

complaint

Mr and Mrs B complain that Southern Pacific Securities 05-2 Plc ("SPS") wrongly added £1,000 in legal fees to their account.

background

The dispute between Mr and Mrs B and SPS goes back many years, and has been subject to two previous decisions from ombudsman colleagues. It relates to Mr and Mrs B selling their house for less than the outstanding secured debt, leaving a shortfall owed to SPS.

This latest issue relates to a failed court case Mr and Mrs B brought against SPS, from which they were ordered by the court to pay £1,000 in costs at £50 a month.

Mr and Mrs B are unhappy that SPS has added the costs to the outstanding shortfall debt so they're being charged interest on it, which they say is a breach of the terms of the agreement and of the court order. They want their outstanding debt (which stands at just under £30,000) to be written off, and their credit file amended to show that.

Our adjudicator thought SPS shouldn't have added the costs to the debt, and said SPS should refund the interest that had been charged on the £1,000 to date. Neither SPS nor Mr and Mrs B agreed and so the matter has been passed to me to decide.

my findings

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

The court order says the £1,000 is to be repaid by Mr and Mrs B at £50 a month. What it doesn't say is that SPS can add it to the shortfall debt, thereby charging interest on it. As it's silent on the payment of interest then I can't fairly say interest should be due. If the court wanted interest to be charged on the £1,000 I'd expect the court order to say so. By staying silent the implication is that Mr and Mrs B need to make 20 monthly payments of £50 each, at which time the legal costs would be repaid.

If Mr and Mrs B miss any of the court ordered monthly instalments then that's a different matter, but if all the court ordered monthly instalments are made in full and on time then I see no reason why interest should be charged.

Mr and Mrs B have argued that the waiving of the interest isn't enough, and that SPS breached the terms of the agreement. We're not the regulator and it's not our role to fine or punish a business. So when directing a business to pay redress for an error, I aim to put a consumer back in the position they would have been but for the error. That's the case here.

SPS has charged interest it shouldn't have on the £1,000 costs. The redress for that is for SPS to remove the interest it's already charged on that amount and ensuring it doesn't charge interest on it going forward.

It would be illogical and disproportionate for the redress to be that the almost £30,000 debt be written off (as Mr and Mrs B have asked) as there's no redress link between them owing SPS the shortfall debt and the minor error that's occurred here; that is, the interest charged on £1,000.

To be clear, this will simply be an internal amendment and won't result in any refund being made to Mr and Mrs B. SPS should also ensure interest isn't charged on that amount going forward, so long as Mr and Mrs B stick to the £50 a month court-ordered payments. This means that, if Mr and Mrs B make the payments in full and on time then after 20 instalments the court ordered costs will be fully repaid. Again, for clarity the actual shortfall debt will remain interest-bearing.

my final decision

I uphold this complaint in part and order Southern Pacific Securities 05-2 Plc to reconfigure Mr and Mrs B's account so the £1,000 court ordered costs are non-interest-bearing. This means it needs to;

- adjust the current balance so the previous interest charged on the original £1,000 is removed;
- ensure interest is not charged on what's left of the £1,000 going forward;
- ensure the £50 a month Mr and Mrs B are paying towards this go to reducing this balance rather than the general shortfall debt, so that after 20 payments (if the court order is kept to) the court ordered costs are fully repaid.

I remind Mr and Mrs B that they must also keep up the payments they agreed to separately towards the shortfall debt, and this decision doesn't affect that.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 11 September 2017.

Julia Chapman
ombudsman