

Ombudsman's Determination

Applicant	Mr R
Scheme	Liverpool Victoria (LV=) SIPP (the SIPP)
Respondent	LV=

Outcome

1. I do not uphold Mr R's complaint and no action is required by LV=.

Complaint Summary

2. Mr R has complained that:-
 - LV= indicated at the outset that the process of purchasing a property for his SIPP would take between six and eight weeks. However, the actual process took nine and a half months. Mr R believes LV= and its panel solicitor are responsible for this delay.
 - Delays in the conveyancing process led to an increase in legal costs of between £3,566.40 and £4,053.24. The principal delays were caused by:-
 - the need for replacement documentation due to the fact that Eversheds, LV='s panel solicitor, solicitor did not discover until well into the process that the property was a leasehold rather than a freehold, despite having been informed of its status at the outset;
 - the late arrival of the full title and contract pack, which was not received until 22 August 2019.
 - Further, his SIPP was disadvantaged by not receiving rental income for a significant period of time due to these delays, amounting to some £4,000.
 - He also suffered considerable stress due to the delays and Eversheds' handling of the matter. This included time spent correcting both LV= and Eversheds, as well as collating more than 300 emails, checking, and responding to LV='s "own questions from their own emails".
 - Further, LV failed to follow their own and standard financial services complaints procedure, in particular timescales, from the point that his complaint was raised.

Background information, including submissions from the parties.

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge that there were other exchanges of information between all the parties.
4. Mr R held a SIPP with LV=. He contacted LV= because he was interested in using his SIPP to purchase a commercial property. LV= sent him an email, with some information which included the following:-
 - Guide to Purchasing a Commercial Property through a SIPP with LV=;
 - SIPP Property Application Form;
 - SIPP Property Fee Menu;
 - Guide to Solicitors Charges;
 - Property Manager Guide;
 - Obligations of Property Manager; and,
 - A brief explanation of the next steps, including estimated time for the legal process and a warning about purchase requirements if buying the property at auction.
5. LV='s panel offered a choice of two solicitors available for conveyancing of the property. Mr R selected Eversheds. He engaged his independent financial adviser (**IFA**) to assist with the process of buying the property for his SIPP. His IFA submitted the completed application form to LV=.
6. On 14 March 2019, LV= sent an email to the IFA acknowledging receipt of the completed application form. There followed a series of email exchanges between the IFA and LV= regarding the Environmental Risk Assessment (**ERA**) after which the IFA instructed LV= to instruct the surveyor, which LV= did on 28 March 2019.
7. There were some delays before the surveyor could complete the survey and it took him several days to sign and return LV='s terms of engagement. In his email of 5 April 2019, the surveyor indicated that he would seek to return the survey report within the following two weeks.
8. On 2 May 2019, LV= received the completed survey report.
9. On 3 May 2019, LV= reviewed the valuation. It then sent formal instructions to Eversheds that same day in respect of the property purchase. Initially Eversheds quoted fees for the purchase of a freehold property. However, it was not until June 2019 that it was established between the seller's solicitor and Eversheds that the property was in fact a leasehold property.
10. Further email communication took place in May and June 2019, primarily from Eversheds requesting the draft lease and other information required to progress the

purchase. During this time LV= arranged for the funds held in Mr R's SIPP to be valued ready for the payment of the purchase price.

11. Between 5 May 2019 and 22 August 2019 the following events took place:-

- On 8 May 2019, the full title, contract pack and draft documents were requested from the seller's solicitor;
- On 28 May 2019 an email exchange occurred between Eversheds and the Seller's solicitor, who confirmed a meeting with their client was to take place regarding the lease plan, which would follow.
- On 4 June 2019, although information requested was still outstanding, Eversheds commenced review and began the report on title;
- On 20 June 2019, the seller's solicitor apologised to Eversheds for the delay, issued the lease plan and a second lease, explaining that the first lease they had issued was "not fit for purpose" because of certain rights required as a result of the lease plan.
- On 21 June 2019 the local search was received and reviewed by Eversheds;
- On 1 July 2019, Eversheds received an email from the seller's solicitor, providing the 2nd lease and lease plan. Eversheds reviewed these documents;
- On 2 July 2019, Eversheds raised queries with Mr R regarding access and the lease plan;
- On 4 July 2019, Eversheds received Mr R's responses to its queries;
- On 8 July 2019, Eversheds emailed Mr R again to clarify some of his responses;
- On 10 July 2019, following instructions from Mr R, Eversheds revised the lease.
- On that day, Eversheds issued the revised lease and raised a number of enquiries to the seller's solicitor;
- There remained some outstanding issues which the seller's solicitor was yet to resolve;
- On 22 August 2019, the full title and contract pack was received by Eversheds.

