

complaint

Mr and Mrs N complain about Southern Pacific Mortgage Limited's (SPML) treatment of them. They say the lender told them they could simply hand back the keys to their mortgaged property and they did so. They complain that it then said it hadn't got the keys, refused to take possession of the house, and continued to add fees to the mortgage.

Mr and Mrs N have been declared bankrupt. The Official Receiver, as trustee, has consented to this complaint.

background

Mr and Mrs N were declared bankrupt in July 2013. They told SPML this soon afterwards, and it agreed to give them some breathing space while they decided what they wanted to do.

Mr and Mrs N say they sent the keys to the house to SPML on its advice, and moved out. They gave it their new address in October 2013. SPML says it didn't receive the keys. It says it told Mr and Mrs N they would need to sign a voluntary surrender form in order for it to take possession of the house. Mr and Mrs N refused to sign the form, and say the Official Receiver told them not to sign it.

SPML continued to send Mr and Mrs N letters about the arrears on their mortgage. It started possession proceedings in August 2014. An order for possession was granted in October 2014.

Our adjudicator thought it unlikely that SPML had advised Mr and Mrs N to surrender the property. But she considered it should have taken steps to take possession of the property sooner, in February 2014. So she recommended SPML refund the fees that were added to the mortgage between February and August 2014.

SPML didn't accept the adjudicator's conclusions. It said there was no obligation on it to take possession action at a particular time. But it offered to refund arrears fees totalling £490.

Mr and Mrs N weren't prepared to accept that. They pointed out that SPML's offer was pointless, because the mortgage was included in their bankruptcy. They felt consideration should be given to the harassment they suffered and the council tax they're liable for because of SPML's delay. They also said they weren't looking for compensation for distress; they just wanted SPML to recognise its failings and adjust its approach in future.

my provisional decision

I issued a provisional decision on this complaint. I said, in summary:

- It was unlikely that SPML had told Mr and Mrs N they should simply hand back the keys to the property. I thought it had told them they should sign and return a voluntary surrender form in order for it to take the property into possession.
- Signing that form might well have affected Mr and Mrs N's liability for the mortgage. So I could see why they didn't want to sign it. But their decision meant it was always going to take longer for the property to be taken into possession than it would otherwise have done. SPML had to follow certain procedures first.
- SPML delayed unnecessarily in taking possession action. It knew in October 2013 that Mr and Mrs N were bankrupt and had moved out of the property, but it didn't start proceedings until the following August. There was no prospect of the situation changing or improving. I didn't think SPML had dealt fairly with Mr and Mrs N, and I thought it was inappropriate in continuing to ask Mr and Mrs N for payment when it knew their situation.
- There was nothing to show that Mr and Mrs N had lost out financially because of SPML's delay. The mortgage was included in their bankruptcy. So I agreed with Mr N that the refund of fees SPML had offered wouldn't help them, and there was no value in my awarding a refund of fees.
- Mr and Mrs N had said they have been asked to pay council tax on the mortgaged property. I could see that the delay in possession could have caused their liability for tax to increase, but I'd need to see details of that liability to make an award for it. I invited Mr and Mrs N to send that to me. I also explained that it would be for the Official Receiver to say whether Mr and Mrs N should be entitled to any award I might make for this.

my findings

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

Both Mr N and SPML have replied to my provisional decision. The only matter still in dispute is whether I should make an award for some or all of the council tax Mr and Mrs N say they're liable for because of SPML's delay.

Mr N has provided council tax bills showing the council is asking him and his wife for payment. The council has also said it will adjust how much Mr and Mrs N owe when it receives evidence of the date the property was taken into possession. Their liability should end on the day before the possession date.

The letters from the council don't mention Mr and Mrs N's bankruptcies and the effect of those on their liability. That's something Mr and Mrs N might want to take up separately with their local council. But the Insolvency Service has told us that Mr and Mrs N's local council was listed as a creditor in their bankruptcies. It has also said this covers the period before bankruptcy, as well as the 2013/2014 tax year.

This leads me to conclude that Mr and Mrs N will continue to be asked to pay council tax from the start of the 2014/2015 tax year – 1 April 2014 – until the date the property was taken into possession.

SPML has seen the evidence Mr and Mrs N have provided, and it isn't persuaded. It thinks the property should be exempt, because the property was empty and the trustee in bankruptcy was liable.

I don't agree with SPML, in the light of what the Insolvency Service has told us. Bankruptcy generally deals only with an individual's debts at the date of the bankruptcy; any debts incurred later are new and are treated as such. And I find nothing to suggest that there's a general exemption for empty properties in this case.

I must decide a fair outcome to this complaint. I've already said I think SPML took longer than it should have done to take possession action. In October 2013, Mr and Mrs N moved out, and they had given the keys to the property to SPML. SPML knew that, and I see no real reason why it didn't take possession action soon afterwards. Had it done so, it should have had possession of the property by April 2014.

Based on the evidence Mr and Mrs N have now provided, I am satisfied that they're being asked to pay council tax they wouldn't be asked to pay if SPML hadn't delayed as it did. So I find SPML should make a payment to cover that part of Mr and Mrs N's liability.

Mr and Mrs N's local council is asking them to pay £1,003.60 for the period between early September 2013 and the possession date in mid-November 2014. In the light of that, as well as what the Insolvency Service has said, and my conclusions about SPML's delay, I think SPML should pay for just over half of this period, from 1 April 2014 until it took possession of the property. In all the circumstances, I consider £530 a fair award.

my final decision

My final decision is that Southern Pacific Mortgage Limited should pay Mr and Mrs N £530. It should make the payment to Mr and Mrs N's trustee in bankruptcy unless the trustee instructs it differently.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs N to accept or reject my decision before 1 June 2015.

Janet Millington
ombudsman