

The complaint

Mr and Mrs S complain about what happened when they tried to move house, and found Lloyds Bank PLC had registered a number of charges over their property, as security for current and previous mortgage lending.

What happened

Mr and Mrs S told us they'd were selling their house, which had a small outstanding balance on a mortgage with Lloyds. They had lived there for many years, and had a mortgage with Lloyds for all that time. They had taken out additional borrowing on the house at points during this time, opening a total of nine sub-accounts within the original mortgage as they did so. But they said most of that lending had been paid off long ago.

Mr and Mrs S found out close to the sale that Lloyds had registered additional charges over their home, in respect of this extra lending. And it hadn't removed these additional charges when the lending was paid off. They said this was very unusual, and gave a misleading impression that their house was still providing security for a considerable amount of lending.

Mr and Mrs S told us their solicitor said she couldn't give the usual undertaking that all charges would be removed from their property, as part of the sale process, because of the unusual nature of these charges.

Mr and Mrs S said they asked Lloyds to remove the extra charges, but it wouldn't do that until all the lending had been repaid. Fortunately, they were able to pay off their mortgage in full, but they said this shouldn't have been necessary. And they said Lloyds then took an unreasonable amount of time to remove the charges, doing so in a piecemeal fashion. During this time, it gave them conflicting information about when the charges would be cleared. So their sale was delayed.

Mr and Mrs S said that if this, and taking 15 days, or working days, to remove a charge, was all bank policy, then Lloyds should have provided reasonable adjustments under the Equality Act, for them, because of issues and conditions of which Lloyds was aware.

Mr and Mrs S had accessed the Land Registry several times, to check the status of the charges on their home, which they said was a cost they wanted Lloyds to cover. They said they'd had to pay their solicitors extra, because of all the extra work involved, and they wanted Lloyds to pay this too. They also wanted Lloyds to cover the costs of temporary accommodation while they were waiting for exchange and completion to take place.

Lloyds said Mr and Mrs S had redeemed their mortgage on 12 May, and their charges were fully removed on 27 May. It thought that this was a reasonable time for charges to be removed. Lloyds said Mr and Mrs S had told it they always intended to move into a rental property until they completed the purchase of their new property, but then asked it to pay additional rental and moving costs. Lloyds didn't think it should have to pay those costs.

Lloyds said having charges from a previous lender should not impact a sale of a property going through. It said that Mr and Mrs S's solicitor could have given an undertaking to the

buyers' solicitors to have the previous lenders charges removed.

Mr and Mrs S said Lloyds either knew, or should have known, that having expired and entirely repaid charges on their Land Registry entry for their property was stopping them from completing their sale. And they said Lloyds also knew they had vacated the house, expecting that after two weeks the new owners would be able to take ownership. So Mr and Mrs S said they were left homeless. They had several weeks of taking holiday lettings for as long as available and having to move between properties. They said this was difficult for them, given their personal circumstances. They maintained that none of this would have happened if Lloyds had removed the additional charges promptly, when the extra lending was paid off.

Lloyds sent us the terms of Mr and Mrs S's mortgage, and said it would not expect any experienced solicitor to ask it to remove all security for its lending until all that lending was repaid.

Mr and Mrs S said they were providing evidence of their costs. They said they also wanted to add in the costs of council tax and utilities for the time that their house remained unsold. They said they'd rounded this up to £250 for the three weeks of delay they said Lloyds had caused. They said they'd like statutory interest to be added, if possible.

Our investigator didn't think that this complaint should be upheld. He thought Lloyds was entitled, under the terms of the mortgage agreement with Mr and Mrs S, to keep all charges in place until any and all debts were repaid in full. And he said Lloyds removed the charges reasonably promptly once the mortgage was redeemed. He didn't think Lloyds had done anything wrong by registering a number of separate charges, and he said it wasn't Lloyds' fault that Mr and Mrs S's solicitor had refused to give a standard undertaking. He said he had taken the Equality Act into account, but didn't think Lloyds needed to make reasonable adjustments for Mr and Mrs S.

Mr and Mrs S didn't agree. They said the main point of their complaint was that the old charges shouldn't still have been there, such a long time after the related lending had been paid off. They set out their reasons for believing that three out of the four charges should have been removed some time ago. And they said it was very wrong for Lloyds to question the professional judgment of their solicitor, who declined to give an undertaking in this case. They also said that Lloyds didn't need fifteen working days to remove the charges, this could have been done instantaneously, so if Lloyds did have a policy on this allowing it to take fifteen days, it should have worked more quickly for them, given their circumstances.

Mr and Mrs S also said that their delay in submitting this extra information was because of serious ill health.

Our investigator said he was sorry to hear about these recent health problems, and wished Mr S a speedy recovery. But he didn't change his mind. He thought the mortgage conditions said Lloyds can keep its security until all mortgages are repaid.

Mr and Mrs S replied again, to say that once the lending had been redeemed the security should be removed. And they still thought that Lloyds should have expedited action in their case, to respect provisions of the Equality Act.

