

complaint

This complaint is about a buy-to-let (BTL) mortgage Mr C has with The Mortgage Business Plc (TMB).

background

Mr C took out a BTL mortgage with TMB. He also had a BTL mortgage with another lender (which I will refer to as W) for the property next door. The solicitors that were carrying out some conveyancing work on the TMB property made an error in the deeds and accidentally registered the properties back to front. So the TMB charge was registered against lender W's property and vice versa. It also added Mr C's then partner (Miss R) to the TMB title deeds, but Mr C says that property was owned just by him.

Due to arrears on the mortgage TMB appointed a firm of LPA Receivers to manage the property. Mr C has been trying to sell the property but hasn't been able to due to the problem with the title deeds.

In its final response TMB offered to refund £460 to Mr C's account (this amount was made up of various fees that had been charged to his account plus interest).

The adjudicator who considered the complaint didn't recommend it should be upheld. He felt the £460 already offered by TMB, plus an extra £55 fee it offered to refund, was fair. Mr C didn't agree and so it comes to me to determine.

my findings

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

Mr C has set out his account of events in considerable detail. I trust he won't take it as a discourtesy that I've condensed his complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint.

Before I address the underlying merits of the complaint in detail, there are some observations I need to make about the extent of my remit to consider this complaint. Where, as here, a lender decides to appoint a LPA Receiver, the LPA Receiver, once appointed does not act as agent for the lender, but for the borrower. What that means in practical terms is that I'm unable to consider any concerns Mr C may have about the actions of the Receiver, because it isn't covered by the jurisdictional scope of the Financial Ombudsman Service.

It seems to me that much of Mr C's complaint is about the Receiver's management of the property. For the reasons I've explained, I can't consider these points. Clearly, the mortgage was in arrears, so TMB was entitled to take legitimate steps to recover the money owed to it. The step it took in appointing an LPA Receiver was a commercial decision that TMB was entitled to take. Generally speaking, we won't interfere in the way a financial business exercises its commercial judgement, and I'm not persuaded there are grounds for me to do so here.

For some reason the solicitors added Miss R's name as joint owner of the property to the title deeds. It appears to have been accepted this was an error by the solicitors, but I should make it clear that I have undertaken no investigation into that – and make no finding on it – as I don't have the power to do so. I'm simply basing this on what seems to have been universally accepted by the parties involved based on the paperwork I have on file.

I'm able to consider a complaint about the solicitors instructed by TMB in relation to the work carried out by them which is – as defined by our rules – ancillary to the mortgage. So this will cover any work done to complete the registration of the mortgage in favour of TMB.

But I've no power to consider a complaint about any work done on behalf of Mr C in order to complete his registration of the title to the property – because that is conveyancing work and isn't ancillary to the mortgage.

Here I note that it seems there is a problem with the title to the property in that Miss R is registered as a co-owner of the property with Mr C. This is an error with the conveyancing work and so is outside the scope of the Financial Ombudsman Service.

I agree that the charges already identified by TMB should be refunded, but I don't think it needs to go any further than that. I'm satisfied the remaining charges were reasonable in the circumstances. I say this because they were charged in accordance with the terms and conditions of Mr C's mortgage account and were based on the conduct of that account.

my final decision

For the reasons set out, my final decision is that I don't uphold this complaint. I leave it to Mr C to decide if, on reflection, he wants to accept the offer previously made by The Mortgage Business Plc to refund various fees to his mortgage account.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 27 August 2015.

Julia Chapman
ombudsman