that the fees were likely to be higher and had not raised any objections or concerns in response to that email. Our adjudicator noted that whilst the fee charged was higher than what was agreed at outset, it wasn't higher than the amount referred to in the email of 23 November 2017. She said the fee specified at outset was only indicative, not fixed.

The existing tenant at the time of the conveyance surrendered their lease early, on 27 April 2018. Curtis Banks agreed that it made an error when sending details of this to the solicitors. However, the adjudicator was satisfied this was later rectified and Curtis Banks had acknowledged the shortcomings by upholding this aspect of the consumers complaint. The consumers had each received a refund of £100 of fees. She felt this was a reasonable response in the circumstances, to acknowledge the inconvenience they experienced.

As regards the completion statement and Land Registry registration, our adjudicator concluded that responsibility for both these actions rested with the solicitors that dealt with the purchase.

The adjudicator found that Curtis Banks had appointed Firm A, and were responsible for instructing Firm A, so the consumers could have reasonably expected Curtis Banks to take action as a matter of course, if needs be. Whilst she said she couldn't fairly hold Curtis Banks entirely responsible, in her opinion there had been a lack of full control on Curtis Banks part in liaising with the solicitors and keeping the consumers up to date.

She said that when resolving complaints, this service takes into account whether a consumer has lost out financially. It also takes into account the trouble and upset the consumer has been caused by the business' shortcomings.

It was the adjudicator's view that the consumers had not suffered any financial loss due to the delays caused by Curtis Banks. However, some shortcomings in the service provided by Curtis Banks had caused the consumers trouble and upset. Therefore, she recommended the complaint was partially upheld and that Curtis Banks paid the consumers a further £100 each for the trouble and upset caused.

Curtis Banks agreed with adjudicators view. However, Mr B, Mr M and Mr W did not agree. They said:

- The solicitors fee was fixed at the beginning. The e-mail received advising on time spent was an indication of costs in relation to time spent only. It did not ask them to confirm whether they were happy to pay the additional costs. If they were being asked, then they should have been given the option to withdraw from the transaction.

The onus was on the appointing party, Curtis Banks, to advise them of the position and their options.

- They confirmed that they were a firm of professional property consultants. And it was purely down to their efforts, not Curtis Banks who were paid a fee to oversee this purchase, that the transaction actually completed.

The consumers asked for the complaint to be passed to an ombudsman.

The adjudicator responded to the points raised, however, she didn't change her opinion. She said the email of 27 November 2017, indicated that fees clocked up exceeded the fees agreed at the outset. In her view this email was clear in the information provided and it was forwarded on to the consumers' financial adviser the same day.

She said Curtis Banks was operating in the capacity as the SIPP provider and was not responsible for providing the consumers with advice. She confirmed she could not hold Curtis Banks responsible for the fees charged by the solicitors.

She agreed that there was a lack of control on Curtis Banks part in liaising with the solicitors and keeping the consumers informed. She had partially upheld the complaint and therefore had recommended Curtis Banks pay each member some compensation to recognise their trouble and upset.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the conclusions reached by our adjudicator and for much the same reasons.

The background and timeline of events has been set out in detail above, so I won't repeat that here.

solicitor's fees

I have looked carefully at the terms and conditions of the SIPP and have read Curtis Banks' Property Guide for SIPP and SSAS properties.

In the Property Guide it said this about fees:

"Please note that all fees are subject to possible review, depending on the exact nature of the service provided, including but not limited to transactions of a more protracted/complex nature."

In the section about instructing a solicitor in the Property Guide it said:

"Once you have decided to proceed with a property purchase and you have chosen which solicitor to use, we will formally instruct the solicitor. We will be the solicitor's client and all on going instructions to the solicitor must come from us however we will ask that you are kept up-to-date with the progress of the transaction."

In its email of 27 November 2017, Firm A advised Curtis Banks that the transaction was more protracted than envisaged at the outset, so the standard fee arrangement could no longer apply.

The fees on the clock as at 27 November 2017, were already £4,000. I understand completion didn't take place until 18 January 2018, so there was clearly further work done by the solicitors in between times. One of the five options presented to the consumers within the solicitors email of 27 November 2017, was to walk away from the deal. They clearly chose not to do so. Had they done so, it's possible their fees would've been limited to the standard fees agreed at the outset.

But, by continuing to proceed with the purchase, and not querying the extent of the further fees, I consider that the consumers gave their tacit agreement to paying more than the standard fees agreed at the outset.

As Curtis Banks was the "*client*" here, it would've been better if it had tried to clarify the amount of the further fees likely to be involved. But, I can't see that the consumers have lost out financially as a result of its failure to do so. They were clearly told there would be additional fees beyond the £1700+ VAT standard fees and it's evident that they were not charged for all the time worked. They were charged £4,000 plus VAT. The fees clocked up had already reached that level in November 2017.

So, I don't make any award in relation to the solicitor's fees.

overall delay

Looking at the correspondence between Firm A and Curtis Banks it doesn't seem to me that Curtis Banks' can be fairly held responsible for this property transaction not completing sooner. The reasons for the delays related primarily to issues relating to the contractual arrangements. Our adjudicator has recommended that Curtis Bank pay Mr W, Mr M and Mr B £100 each for the initial delays. Curtis Banks has accepted our adjudicator's view. I consider that a fair and reasonable response.

tenancy deposit, Land Registry and completion statement issues

I agree with our adjudicator in its capacity as Firm A's client in relation to this property transaction Curtis Banks could have been more pro-active in liaising with Firm A about these aspects. However, whilst it may have impacted on the level of service the consumers consider Curtis Banks provided them with, I can't see that they lost out financially as a result of these shortcomings. Curtis Banks has already refunded fees of £100 each and I consider that a fair response in the circumstances.

I therefore leave Mr W, Mr M and Mr B to decide whether they each want to accept the extra £100 compensation.

my final decision

For the reasons explained above, I partially uphold Mr W, Mr M and Mr B's complaint against Curtis Banks Limited. I order Curtis Banks Limited to pay Mr W, Mr M and Mr B £300 in total (£100 each) for their trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W, Mr M and Mr B to accept or reject my decision before 7 June 2020.

Kim Parsons
ombudsman