DRN-5400828

The complaint

Mr C complains about how Clydesdale Bank Plc trading as Yorkshire Bank registered its charge over his property in connection with his mortgage.

What happened

Mr C took out a mortgage with Yorkshire in 2007. He borrowed around £60,000 over 25 years on interest only terms (later switched to repayment), with an initial three year fixed rate. The mortgage was secured over Mr C's leasehold property. In 2009, Mr C purchased the freehold of the property. In 2010, he took a new fixed rate on his mortgage. He's taken further fixed rates since.

Mr C says that when he purchased the freehold, he did so using a personal (unsecured) loan taken from Yorkshire for that purpose, and he made Yorkshire aware of what he was doing. He says that he expected that Yorkshire would therefore merge the leasehold and freehold titles of his property, and transfer its charge to the merged title.

Mr C says that he discovered this hadn't been done recently, when he applied for a second charge mortgage with another lender and the new lender was unhappy with Mr C owning both titles – it was then Mr C learned that the property still had split leasehold and freehold titles, and Yorkshire's charge was still registered over the leasehold title, even though Mr C had bought the freehold.

Mr C complained that Yorkshire hadn't sorted out the title registration at the time he purchased the freehold. It shouldn't have continued to lend – for example, by agreeing new interest rates – while its charge was secured over the leasehold title, and the fact it had done so showed it had failed to exercise due diligence. He's also unhappy that there are no longer any branches close to where he lives, meaning he's had to spend long periods on the phone to Yorkshire trying to get things resolved. He's also concerned that his personal data would be at risk if he speaks to a staff member working from home. And he says that Yorkshire has taken too long to resolve things now.

Yorkshire said it had secured its charge over the leasehold title when the mortgage was taken out. It wouldn't automatically transfer to the freehold when Mr C bought the freehold, and Yorkshire hadn't received a request to transfer its charge or agree to a merger of the titles. But it offered £25 compensation as an apology that Mr C had had to wait on the phone.

Our investigator didn't think Yorkshire had acted unfairly. Mr C didn't agree and asked for an ombudsman to review his complaint.

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'm sorry to disappoint Mr C. But I agree with our investigator. I don't think Yorkshire has

done anything wrong here.

A leasehold property involves two sets of ownership – the actual land and building is owned by the freeholder, who then enters into a lease with the leaseholder allowing the leaseholder to live in and use the property for a defined period. To reflect the ownership structure, there are two entries at the Land Registry – a freehold title and a leasehold title. One registers ownership of (and charges over) the freehold, the other ownership of (and charges over) the leasehold.

When the mortgage was taken out in 2007, Mr C only owned the leasehold. Yorkshire's mortgage was registered as a charge over the leasehold title – which Mr C continued to own, but subject to Yorkshire's charge.

In 2009, Mr C purchased the freehold using a personal loan from Yorkshire. Mr C says he told Yorkshire what the purpose of the loan was, but Yorkshire says it only knew that it was for "home improvements". Mr C says that this is important, because Yorkshire knew he was buying the freehold, and should therefore have merged the titles at this point, securing its charge over the freehold.

As I say, Yorkshire doesn't agree that it knew that. But in any case, I don't think it matters whether Yorkshire knew or not. Even if it did, things wouldn't have worked out in the way Mr C says they should have done. That's because I'm afraid Mr C is wrong about how amending title entries at the Land Registry works, and about Yorkshire's obligations in situations like this.

Once Mr C owned both the freehold and the leasehold, they didn't automatically merge and the leasehold didn't disappear. Both still existed. Mr C had the choice of dissolving the leasehold so that only the freehold remained, or of keeping both (perhaps with a view to selling one but retaining the other at some point in the future).

The only way the leasehold interest would be dissolved and merged into the freehold would be if Mr C made an application to the Land Registry for that to happen. If he did make an application, he would need to get Yorkshire's consent to dissolving the leasehold because Yorkshire held a charge over it. But it would be Mr C's application not Yorkshire's.

This is what actually happened in 2024 when Mr C applied for a second charge loan. The new lender said that it wanted the titles merged and for its loan to be secured over the freehold. So Mr C instructed a solicitor to apply to the Land Registry to do that for him, and the solicitor asked Yorkshire to consent and to sign a deed of substituted security (moving its charge from the leasehold to the freehold). This was Mr C's application. Only Mr C could make it in 2024. And only Mr C could have made it at any point between 2009 and 2024.

I can't find Yorkshire at fault for not making this application and resolving the position with the title, because this is not an application it could ever have made. Mr C, not Yorkshire, owned the two titles and only Mr C could have applied to regularise the position.

Yorkshire did nothing wrong in allowing Mr C to take new interest rates after 2009. A new interest rate is not a new mortgage. It's a change to the existing mortgage, changing the interest rate. There was no need for Yorkshire to apply for a new charge over either the leasehold or freehold titles, and no need for it to check the security it already had.

In any case, even if it had checked the title, it wouldn't have found any problem or needed any change to be made. Yorkshire still had a charge over the leasehold title, and that was enough to have given it good security for its mortgage. Even if it knew that Mr C also owned the freehold, there would have been no need for it to require him to make a change, because

its mortgage and charge continued to be valid and effective security. So Yorkshire would have had no reason to have checked the position with the title – and, if it had checked, no reason to be concerned and no reason to withhold a new interest rate.

I don't know why the second charge lender required Mr C to merge the titles before it would lend. It could have taken second charge over the leasehold interest only. But it may have felt that it was better – given that Mr C owned both interests in the property – for it to take security over everything. Which it preferred was a decision for the second charge lender to make. But it doesn't mean that Yorkshire would or should have made the same decision.

I'm not considering what the second charge lender did in this complaint. I'm only considering what Yorkshire did. For the reasons I've explained, I'm not persuaded it did anything wrong. Even if it knew Mr C had bought the freehold, that didn't make any difference to the validity of its mortgage or charge secured against the leasehold. It didn't need Mr C to merge the titles – it was the second charge lender that required that. Making this change was not Yorkshire's responsibility, and was not something Yorkshire was able to do. Only Mr C could make the necessary application. It follows that it wouldn't be fair to say that Yorkshire should have done it, either in 2009 or since, and it wouldn't be fair to expect Yorkshire to pay the legal fees Mr C incurred in doing so. They are Mr C's responsibility, and the price he had to pay to access the loan from the second charge lender. I've not seen any unreasonable delay by Yorkshire in responding to Mr C's solicitor.

Finally, Yorkshire has explained that its phone lines have sometimes been busier than it would like. It paid Mr C £25 compensation for the inconvenience of waiting on the phone. I think that's fair. It's unfortunate there is no longer a branch near where Mr C lives, but Yorkshire has made sure that Mr C can contact it by phone instead. I don't agree that there is any issue with Mr C's calls potentially being dealt with by staff working from home. That's not unusual now. What matters is that Yorkshire has robust procedures and training in place to protect Mr C's personal data, not where individual staff who process that data are located. There's no suggestion that any data protection issue has actually arisen. But if Mr C is unhappy about what he sees as the risk of Yorkshire allowing homeworking, he can choose to use another firm instead – as indeed he did when he applied for the second charge.

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 C to accept or reject my decision before 17 April 2025.

Simon Pugh
Ombudsman