

The complaint

Mrs H complains that Leeds Building Society wrongly included land near to her property in its charge when she re-mortgaged. She asks that it compensates her for the costs involved in releasing the land from the charge.

What happened

Mrs H re-mortgaged with Leeds in 2018. The mortgage was recommended by a broker. Mrs H took out a “legal assisted” product. That meant that Leeds paid the basic legal costs associated with the mortgage.

In 2021 Mrs H wanted to transfer a piece of land she owned near to her property. She found out that Leeds’ charge was also registered on this land (which I’ll refer to as “the land”).

Leeds agreed to release its charge on the land. However, Mrs H incurred costs, including legal fees, a £65 fee to Leeds and a fee to the Land Registry. Leeds said the land was included in its charge because it shared the same title number as Mrs H’s main property.

Mrs H says this was unfair. She says as a matter of conveyancing procedure, where two properties share a title number and only one is to be charged the registration of the charge should make the extent of the charged property clear. She said on the title plan her main property is tinted pink to distinguish it from the land, and the previous charge was only on that part. Mrs H said the conveyancer would have seen this when checking the title and registering the charge, and should have registered Leeds’ charge in the same way. Mrs H says Leeds hasn’t provided a satisfactory response to these points or to her complaint.

Our investigator said Leeds hadn’t acted unfairly. It told Mrs H it recorded its charge against the property title, which included the land. Our investigator said if Mrs H wanted to split the land from the property title, she’d have always needed to instruct her own solicitor to do this. Mrs H didn’t agree.

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.

The mortgage – with the legal assisted product – was recommended by a broker. Only basic legal work is included, and the solicitors appointed by Leeds wrote to Mrs H saying this. Leeds says the solicitors it instructs in relation to a standard re-mortgage with a legal assisted product undertake limited work. The assumption is that any legal risks would have been addressed when the borrower bought the property. The solicitors acted for Leeds.

Mrs H says Leeds (or its solicitor) should have advised her that the title needed to be split. But I don’t think it was their responsibility to advise Mrs H about her property title. Mrs H could have instructed solicitors herself if she needed advice.

Mrs H says as a matter of conveyancing procedure, where two properties share a title

number and only one is to be charged the registration of the charge should make the extent of the charged property clear. In effect, Mrs H is saying that Leeds should have instructed its solicitors to register the mortgage on part only of the property title. But, in fairness, this would only be the case if Leeds was aware that the title included two properties and it was agreed between Leeds and Mrs H that only one property was to be subject to the charge.

Leeds instructed its solicitors to register the charge against the property, referring to the name of the property and the title number. Mrs H hasn't said – or provided evidence that – she told Leeds or its solicitors the land was to be excluded from the charge. I don't think it's reasonable to say that Leeds should have known this was what she wanted. And I don't think it's reasonable to say that Leeds should have asked Mrs H (or instructed its solicitors to ask her) about the land and whether she wanted it to be excluded from the charge.

Mrs H says that part of the title was tinted pink, and a previous charge was recorded only on the part tinted pink. She says the conveyancer would have seen this. But even if Leeds was aware of this, I don't think it needed to investigate why this was or record its charge in the same way.

In order for Mrs H to transfer the land in 2021, she had to split the title. This was something she'd always have needed to do – and incur the related costs – before transferring the land separately from the rest of her property. This might have been easier (and cheaper) if Leeds' charge wasn't recorded against the land. But, as I said, I don't think Leeds knew in 2018 that Mrs H expected this.

Mrs H says Leeds didn't respond to all of her complaint points. Complaint handling isn't a regulated activity, which means I can't usually look into how a complaint is dealt with. While I can look into how a complaint was dealt with if it impacts on resolving the underlying problem, I don't think that was the case here. Leeds agreed to release the land from its security and told Mrs H what steps she needed to take for it to do this.

I don't think Leeds treated Mrs H unfairly. I don't think, in fairness, Leeds knew – or should have known – in 2018 that Mrs H wanted the land to be excluded from the mortgage. In the circumstances, I don't think it's fair and reasonable to require Leeds to pay compensation to Mrs H.

I can't look into the actions of the solicitors. I understand Mrs H is pursuing a complaint about the solicitors separately.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 4 October 2022.

Ruth Stevenson
Ombudsman