

complaint

Mr and Mrs S complain of unnecessary legal and valuation fees incurred on their applications to The Royal Bank of Scotland Plc (RBS) for a fixed rate product and a further advance on their mortgage.

background

Mr S is an employee of RBS. Mr and Mrs S bought their house in 2004. Mr S says they obtained a staff mortgage from RBS to purchase it and a first legal charge was taken over the property. The copy legal charge supplied to me is undated but RBS hasn't disputed this account. Mr S says that since then he and Mrs S have taken many fixed interest products managed by facility documents.

Mr S says that in October 2017 they applied for a fixed rate product and a further advance for home improvements. Historically, staff mortgages had been held on a different product system. This was no longer available and any change to their arrangements meant being moved to a new, still internal, product holding platform.

Mr S says that the key issue surrounding the complaint is the legal charge. He says RBS's online advice hub advises that to move mortgages between the platforms, you first move the mortgage, with no valuation and no legal work required. The property is already charged to RBS. You then undertake the further advance and consider if a valuation is required. This would have been acceptable to him.

He says that initially, RBS told Mrs S that no legal work was required. But later RBS told him that he had to supply solicitor details. He queried this and was informed by email that it would be "sorted" once the case was underwritten. But this didn't happen.

Instead he says RBS treated the transaction as a re-mortgage - from RBS to RBS - engaging solicitors to take a first legal charge in favour of RBS, to replace the existing legal charge in favour of RBS. He says RBS used these solicitors to repay the initial mortgage at RBS with a mortgage drawn on RBS, incurring fees in the meantime, and that the solicitors had been unable to explain to Mr S why they were engaged in this transaction.

Mr S says the engagement of external solicitors complicated the process as there were delays in their obtaining redemption figures and ultimately settling the loan.

Mr S says his complaint to RBS about the cost of instructing of solicitors wasn't upheld. He can't see why as the procedures clearly stated no legal work was required. RBS already had a first legal charge on the property.

He says the reason given by RBS was that each legal charge was associated with terms and conditions which couldn't be updated. Mr S disagreed. He said RBS was saying that a new legal charge had to be taken every time a borrower changed mortgage products.

Mr and Mrs S complained to RBS. In its response dated 23 January 2018 it listed as follows the complaints made:

1. the valuation wasn't instructed on 9 November as it should have been;

2. he'd been given differing information regarding whether RBS could send paperwork by email;
3. there were delays in issuing the redemption statement;
4. the general service he'd received while going through the process;
5. a valuation was required for his mortgage application;
6. the time taken for him to receive the initial paperwork;
7. an error had been made in instructing solicitors to conduct work regarding legal charges;
8. the £995 product fee;
9. the £102 charged by the solicitors.

RBS agreed with complaints 1-4. It didn't agree with complaints 5-9.

For the inconvenience caused by complaints 1-4 RBS credited Mr and Mrs S's account with £150 compensation. It also credited £152.47 for the additional interest payable by Mr and Mrs S as a result of the delay in moving to a lower interest rate. In respect of complaints 5-9 it said:

5. *"I note that you are unhappy a valuation was required for your remortgage. I can confirm the correct process has been followed in this instance. Although you raise a point that your LTV (loan to value) is low, as you are taking out additional borrowing to ensure a thorough and robust sales process the underwriter has determined an updated valuation is required.*
6. *Moving on to your complaint surrounding the time taken for you to receive your paperwork, I have reviewed our systems and confirmed that the correct internal process has been followed. Your mortgage adviser issued the paperwork correctly in line with their department's timescales. We cannot be held responsible for delays in the mail.*
7. *I cannot agree that we have instructed [solicitors] to conduct work on legal charges incorrectly. I note that you have queried why [solicitors] are required to complete work when we already hold a legal charge. I have liaised with our legal counsel and they have confirmed all legal charges hold an associated terms and conditions (behind the charge). These terms and conditions cannot be updated and when you remortgage with us a new charge needed to be raised. Although you may feel this process is convoluted I can assure you it has been followed correctly and for a valid reason.*

8. *I am unable to agree with your complaint about the £995 product fee. Regardless of the service you have received I cannot agree this fee is not valid. The fee is clearly detailed in the offer documentation that you have agreed to. No error has been made in the application of this fee.*
9. *I cannot agree with your complaint surrounding the £102 in charges from [solicitors], as confirmed above the legal work instructed by [solicitors] was correct. If you are dissatisfied with the charges accrued any complaint should be directed to them. We are not responsible for fees charged by a third party."*

Mr and Mrs S weren't happy with this and brought their complaint to this service. In reply RBS provided the advice from its (internal) legal counsel as follows:

"This is our standard process and not something that we could waive. We need to do this as when the customer remortgaged with us, they moved onto our current terms and conditions. The legal charge which was put into place for the staff house purchase loans does not refer to the correct terms and conditions and therefore needs to be released with a fresh charge put into place which refers to the correct and current terms and conditions.

