

## The complaint

Mr S's complaint is that, because Bradford & Bingley Limited (B&B) failed to remove a Land Charge in 2015, he wasn't able to complete on an equity release mortgage in September 2022. Mr S would like B&B to compensate him for his financial losses because equity release interest rates have since risen.

## What happened

I will start by explaining that reference throughout this case to the 'Land Registry' is irrelevant and has led to both sides being at cross-purposes throughout this complaint.

Mr S's land was unregistered and therefore not registered at H M Land Registry. In 1993 he'd taken out a mortgage with B&B. This was a second mortgage. I say this for the following reasons.

Where there is a first mortgage on unregistered land, the lender retains the title deeds as security for the loan. When that loan is repaid, the bundle of deeds is returned to the borrower.

Where there is a second mortgage, all the lender has as security is the mortgage deed, because the title deeds are with the first charge lender. So in order to protect its security, the lender registers a C1 land charge on the Land Charges Register. This is completely different from the Land Registry, which deals only with registered land.

An unregistered second charge is known as a puisne mortgage.

When the mortgage was repaid in 2015, a standard letter was sent out saying that the legal charge had been removed from the Land Registry. That, of course, couldn't have happened, because the puisne mortgage wasn't registered at the Land Registry. Instead, what B&B was required to do at the time was to remove the C1 land charge by filing Form K11 with the Land Charges Register.

I'm not surprised that B&B wasn't aware of this. Because most land is registered, puisne mortgages are now extremely rare.

In October 2022 Mr S's solicitors contacted B&B to explain that there was an outstanding C1 charge on the register. This had shown up when the solicitors had carried out a search of the Land Charges Register, which is a requirement when the land isn't registered. B&B responded to say that it had removed the charge "*at the Land Registry*" in 2015 – which is, of course, incorrect.

I am told that the C1 Land Charge wasn't removed until April 2024.

Mr S says that because of B&B's errors, he lost out on the chance to complete on an equity release mortgage at an interest rate of 3.99%. In January 2023, after Mr S had complained to B&B, a final response was issued. B&B repeated its error that it had removed the charge "*at the Land Registry*" and also mistakenly referred to a "*charge certificate*", something which

again applies only to registered land. Clearly the standard letter sent out in 2015 hadn't taken note of the actual situation in relation to this puisne mortgage on unregistered land.

Dissatisfied with B&B's response, Mr S raised his complaint with our service. Unfortunately this misunderstanding about the type of mortgage this was then permeated through into the investigation of the complaint, both at B&B and our service in relation to mistaken reference to the Land Registry.

B&B offered compensation of £500, but the Investigator thought that B&B should compensate Mr S for the difference in the 3.99% equity release mortgage he wanted to take out in late 2022 and the interest rates now available to him.

As B&B didn't agree with this outcome, the matter has been referred to me.

### **Provisional decision of 13 November 2024**

I issued a provisional decision in which I made the following findings.

I doubt staff processing redemptions in 2015 would have ever heard of a puisne mortgage or been aware of the need to file a K11 to remove the C1 land charge.

I think that, when they received the system-generated letter referring to the '*Land Registry*' and talking about the '*charge certificate*' the solicitors, knowing this was an unregistered second charge mortgage, ought to have been alerted that B&B wasn't aware of the steps it needed to take to remove the C1 Land Charge. The solicitors could have carried out a K15 search (which costs £1) to ensure the C1 had been removed. They could also have contacted B&B to explain that B&B would need to file a K11 at the Land Charges Register to remove the C1 entry.

In any event, I think that if Mr S's solicitors had read the letter from B&B in 2015, they ought to have been on notice that something might have gone wrong, given the reference to the Land Registry, which the solicitors would have been aware didn't apply to this property.

Likewise, when B&B was contacted in October 2022 by another firm of solicitors, it would have been a simple matter for the solicitors to explain that B&B needed to file a K11 to remove the C1 Land Charge, which I think would have resolved the issue quickly. The solicitors ought to have been aware from B&B's reference to the Land Registry that no-one at B&B realised this was a puisne mortgage.

This isn't surprising, puisne mortgages are very rare, and in 24 years at the ombudsman service, this is the first case involving a puisne mortgage I have ever come across. But of all the parties in this transaction, Mr S's solicitors are the ones who would have had the expertise to know this was a puisne mortgage and what needed to be done to remove the entry on the Land Charges Register.

I'm therefore not persuaded that the error is totally the responsibility of B&B. I think the solicitors acting for Mr S in 2015 and 2022 could, and should, have explained to B&B what was required to remove the C1 Land Charge. I'm satisfied the solicitors would, or should, have been aware that B&B didn't know this was a puisne mortgage and taken steps to mitigate Mr S's position in this regard.

However, B&B's insistence that it had removed the charge "*at the Land Registry*" caused confusion since October 2022. As I said above, I think the solicitors could

have picked up on this and explained what B&B needed to do at that time, which would have resolved the issue at that time. Instead it appears Mr S was sent on a bit of a wild goose chase corresponding with H M Land Registry, who, correctly, confirmed it held no information about his property, because it was unregistered.

