

The complaint

Mr S complains that Lloyds Bank PLC didn't honour an agreement to pay for the legal fees he incurred when he moved his mortgage to Lloyds, and didn't refund the fees either.

What happened

Mr S bought his property in 2021, using a mortgage with another lender. In 2023 he applied to re-mortgage to Lloyds and take a new fixed rate.

Lloyds issued a mortgage offer. The offer said, in Section 8 ("Flexible Features")

"If you use the Remortgage Service, Lloyds Bank will arrange for any legal work required in connection with the remortgage to be carried out. This will not cover any legal advice required and will not cover any costs incurred for any additional legal work including on your behalf."

Lloyds instructed a solicitor I'll call A to act in the remortgage.

A discovered that when Mr S bought the property in 2021, the title hadn't been properly registered. It said that in those circumstances it would normally ask for an undertaking from the solicitor who had acted for Mr S in the purchase. But that solicitor was no longer trading, so that wasn't possible in this case.

A said that in those circumstances Mr S would need to contact the Registers of Scotland to find out who had taken over from the previous solicitor. Mr S did so, and the Registers of Scotland referred him to another firm I'll call T.

Mr S instructed T to act for him and notified Lloyds of the change. Lloyds issued a new offer naming the new solicitors. The wording I've quoted above was not included in the new offer.

Mr S asked Lloyds to pay his solicitors' fees. He said Lloyds had agreed to cover his legal costs as part of the mortgage. Lloyds said it wouldn't. Mr S says a member of Lloyds staff told him to pay the solicitor himself, then reclaim the fees from Lloyds after completion. He did so, but Lloyds didn't agree to refund him either. So Mr S complained.

Our investigator didn't think Lloyds had acted unfairly, so Mr S asked for his complaint to be reviewed by an ombudsman.

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, I'm not persuaded Lloyds has unfairly refused to pay Mr S's legal fees. It offers to cover the costs of legal work on a remortgage – but only the costs of conveyancing; that is, the cost of registering the new standard security against the property title. And it only does so where it has appointed the solicitor involved.

The first offer made clear that Lloyds would pay for legal work on the remortgage – but wouldn't pay for any additional legal work that Mr S needed separately to complete the remortgage.

Unfortunately, this wasn't a standard case where the only legal work needed was registering the new standard security.

Because Mr S's original solicitors had not completed the registration of the title correctly, that needed to be done first. A couldn't do that. And it couldn't go ahead with the remortgage based on an undertaking from the solicitors to do so either, because the solicitors were no longer trading and couldn't give that undertaking.

In those circumstances, Mr S needed to instruct T to resolve the title issue first, before the new standard security in favour of Lloyds could be registered and the mortgage funds paid out.

This was legal work beyond that required simply to give effect to the new mortgage – and therefore beyond the scope of what Lloyds had agreed to pay for in the original mortgage offer.

When Mr S instructed T, Lloyds instructed T to act for it too. Mr S's costs weren't covered by Lloyds' remortgage service, because of the extra work needed for Mr S, and because T hadn't been selected by and instructed by Lloyds.

Lloyds' second mortgage offer, naming T rather than A, no longer included the section I've quoted above saying that Lloyds would cover legal costs even on the remortgage. Lloyds didn't make that clear when Mr S told it he was changing solicitors, and I don't think just omitting that part from the mortgage offer did enough to draw the change to his attention.

However, even if Lloyds had been clearer that Mr S was no longer eligible for the free legal service, I don't think this would have made any difference to the overall outcome. He couldn't opt back in, because of the need to instruct T. So the only alternative was not to proceed with the remortgage at all. He'd have had to stay with his existing lender – which he'd already chosen not to do. And he'd have had to pay to resolve the problem with the title at some future point anyway, even if he didn't go ahead with this remortgage. To complete this mortgage, Mr S would need to pay legal fees. And if he didn't complete this mortgage, he'd have had to pay similar fees at some point in the future. Lloyds isn't responsible for him being in that position.

I also don't think the email Mr S has shown us from Lloyds is an agreement to refund the fees on completion. It's merely saying that he has the option to pay them now and try to reclaim them later – it's not promising that Lloyds would offer a refund.

I'm therefore satisfied that Lloyds hasn't unfairly caused Mr S to pay legal fees he shouldn't have had to pay or could have avoided. And it hasn't promised to refund them and then gone back on that promise. In all the circumstances, I don't think it would be fair to direct Lloyds to pay Mr S's legal fees to resolve this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 April 2024.

Simon Pugh
Ombudsman