12. On 15 October 2019, the IFA instructed LV= to disinvest the sum of £115,000 being the purchase price of the property, together with a further sum of £6,500 to cover all fees already quoted plus a contingency sum. These sums were to be made available to the SIPP's bank account in preparation for payment to the seller's solicitor.

13. On 16 October 2019, the SIPP was valued in readiness for making the purchase of the property using SIPP funds.

14. Also on that day, LV= made an internal instruction for the sum of £126,392 to be disinvested as per the IFA's request and asked for a time scale for the disinvestment.
15. The partial sale of units from the SIPP was carried out based on the bid price of the units on 16 October 2019, the instruction to sell the units was placed on 17 October 2019 and this transaction completed on 18 October 2019.
16. On 22 October 2019, the relevant departments at LV= confirmed to each other that the sale of units for cash was complete, and the disinvestment proceeds were in the SIPP bank account.
17. On 15 November 2019, the purchase of the property for the SIPP was completed.
18. Subsequently, Mr R complained to LV= and some email correspondence ensued between them in which LV= acknowledged the complaint, and apologised for a delay in dealing with it.
19. On 17 December 2019, LV= wrote a letter to Mr R, acknowledging his further email and apologising for the continued delay in sending a final response. It confirmed it awaited some information from Eversheds before it could fully respond to his complaint.
20. On 7 February 2020, LV= issued its final response to Mr R. It concluded that regardless of the time it took to realise the matter was the purchase of a leasehold rather than a freehold, this had no bearing on the timescale for completion of the property purchase. It believed the delays were caused by the failure of the seller's solicitor to provide the full title pack until 22 August 2019. Further, it believed the seller's solicitor was slow to respond to the title enquiries raised.
21. Mr R did not accept LV=s final response.

Adjudicator's Opinion

22. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by LV=. The Adjudicator's findings are summarised in paragraphs 23 to 30 below.
23. The Adjudicator reminded Mr R that some of the issues of which he had complained were beyond TPO's powers, namely his complaints about Eversheds, as it is not the employer, administrator, trustee or scheme manager of a pension. Similarly, the seller's solicitor was also an entity that Mr R could not complain to us about, for the same reasons.
24. The Adjudicator considered whether or not it would be appropriate for her to ask LV= to compensate Mr R for the length of time taken by a third party to complete tasks necessary to the conveyancing of the property. She also considered whether LV= should compensate Mr R for additional expenses incurred and fees imposed by a third party during the progress of the property purchase. Having studied the evidence

provided by both parties, the Adjudicator concluded that the delays were not caused by LV= but by the surveyor and by the seller's solicitor.

