

The complaint

Mr W complains about the way in which his account with Specialist Motor Finance Limited (“SMF”) was settled.

What happened

In December 2004 Mr W entered into a credit agreement with SMF. Mr W failed to maintain the repayments on the account and in accordance with the terms and conditions of the agreement SMF issued legal proceedings to obtain a judgment and secure the debt against Mr W’s property. On 7 August 2006 a Final Charging Order was obtained in the sum of £7,768.10 plus interest.

Mr W hadn’t made any payments towards the debt since 2009. In 2023 Mr W decided to sell his house. His conveyancing solicitors obtained a settlement figure for the secured debt from SMF on 25 July 2023 in the sum of £33,671.37.

Mr W contacted SMF to discuss paying a reduced settlement figure. SMF advised Mr W that if he was looking to make an offer it would need to come from his solicitor.

Mr W’s solicitors provided a completion statement without putting an offer forward.

Mr W complained to SMF and asked for some of the money back. SMF didn’t uphold the complaint. In its final response it said it had informed Mr W that any offer needed to be made through a solicitor, and that it had also informed the solicitor that if they wished to make an offer it could be reviewed. SMF also said that as there was sufficient equity in the property the full outstanding balance was required to be paid.

Mr W remained unhappy and brought his complaint to this service.

Our investigator didn’t uphold the complaint. They said that because there was no offer put forward by Mr W’s solicitors the full balance of the debt was repaid to SMF.

Mr W didn’t agree. He said he’d emailed an offer of £15,000 directly to SMF. He’s unhappy that his offer wasn’t considered and says he only found out that SMF were taking the full sum secured on the day of completion.

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.

It may help if I explain what a charging order is and how it works. A charging order is a court order which imposes a charge on the freehold or leasehold property of a debtor in order to secure payment of a debt. The charge is registered with the land registry. Interest accrues on the sum secured. When you sell the house, the proceeds of sale will be used to pay off the debt owed to the creditor.

Because a charging order is a court order, this service isn’t able to look behind it. So I can

only look at whether SMF treated Mr W fairly when it came to settlement of the debt.

I've reviewed the available information. I can see that when Mr W raised the issue of offering a reduced sum to settle the debt, SMF advised him to put any offer via his solicitors so it could be reviewed. I can't see that the solicitors put forward an offer. When the solicitors sent a completion statement to SMF, they entered the full amount outstanding as the settlement figure.

Mr W has said that he didn't want to spend money on his solicitor putting forward an offer, so he put an offer forward himself. I haven't seen any evidence that Mr W put forward an offer, but I have no reason to doubt what he says. Mr W says he offered £15,000.

I can't be certain of whether SMF received Mr W's offer. However, if it was received, I think it's likely that SMF reviewed it and decided it was too low. I say this because it would've been apparent to SMF from the information provided by Mr W's solicitors that there was sufficient equity available from the sale of Mr W's property to settle the full amount outstanding. There's no obligation on a secured creditor to accept less than the full sum owed, so I can't say that SMF did something wrong by not accepting a lower offer.

Based on what I've seen. I haven't seen anything to suggest that SMF treated Mr W unfairly. I understand that Mr W would've been disappointed that his offer wasn't accepted but as I've said, there's no obligation on SMF to accept a lower offer.

For the reasons I've explained I'm unable to uphold the complaint.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 April 2024.

Emma Davy
Ombudsman