Because no agreement was reached, this case came to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I proposed to uphold it in part. This is what I said then:

I think it may be helpful if I start by setting out my overall conclusions on this case, then explain how those have been reached. I've reached two key conclusions –

Firstly, that it was not fair and reasonable in this case, or in line with the terms of Mr and Mrs S's mortgage that Lloyds has sent us, for Lloyds to retain four separate charges over their property until all lending was redeemed.

Secondly, that the delay in removing the old charges does, in my view, make it reasonable for me to ask Lloyds to pay Mr and Mrs S some compensation, and some of the additional costs they have evidenced. But it would not be fair and reasonable for me to ask Lloyds to pay the accommodation costs they have shown us.

I'll explain why I've reached each of those views.

When Mr and Mrs S wanted to sell their house, there were four separate charges (one of which was amended) held over the property, all in favour of Lloyds. They have described this as very unusual, and said that the underlying lending which appeared to have generated many of these charges, had been paid off many years previously. They said this unusual situation concerned their solicitor, and she was not willing to give the usual undertaking, that existing charges would be removed by the lender after the sale.

Lloyds has queried this decision by Mr and Mrs S's solicitor. In correspondence with our service, Lloyds suggested that no experienced solicitors would ever ask it to agree to remove its charges until the total balance owed was repaid.

But that's not quite what Mr and Mrs S's solicitor asked. What the firm queried, was the number of charges Lloyds held. The firm noted Mr and Mrs S said some of these were in respect of lending paid back many years ago, and asked Lloyds, if this was the case, to remove just those charges, and to do so as a matter of urgency. Mr and Mrs S's solicitors never suggested that Lloyds should remove all its security over the property.

Looking at its contact notes, Lloyds appears to have taken the view that none of its charges should be removed, until absolutely all its lending was redeemed. It has referred to the terms and conditions of Mr and Mrs S's mortgage, which it sent us. But that doesn't seem to me to be what these terms say. Rather, what they say is that one charge would cover all secured lending by Lloyds to the homeowners, either jointly or separately.

Our security over your property is security for more than just the amount you owe us under this agreement (which we refer to in this booklet as "our agreement").

It also covers any other money you owe us under another mortgage agreement you have (or have had) with us or that you have with us in future while we still have the security over your property.

Lloyds referred, in its response to this complaint, to the following provision of these terms -

We can keep our security until everything you owe under our agreement (and any other mortgage agreements and mortgage loans mentioned above) has been paid in full.

Lloyds appears to have understood this as saying it's entitled to keep any and all charges, (even if the lending made in respect of those charges has been redeemed) until all secured lending has been redeemed.

The provisions in these terms do not suggest to me that Lloyds would usually seek to register multiple securities, and keep each of those in place until not only that lending, but any other secured lending, has also been repaid. This reads to me as if the reverse is what the terms suggest, that Lloyds would not register multiple securities, because any security it already holds will run to all of its lending.

I think Lloyds recognised this, at least in part, when it said to our service "*...although there were 9 separate sub accounts, this doesn't mean there were necessarily 9 separate charges. Lloyds Bank held first charge over the property, so any further borrowing, wouldn't require separate charges to be added*". I agree with that. I don't think the multiple charges on Mr and Mrs S's mortgage were likely to have been required at all.

So I cannot say that Lloyds has followed the terms and conditions of Mr and Mrs S's mortgage by registering and retaining multiple securities over their property. Nor can I say that what it has done, in registering multiple securities and then refusing to remove any of these until all the lending had been redeemed, or alternatively to confirm in writing that at least some are in respect of lending which has been redeemed, was fair and reasonable.

For those reasons, I think that Lloyds has caused a delay to Mr and Mrs S's sale, and caused them to incur some additional costs. I think it should pay some of the expenses they've asked for, and some compensation. But I don't think Lloyds has to pay everything Mr and Mrs S asked for. I'll now move on to explaining how I've reached this conclusion.

Mr and Mrs S's request for payment falls under five broad heads – additional solicitors costs, additional costs of checking the Land Registry, accommodation costs, costs of maintaining their property whilst they were in alternative accommodation, and compensation for the stress and inconvenience they experienced.

Mr and Mrs S's solicitors have confirmed that the only reason for the additional payment, over and above the agreed cost of conveyancing, was the additional work on removing the numerous charges in favour of Lloyds. I think it's reasonable to ask Lloyds to pay that. So I'll include a payment in my award to cover this, of £320 plus vat, £384 in total, with statutory interest at 8% simple from the date Mr and Mrs S can show they paid these fees, until the date the fees are refunded.

Mr and Mrs S have also shown us a total of fifteen payments to the Land Registry, while they were seeking to have the charges removed. I think it was reasonable for Mr and Mrs S to continually check the registry, given that they've told us they received conflicting information about what Lloyds would remove and when. And I also think it's likely that Mr and Mrs S's additional solicitors' charges were lower, because of the amount of work they did on this themselves. So I'll include a payment to cover this, of £45, in my award below, with statutory interest at 8% simple from the date Mr and Mrs S paid these charges, until the date the charges are refunded.

The bulk of Mr and Mrs S's financial claim is made up of accommodation costs, which they say cost £3,484.62. Mr and Mrs S say they'd agreed to complete on 19 May, so they thought their accommodation costs should be paid from 19 May to 11 June.