25. The Adjudicator also noted that Eversheds was not informed that the property was a freehold until June 2019, but concluded that it was for Mr R or his IFA to have established at the outset the status of the property under offer, and to have provided accurate information to both the SIPP provider and its solicitor. She was of the view that this kind of information error was not uncommon in property transactions, and that, in isolation, it had not caused a significant delay, because Eversheds had commenced evaluation of the lease in May 2019.
26. The seller's solicitor had not provided the full title and contract until 22 August 2019, and this fact led the Adjudicator to the view that LV= could not be held responsible for this delay. If Mr R wished to pursue a complaint about either Eversheds or the seller's solicitor, he must approach the relevant complaints authority for these solicitors. There would likely be time implications, but the Adjudicator considered any time that had been expended while Mr R waited for us to consider this complaint may be taken into consideration by such organisations.
27. In respect of fees, these were set out in the brochure provided to Mr R at the outset, and it was for Eversheds to charge what it required to carry out the necessary conveyancing. In any event, we had no power to consider such complaints about a solicitor's fees or expenses.
28. In respect of the time taken, the Adjudicator concluded that LV= had not raised Mr R's expectations unrealistically and his loss in relation to rent was one of anticipation rather than one of fact. He knew at the outset that the property could only commence paying rent to the SIPP once the matter had concluded and the SIPP owned the property.
29. On the matter of the delay in responding to Mr R's complaints, the Adjudicator acknowledged that LV= had made its first response on 23 December 2019. However, she said, it had written to him again on 7 February 2020 and had also granted him rights to bring his complaint to us, which he did on 28 April 2020. The Adjudicator said that LV= would have sent at least one acknowledgement of his complaint to Mr R, and he could have brought his complaint to us any time after raising it with LV=, if he had not received a full response within the 8-week period provided for such a situation.
30. Mr R also complained that he was provided with no explanation for the change of staff during the conveyancing process. The Adjudicator confirmed this was not something TPO has the power to consider. She confirmed that staff matters were entirely at the commercial discretion of LV=, and she noted that Mr R was given an explanation in LV='s letter of 7 February 2020. The Adjudicator acknowledged Mr R's experience of stress throughout the conveyancing process, but considered that LV= had acted in a timely manner and liaised with internal departments to ensure its part in the process was carried out swiftly. She also commented that LV= had ensured

both Mr R and his IFA were made aware in good time of the requirement to put the purchase monies in the SIPP account before completion of the property transaction could be carried out.

31. LV= accepted the Adjudicator's findings, but Mr R did not. The complaint was passed to me to consider. Mr E provided his further comments, which do not change the outcome. I agree with the Adjudicator's opinion and acknowledge the additional points raised by Mr R.

Mr R's additional comments

32. At the outset, he was told solicitor's costs would be fixed at around £1,700 but upon discovering the property was leasehold, he was informed that the solicitor's costs would be around £2,400. However, he was subsequently told that the solicitor's costs would be in the order of £5,500. He felt he was blackmailed into accepting this as non-payment would have held up the purchase. He feels the fee should be as originally quoted.
33. He was also told at the outset that he had to use a panel solicitor, but this later turned out to be incorrect.
34. The whole process should have taken around three to four months as he believes it was not a complex transaction. He lost at least five months' rent due to the delays.
35. He was offered compensation by LV= during a telephone call, but cannot recall when this took place, or how much he was offered, although he thinks it might have happened between August and November of 2019, with compensation offered in the order of £200. He confirmed that he had not accepted the offer of compensation.
36. While he understood that our powers do not extend to dealing with complaints about solicitors, Mr R believed LV= had a vicarious liability in respect of the conduct of any organisations it employs or recommends its customers employ, such as a panel solicitor.

LV's additional comments

37. Its standard practice was to use one of the panel solicitors.
38. As confirmed to the IFA in the email of 27 March 2019, only once the valuation report had been received and vetted would LV= be able to instruct Eversheds. The valuation report was received by LV= on 2 May 2019 and Eversheds was appointed on 3 May 2019.
39. Having reviewed the timeline provided by Eversheds, LV= saw no delays on its own part between receipt of the Property Application Form and the date of appointment of Eversheds after receipt of the valuation. From that point, the major delays were out of LV='s control and mainly centred around the information/documentation required by Eversheds from the seller's solicitor.

40. In respect of Mr R's assertion that it had a vicarious liability, LV= drew our attention to Section K. of the Declaration page of the Property Application form signed by Mr R which stated at point (d) "by instructing solicitors, surveyors, building contractors, or any other person, NMPTL will have no responsibility to me/us for the performance of those instructed and will not be responsible for any fees incurred as a result of any instruction." LV= also reiterated its view that, in any event, Eversheds was not responsible for the delays incurred in the conveyancing process.
41. It corrected the Adjudicator in respect of dates, confirming it had advised the IFA on 27 March 2019 that the ERA had passed, rather than 2 March 2019, as the Adjudicator had stated in her Opinion.
42. Regarding the length of time it took Eversheds to discover the property was a leasehold, LV= explained that Eversheds had originally requested the title pack and draft documents from the seller's solicitor on 8 May 2019. These were not received until 28 May 2019. Accordingly, Eversheds were working on an incorrect assumption for less than three weeks while they awaited further information/documentation from the seller's solicitor. This evidence demonstrates that it did not take until 17 July 2019 for Eversheds to confirm it was a long leasehold purchase.