In the circumstances, I'm not persuaded B&B can be held responsible for Mr S losing out on the 3.99% equity release product, or that it should compensate Mr S for legal fees, or for additional interest he may have to pay if he takes out an equity release mortgage at a higher interest rate.

B&B offered compensation of £500 for poor service, which I think is fair and reasonable in all the circumstances. I'm not intending to award any other compensation or redress.

B&B accepted the provisional decision, but Mr S did not. He's made some further points, which I summarise below.

- This was his main mortgage, with further advances taken out. It wasn't a second mortgage.
- He arranged the redemption and simply asked the solicitors to receive the deeds in 2015. These were the same solicitors as acted for him in 2023, as the firm had changed its name.
- When B&B contacted the Land Registry in 2015 he'd have expected the Land Registry to have rejected its request to remove the charge as the land wasn't registered.
- There must have been a considerable number of unregistered properties in 2015, so this shouldn't have been an unusual situation for B&B.
- When he eventually takes out an equity release mortgage, he will struggle due to the higher interest rates.

### **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.

I am grateful for Mr S explaining that he only held the one mortgage with B&B, but there had been further advances. That explains why the C1 land charge came about.

Where land is registered, under s.49 of the Land Registration Act 2002, a lender can add (or "tack") a further advance to an original secured loan, such that the further advance enjoys the same priority over subsequent creditors as the original loan. So even if a borrower has taken out a second mortgage but then takes a further advance with his main mortgage lender, the further advance will rank in priority over the second charge.

However, this can't apply in the case of unregistered land, as there is no register entry onto which to 'tack' a further advance. Where there are further advances on unregistered land (as Mr S has confirmed was the case here), these need to be secured on the Land Charges Register, so that they have priority over any subsequent lender. Therefore to protect the priority of the further advance, a C1 entry was entered on the Land Charges Register in relation to what Mr S has explained was further advances.

I am satisfied that this explains what has happened here.

Mr S has queried what would have happened in 2015 when B&B contacted the Land Registry to remove the charge. But B&B didn't do that – it simply sent out its standard letter with the deeds. However, B&B's notes say on 7 May 2020:

*“Mortgage Deed received from sols. Signed, sealed & returned. Please note we are unable to submit anything to Land Registry with regards to this as it's unregistered, solicitors would need to do this.”*

This was confirmed to the solicitors. I don't know why the solicitors had been instructed in 2020, or why they took no steps at that time to remove the C1 land charge once B&B returned the sealed, vacated mortgage deed. If they'd filed the K11 with the Land Charges Register at that time, the C1 entry would have been removed and Mr S's equity release mortgage could have gone ahead in 2022. I'm also satisfied from the email chain that the solicitors knew in early September 2022 what B&B needed to do to remove the C1 entry, and so ought to have explained it at that point.

In the circumstances, the initial conclusion I reached in my provisional decision hasn't changed. I'm not persuaded that B&B is entirely at fault. The existence of the puisne mortgage (which, I am now satisfied, was in relation to further advances) is not something that a person without legal training would be expected to identify or know about when processing a mortgage redemption in 2015, or sealing a mortgage deed in 2020. But the solicitors would have had the requisite knowledge to be aware in both 2020 and 2022 that further steps needed to be taken in order to mitigate Mr S's position.

I think this could have been explained to B&B by the solicitors who, I note, told Mr S what needed to be done on 6 September 2022. But it wasn't until nearly four months later – and after Mr S's second mortgage offer at a rate of 5.21% had already expired – that the solicitors wrote to B&B explaining that the C1 entry would need to be removed.

In closing, I've noted what Mr S has said about his finances, and that the mortgage offer he'd had in June 2022 at an interest rate of 3.99% was about his limit for being able to cover the monthly interest payments. However, with a lifetime mortgage the borrower doesn't need to make monthly repayments – that is the point of an equity release mortgage. The mortgage offer for the 3.99% product Mr S sent us shows that no monthly repayments are required.

I don't know if Mr S has misunderstood how equity release mortgages work, but he is not required to make any monthly payments. Instead, interest rolls up against the outstanding balance and the total debt is repaid out of his estate after his death. If Mr S is unclear about this, he will need to speak to his financial advisers before taking out an equity release mortgage.

As I said at the outset, a puisne mortgage is an extremely rare occurrence, and so it is unsurprising that both Mr S and B&B were confused about what was happening and how best to get the C1 entry removed. However, I remain of the view that the solicitors could have done more at an earlier stage to get things back on track. So for that reason, I'm not persuaded that the reason Mr S's equity release mortgage didn't complete sooner is wholly as a result of any error, act or omission on the part of B&B.

### **Putting things right**

As explained above, I'm not persuaded B&B can be held wholly responsible for Mr S not being able to complete on his equity release mortgage in September 2022. I am therefore satisfied that the compensation offered by B&B of £500 for poor customer service is fair, reasonable and proportionate in all the circumstances.

### **My final decision**

My final decision is that Bradford & Bingley Limited must pay Mr S £500 compensation for distress and inconvenience. I make no other order or award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 January 2025.

Jan O'Leary  
**Ombudsman**