

complaint

Mrs M complains that Derbyshire Home Loans Ltd ('DHL') has acted unfairly over its repossessing her property.

background

Mrs M has a mortgage with DHL, which since 2004 was previously with another lender (SPPL). The account first fell into arrears in 2007. DHL started legal proceedings for the arrears and obtained a suspended order for possession in 2008. Mrs M made further payments towards the arrears, but eventually DHL obtained an order for eviction in 2010. By then Mrs M was living overseas. According to the land registry documents Mrs M bought the property in 1996 - and both the first charge (Abbey) and the second charge (SPPL) were duly registered then. The freehold was held under one title number at the land registry, but the title was subject to a lease registered under a different title number.

DHL has been unable to obtain an order for sale of the property from the courts, because it seems its charge is only registered against Mrs M's *freehold* interest in the property and not against her *leasehold* interest. DHL's solicitors (Eversheds) tried to rectify the title at the land registry, but were unable to make contact with Mrs M overseas for her co-operation despite their efforts to do so. This only came to light to Mrs M after she had made a complaint to DHL about mis-sale of her mortgage in 2014. Until the title has been rectified, the property cannot be sold. The arrears are in the region of £35,000 (*DHL now say the arrears are £39,687*) – but a court order of July 2015 refers to a debt figure of £321,000 (unless that amount is an error).

Mrs M complains about DHL repossessing her property and failing to sell it – leading to increased interest and charges. The Mortgage Works administers the complaint on behalf of DHL.

The adjudicator thought that we could not look into the complaint, because the issues were the subject of court proceedings. She said that Mrs M could bring a later complaint when her losses had crystallised after DHL had sold the property. DHL agreed with this outcome.

DHL said that Mrs M could assist with the title issues by executing a replacement mortgage deed in favour of DHL, which it could use to register its interest against the leasehold title. She could also sign a letter agreeing to give DHL voluntary possession of the property. Mrs M was not willing to agree to either of these steps.

Mrs M has also made two separate complaints against her brokers, Finance Assured ('FA'), in respect of mis-sale of (1) the mortgage and (2) a critical illness policy. As FA is no longer trading, the complaints are being handled by the Financial Services Compensation Scheme.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken careful note of the further comments from both parties since my provisional decision of 15 October 2015, including Mrs M's explanation as to how she came to take out the DHL mortgage and live overseas.

In that decision I had some sympathy with Mrs M over the delay in DHL selling her property and redeeming or reducing her outstanding mortgage with DHL. One of the problems seems

to have been DHL's solicitors being unable to make contact with her from about December 2010, by which time she had been living overseas for three years.

I agreed with the adjudicator that we could not consider a complaint where the issues were the subject of court proceedings. DHL obtained its court orders over the mortgage arrears and it was open to Mrs M to have defended those proceedings

I also thought that Mrs M might have a complaint against her own solicitors (Curtis Parkinson) – to whom she wrote in December 2014 - over the issues of rectification of her title and/or against DHL in respect of its delayed actions over registration of the charge. It was not clear whether her solicitors, who acted for her and presumably her then lender (SPPL), properly investigated the title to the property when she remortgaged in 2004. It was also unclear as to whether both her solicitors and DHL's predecessors (SPPL) were fully aware that Mrs M was acquiring a leasehold as well as freehold interest in the property. Mrs M said that she had some deeds, but I was not sure to what they related – whether leasehold and/or freehold – and whether they were original or copies. I did not know the value of her property, nor the correct outstanding debt. I asked to see an updated mortgage statement for the past 12 months. *DHL has yet to send the updated mortgage statement.*

Mrs M now says that the original mortgage deed relates to the leasehold (being the garden), not the freehold (being the land on which the property sits). She has the 'original copies' of both.

I agreed that Mrs M might have a further complaint when her losses had been calculated after sale of the property – and DHL agreed with this conclusion.

In order to resolve the impasse over the title, I thought that DHL should consider paying for Mrs M's legal costs in resolving the title issue, because it was clear that she needed separate representation and her own solicitors had not replied to her letter of December 2014. This also reflected the inaction by DHL and/or its solicitors between 2011 and 2014 over the title issue.

My provisional decision was that:

- (1) We could not consider that part of the complaint that related to the court issues.
- (2) Mrs M had the right to bring a later complaint when her losses had crystallised.
- (3) DHL should pay for Mrs M's legal costs in resolving the title issue. *DHL now agrees to this step (limited to the execution of the deed), having spoken to the appointed solicitors. Mrs M should co-operate with DHL and/or the solicitors to resolve the matter.*
- (4) Mrs M should co-operate with all reasonable steps to rectify the title at the land registry.

Having considered the responses to my provisional decision, I have decided to make a final decision along the same terms because it is important for the title to the property, both freehold and leasehold, to be resolved without further delay. I would hope that this can be achieved as soon as possible with the full co-operation of both parties. DHL will then be able to proceed with the sale of the property and Mrs M's loss can be crystallised, in respect of which it has been agreed she would have the right to bring a later complaint.

my final decision

My final decision is that:

- (1) We cannot consider the part of the complaint that relates to court issues.
- (2) Mrs M has the right to bring a later complaint when her losses have crystallised.
- (3) DHL will pay Mrs M's reasonable legal costs in resolving the title issue.
- (4) Mrs M will co-operate with DHL and/or the appointed solicitors to rectify the title issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 4 January 2016.

Charles Sweet
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