The timeline Mr and Mrs S have sent us, said they had indicated to their solicitors on 6 May that exchange on 10 May and completion on 19 May would be acceptable, and they'd made removal arrangements accordingly. Mr and Mrs S also told us they had always intended to move into temporary accommodation during the removal period, rather than live around boxes. I understand their decision to do this, particularly in light of the health challenges they have told us they both face. But I don't think that decision is Lloyds' responsibility.

I haven't been able to see that Mr and Mrs S were in fact committed to their exchange and completion dates on 6 May. And they knew on 10 May that they would face some difficulties and potential delay with their sale. Their solicitor told them then she wasn't prepared to give the usual undertaking about the repayment of charges over their property, because of the unusual number of these held over their property.

Mr and Mrs S first asked Lloyds to remove the old charges on 12 May. Their solicitors had already written to Lloyds about this, with the same request, on 10 May. Mr and Mrs S found they had to pay off the mortgage in full before Lloyds would remove the charges. And the charges were finally removed on 27 May.

Mr and Mrs S have told us their sale didn't actually complete until 9 June, and their related purchase went ahead on the same day. I understand they had been anticipating a gap between their sale and purchase, and it looks as if Lloyds' delay may have eliminated this.

It might have been reasonable in this case to ask Lloyds to pay for costs necessarily arising out of a delayed exchange and completion, perhaps cancellation and rebooking charges for a removal firm. But I haven't been able to see that it's Lloyds' fault that Mr and Mrs S still chose to move into hotel accommodation on 17 May (before their planned completion) and remained away from home until 11 June. So I don't think that it would be fair and reasonable for me to ask Lloyds to pay those costs for Mr and Mrs S.

Mr and Mrs S also wanted Lloyds to pay the additional costs of maintaining their home, after they moved into temporary accommodation. They wanted it to cover council tax, and utilities. I've explained above that I don't think it's Lloyds' fault that Mr and Mrs S chose to move out of home before they'd exchanged on their property. And I also note that Mr and Mrs S's family member continued to live in the property during this time. I don't think it would be reasonable to ask Lloyds to pay the costs of maintaining the household during this period.

I do think, however, that Mr and Mrs S have been put to some inconvenience, and I think it's likely that the sale of their property was delayed. For those reasons, I will ask Lloyds to pay £500 in compensation now. I think that would form part of a fair and reasonable outcome to this complaint.

For completeness, I should respond to Mr and Mrs S's point that the Equality Act required Lloyds to expedite the removal of the charges in their case. I don't think that issue necessarily arises here, because what I think it's likely that Lloyds should not have registered more than one charge in the first place. If that had been done, then I anticipate that Mr and Mrs S's solicitor would have been likely to be willing to give the usual undertaking, in respect of one charge that could clearly be related to their existing outstanding borrowing.

I should also say that it's not our role to say whether a business has acted unlawfully or not – that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things

into account including relevant law and what we consider to have been good industry practice at the time. So although it's for the Courts to say whether or not Lloyds has breached the Equality Act 2010, we're required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint.

However, in the situation in which Mr and Mrs S found themselves, I haven't been able to see that the provisions of the Equality Act required Lloyds to expedite the removal of the charges on their property, as a reasonable adjustment in respect of their personal circumstances (which I haven't set out here). That's because I think the need for urgency arose not primarily because Mr and Mrs S needed to spend some time away from their home whilst the move was being completed, but primarily because they chose to move out of their home well in advance of the move, in line with their previous removal plans, at a point when it must have seemed very likely that these plans would be somewhat delayed.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

Lloyds replied to say it accepted my decision. It said the charges that were applied were done in line with its policy in the 1990s. But it hadn't been able to show why, when separate sub accounts were redeemed, it doesn't then remove the charge for that sub account.

Lloyds said that ordinarily, most solicitors accept that on full redemption, all applicable charges would be removed. But here, it appreciated Mr and Mrs S's solicitor wasn't satisfied with this agreement and therefore why they waited to complete the sale. So it would accept my proposed resolution, and it asked for details to allow it to make the required payments.

Mr And Mrs S also replied to accept. They said they were pleased to note I'd said that the multiple charges were unnecessary, and they'd been correct to complain about this. They said they wanted to bring an end to this matter, so they accepted my proposed award, and said they hoped this would result in improved procedures (and staff training) so that no other long-term customer was placed in a situation similar to theirs in future.

Neither side has offered any further evidence or argument, and I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Lloyds Bank Plc must pay Mr and Mrs S the following –

- A refund of £384 in respect of additional solicitors fees, with interest at 8% simple from the date Mr and Mrs S can show they paid these fees, until the date the fees are refunded.
- A refund of £45 in respect of Land Registry fees, with interest at 8% simple from the date Mr and Mrs S paid these charges, until the date the charges are refunded.
- £500 in compensation.

(HM Revenue and Customs requires Lloyds Bank Plc to take off tax from this interest. Lloyds Bank Plc must give Mr and Mrs S a certificate showing how much tax it's taken off if they ask for one.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 4 September 2023.

Esther Absalom-Gough

Ombudsman