Summary of the Ombudsman's Determination and reasons

43. Dealing with the solicitor's costs first, I see from the evidence that LV= supplied Mr R with a document called "A Guide to Solicitors Charges for SIPP Commercial Property Transactions Effective April 2015". In my opinion, a guide is not a quote but rather an indication of potential charges. The guide set out both freehold and leasehold property fees and it was clear that leasehold fees were around £300 more than freehold fees in all examples given. Fees for purchases at similar prices to Mr R's property were quoted at £1,875 for a freehold and £2,145 for a leasehold. There were then various additional fees chargeable depending on the work done - for example, for the preparation of a new lease.
44. Mr R's IFA instructed LV= to disinvest the sum of £6,500 "to cover all fees already quoted plus a contingency sum". It is reasonable to infer that Mr R and his IFA would have been in close contact throughout the conveyancing process and that his IFA would have discussed such fees, so I do not consider Mr R would have been unaware that the final costs would likely be well in excess of £1,700.
45. Turning now to whether or not LV= had a vicarious liability regarding solicitor's fees and overall conduct of Eversheds in respect of any delays. It is significant that LV= had stated in writing that it was not responsible for the charging of legal fees and related costs. Indeed, an additional statement on the Declaration page, said that "I/we undertake not to make any claim against NMPTL We further undertake to be responsible for paying the fees incurred by any solicitors, surveyors, building contractors or any other person instructed by NMPTL". Accordingly, I agree that by such statements LV= had made it clear to Mr R at the outset that it bore no 'vicarious

liability' for the conduct of Eversheds, nor for any delays Eversheds or any other party connected with the property purchase might cause. Mr R's signature on the application form indicates his acceptance of these terms and conditions.

46. As the Adjudicator has already confirmed, even if Eversheds had caused some delay, which is not the case so far as I can see, I do not have the power to hold it to account. Similarly, I have no power to direct the seller's solicitor to make good any losses for any possible delays it may have caused. Mr R should take advice about which regulatory authority might be available to look into any complaints he has about either solicitor in relation to his property purchase.
47. Insofar as the required use of a panel solicitor is concerned, I note that the "Guide to Purchasing a Commercial Property Through a SIPP with LV=" says only that "Our panel solicitors D.M.H Stallard or Eversheds, will provide the legal services". It does not state that it is mandatory to use one of these two solicitor. LV= says their standard practice was to use one of these panel solicitors. This evidence tends to suggest that Mr R assumed it was mandatory. However, whether it is mandatory or merely a standard practice, LV= has the commercial discretion to choose which solicitors will be available on its panel, and whether or not to offer the option for the customer to use their own solicitor.
48. Mr R says he was offered compensation, which would suggest he believes LV= accepted some responsibility for the delays or for the higher-than-expected fees. However, LV= says it can find no trace of such an offer, and there is no written record it can find of an offer having been made to Mr R in writing or during a telephone call. In my opinion, the question of an offer is a somewhat moot point, since Mr R also stated that he refused it. On the evidence provided to me, I do not think this complaint would have been resolved had LV= made an offer, unless it had been to pay Mr R sufficient compensation to cover the lost rent, the excess fees he feels he was charged plus a sum for any general distress and inconvenience he experienced in relation to the delays.
49. Having considered all of Mr R's points, I find that the delays were not caused by LV= and the additional fees Mr R felt obliged to pay were charged by the solicitor, not by LV=.
50. I do not agree that a vicarious liability rests on LV='s shoulders, partly because it already stated in the Application form that it carried no such liability, and partly because there is nothing I can see in the contractual aspects of using the SIPP to acquire the property that suggests LV= should carry the responsibility if another party causes delays or charges higher fees than originally anticipated.
51. It is very unfortunate that the purchase process took longer than anticipated, but LV= offered no guarantee as to the length of time the process would take. It owes nothing to Mr R for any additional costs incurred through any delays not of its making, nor for any lost opportunities to charge rent while the property was being conveyed to the SIPP.

CAS-50479-K7G0

52. I do not uphold this complaint and there is nothing further for LV= to do.

Dominic Harris

Pensions Ombudsman

3 July 2024