

The complaint

Mr S and Mr C complain that Capital Home Loans Limited (CHL) unnecessarily appointed receivers on two buy-to-let properties where the term had ended, when it knew that they were in the process of remortgaging those properties.

What happened

In 2005, Mr S and Mr V took out a buy-to-let mortgage with CHL over a term of 15 years – so it was due to be repaid on 31 July 2020.

In 2006, Mr S and Mr V took out another buy-to-let mortgage with CHL over a term of 15 years – so it was due to be repaid on 31 October 2021.

On 4 October 2022, as the mortgages had not been repaid, CHL appointed receivers. The mortgages were repaid on 10 November 2022.

Mr S and Mr V complain:

- CHL knew they had offers in place to remortgage to another lender – so it was unreasonable to appoint receivers
- They incurred fees of over £12,000 for the appointment of receivers – despite them only being in place for four days.
- CHL has recorded a default on their credit files – this has led to their credit card limits being reduced and meant they can't access new interest rate products on other mortgages.
- They did not understand why they were asked to repay £90,033.95 in respect of one of the mortgages – they believe the balance should have been £88,780.

The investigator did not think the complaint should be upheld.

Mr S and Mr V did not accept what the investigator said. They made a number of points, including:

- The Covid 19 pandemic meant they had difficulty sourcing a new lender to remortgage.
- They'd used credit cards to refurbish some of the properties with the intention of increasing rental and sale values and then remortgaging to repay the credit cards. No one foresaw the pandemic, but it ruined their plans.
- They told CHL about their plans – and they could not have done any more to keep it informed.
- Appointing receivers was premature. There was no justification to not pause any action for around two months to allow the remortgage to go ahead.

- There was no compelling reason that meant CHL had to appoint receivers – it was not incurring any loss and certainly not to justify expenditure of over £12,000.
- They are being punished for delays that were outside their control.

The investigator later said he thought the disputed end balance of the mortgage was correct.

What I've decided – and why

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

When Mr S and Mr V took out the mortgages they agreed to pay them back in 2020 and 2021. I agree that the pandemic would have made it difficult for them to remortgage when the term ended. But CHL offered them forbearance during that time and it did not take any formal recovery action. I consider it treated Mr S and Mr V fairly.

Mr S and Mr V told CHL that they were in the process of selling two other properties. Their plan was to use the proceeds of the sales to clear the credit card balance and then they would be able to remortgage the two mortgaged properties. CHL asked Mr S and Mr V for evidence that they had remortgage applications in place to repay the mortgages – both by phone and in writing. The letters included clear warnings that if the debt wasn't repaid in a mutually acceptable time, then CHL would take steps to recover the debt by appointing receivers or forcing a sale – and that defaults would be recorded on their credit files.

While Mr S and Mr V might have told CHL about their plans, I think it was reasonable for a lender in that position to seek evidence to support that the mortgage was going to be repaid. Despite several reminders, I can't see that Mr S and Mr V supplied the evidence that CHL had asked for before the receivers were appointed. So it was reasonable for it to appoint receivers when it did.

I consider CHL gave Mr S and Mr V a fair opportunity over several months to provide the evidence it was asking for. It's unfortunate that the remortgages were close to completing when the receivers were appointed. But CHL was clear that it needed evidence to support the steps Mr S and Mr V were taking to repay the mortgage and that Mr S and Mr V merely keeping it updated wasn't enough. I consider that CHL was entitled to appoint receivers in these circumstances. It was fair, bearing in mind the amount of forbearance it had already shown by that point, as the term of the mortgages had ended some time ago and as Mr S and Mr V had not given it the evidence it had reasonably requested.

The evidence I have shows that CHL has passed on the receiver's costs to Mr S and Mr V. It is entitled to do so. I don't think this was unfair – and the level of fees are not unusual in my experience. Mr S and Mr C said CHL had refunded one set of fees. That is more than I could reasonably require it to do in the circumstances. Once the receivers had been appointed, I consider it was reasonable for CHL to keep them in place until the mortgages had been repaid.

The receivers were acting on behalf of Mr S and Mr V and they aren't covered by our jurisdiction. So I can't look at any acts or omissions by the receivers.

CHL was also entitled to record defaults on Mr S and Mr V's credit file. I think that was an accurate reflection of the conduct of the accounts. But CHL has agreed to remove them. CHL has told us it has taken steps to remove the default that remained with one credit reference agency. Hopefully that has resolved the matter. But as the default was recorded correctly, I can't tell CHL to compensate Mr S and Mr V for that.

I can't see that the redemption balance is incorrect. The increase in balance reflected interest and solicitor's costs. I can't see any error by CHL.

I understand the impact of the pandemic on Mr S and Mr V's plans. But CHL showed forbearance in not taking recovery action sooner. It set out clearly a number of times over several months that it needed evidence of the remortgages. That was not provided – and I can't see how the pandemic could have prevented Mr S and Mr V complying with CHL's request. They might have been doing all they could to arrange the remortgages. But without the evidence of that, it was reasonable for CHL to appoint receivers and to pass on the cost of that to Mr S and Mr V.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mr V to accept or reject my decision before 21 December 2023.

Ken Rose
Ombudsman