

The complaint

Mr and Mrs A say they incurred a large legal bill in 2017 due to errors made by TSB Bank plc's solicitor in registering the legal charge when they remortgaged in 2015.

What happened

I issued my provisional decision in April 2021, the findings of which stated:

"I'm able to consider a complaint about the solicitors instructed by TSB in relation to the work carried out by them which is – as defined by our rules – ancillary to the mortgage. So this will cover any work done to complete the registration of the mortgage in favour of TSB.

There seems to have been some confusion here on what the actual error made by TSB's solicitor was. The solicitor was right to register TSB's charge on the freehold of the property. The only error it made was not also registering the charge on the title of the individual leasehold flat. I've reviewed TSB's legal guidance for properties like this and I'm satisfied that is the true position.

If nothing had gone wrong in 2015, TSB's solicitor would have registered the charge on the title of the freehold and on the title of the leasehold flat.

This means that in 2017 Mr and Mrs A's solicitor would still have needed to approach TSB for permission for the charge to be removed from the freehold title, and Mr and Mrs A would still have incurred all the costs they did for that to be undertaken.

There was a very small amount of legal work that Mr and Mrs A's solicitor needed to do in 2017 to correct the omission that had been made in 2015 - that is, the charge hadn't been also registered on the title of the leasehold flat - but the time for that would have been minimal. The greater expense was incurred in removing TSB's charge from the freehold and, as I said, that was work Mr and Mrs A would always have needed to pay for in 2017 even if nothing had gone wrong in 2015, as that part of the charge had been correctly registered.

TSB covered the cost of the registration, so the only outstanding matter would be if Mr and Mrs A's solicitor charged them anything for the small amount of time it would have spent on this matter in isolation. I've carefully considered the legal bill Mr and Mrs A sent, along with the correspondence from their legal firm, and having done so I've no way of separating out how much – if anything – Mr and Mrs A were charged for the very minimal amount of work that was needed to register the charge on the leasehold flat.

Bearing in mind the overall charging structure, and the discount that was applied, I'm currently minded to order TSB pay Mr and Mrs A £200 in total to cover the estimated increase in legal cost and for their time and trouble. I can't award more to Mr and Mrs A for their time and trouble as I'm rejecting the main thrust of their complaint for the reasons I've set out above. And because TSB explained the correct position – in that the charge

on the freehold was correctly registered – to Mr and Mrs A’s solicitor in its letter of 20 March 2017 and to Mr and Mrs A in its response to their complaint in December 2019.”

I invited both parties to let me have any further submissions before I reached a final decision. Mr and Mrs A didn’t accept my provisional decision, and TSB didn’t respond.

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.

Having done so my opinion hasn’t changed, and I’m satisfied with the findings I reached in my provisional decision.

In response to my provisional decision Mr and Mrs A said

“To say I am disappointed with the offer of compensation is an understatement.

I was not happy that you reduced my claim submitted to TSB to around £1,300 but thought I was being reasonable in not challenging it.

However, this settlement of £200 is a joke. It amounts to less than 1 hour of the solicitors time.

You assured me, after receiving the evidence, that TSB had a case to answer, especially as their solicitor had admitted the mistake in an email.

Well it appears to me that TSB seem to be able to reject ANY offer of compensation put forward by the Ombudsman Service.

This is not right.

I assumed, wrongly, that the once the decision was made by Ombudsman Service, they had to pay, not negotiate their way out of paying.

It is akin to a judge asking a defendant what prison sentence they will accept.

In my view, I have wasted my time (over 10 hours) pursuing a claim that is biased in favour of a Plc. I’m afraid to say the Ombudsman Service is like a toothless tiger, all noise and no bite.”

I’m not sure from their response if Mr and Mrs A understood my provisional decision, so I’ll explain it here.

Yes, TSB’s solicitor did make a mistake in 2015. But that mistake isn’t what Mr and Mrs A think it was.

The only mistake that was made by TSB’s solicitor in 2015 was to not register TSB’s charge on the lease of the flat (title number ending *64). It didn’t make a mistake when it registered the charge on the freehold of the property (title number ending *35).

If nothing had gone wrong in 2015, TSB’s solicitor would have registered TSB’s charge on the flat (title ending *64) and the freehold of the property (title ending *35). Mr and Mrs A could never have been in the situation where the charge was only registered on the flat, and not the freehold.

So Mr and Mrs A's solicitor would always have needed to undertake the work they did in 2017 to remove the charge from the freehold and Mr and Mrs A would always have incurred the costs of that. For that reason, there are no grounds for me to order TSB to cover the costs of the removal.

All that said, it is likely Mr and Mrs A were charged a small amount by their solicitor for their time in registering the charge in 2017, so for the reasons given in my provisional decision I feel £200 compensation is warranted to cover that cost, and for the trouble Mr and Mrs A were put to. I can't award any more than that as the main thing Mr and Mrs A are complaining about – the registration of TSB's charge on the freehold – wasn't a mistake and should always have happened.

My final decision

I uphold this complaint in part and order TSB Bank plc to pay £200 to Mr and Mrs A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 22 July 2021.

Julia Meadows

Ombudsman