....the wording of our legal charge has been approved and registered at the Land Registry. So each and every legal charge which is granted in our favour must be exactly in accordance with that approved form otherwise it won't be accepted by the Land Registry for registration. Further we would never agree to any variation to the terms of our legal charge once it has been registered at HM Land Registry, as given our size, we need to have complete consistency across the mortgage book. Accordingly we require a fresh legal charge to be put in place so that the legal charge refers to the correct terms and conditions for the mortgage."

Our adjudicator didn't recommend Mr and Mrs S's complaint be upheld. He referred to the advice from RBS's legal counsel and added that the valuation fees appeared to have been charged owing to the length of time which had passed since a valuation had last been carried out. He was satisfied that in order to accurately assess the ability to switch products a new valuation was required.

Mr and Mrs S didn't agree and asked for an ombudsman to look at the case. They said no-one had stated why the existing legal charge - which they assumed was also Land Registry compliant as it was already registered - wasn't satisfactory for their needs.

On the basis put forward by RBS, every historic legal charge would need to be replaced. Surely not? The legal charge they had was compliant or it wouldn't have been registered when they originally took out the mortgage in 2004. RBS hadn't stated what was wrong with the existing legal charge and why it needed to change.

I took a different view of the complaint to the adjudicator. So I decided to issue a provisional decision, setting out my view of the case and inviting further comments. Both parties have now responded and so I issue my final decision.

my provisional decision

In my provisional decision, I said:

“I’ve read the copy supplied by Mr and Mrs S of the 2004 legal charge. It’s executed by both parties but undated. It’s an all monies charge securing a covenant to discharge on demand the mortgagor’s obligations. It makes no reference to the current (or any) terms and conditions of RBS. It’s not specific to a staff loan.

Mr and Mrs S say the terms and conditions are managed by facility documentation not the legal charge. When they applied in 2017 for a fixed rate product and a further advance for home improvements, there was no need for a new legal charge or for any involvement by solicitors.

That seems to me to be right. The legal charge doesn’t refer to any terms and conditions, so there can’t be a requirement that it be updated to refer to the “correct” terms and conditions. There would have been no variation to the terms of the legal charge.

Subsequent to the adjudicator’s view RBS has further commented:

“Overall charges against the property are not held by the individual bank, such as NatWest or RBS. In fact the charge is registered to the department or branch of the bank that the lending was originally completed with. For example if a customer applied for a mortgage with the Branch in Bedford, then wanted to re-mortgage and borrow additional funds completed via a telephony application with the mortgage lending unit. The charge would have to be updated to show that the mortgage lending unit holds that charge.”

However I’m not persuaded by this either. The question to which department or branch a legal charge is registered is an internal matter and has nothing to do with the title. Nor is it anywhere recorded on the legal charge.

RBS also suggests that the new product and further borrowing couldn’t be completed on a former staff house purchase loan. That may be right, but Mr and Mrs S’s point, with which I agree, is that these matters fell to be dealt with by facility documentation. They didn’t require a new legal charge or the instruction of solicitors.

Accordingly I agree with Mr and Mrs S that the instruction of solicitors was unnecessary and that they shouldn’t be liable for the fees of £102. And in any event, the offer of loan dated 17 November 2017 says in section 4 that the conveyancing fees for the re-mortgage work would be paid by RBS.

However as Mr and Mrs S applied for a fixed rate product and a further advance for home improvements, I can’t see any objection to the valuation fees. There hadn’t been any valuation since the original purchase in 2004.

It seems to me that any delay caused by RBS’s unnecessary insistence on discharging the existing legal charge and taking a new one has been covered by the compensation payment already made. However I consider that an additional award of £250 is appropriate to cover the trouble and upset caused to Mr and Mrs S by RBS’s unnecessary complication of the process.”

the responses to my provisional decision

RBS accepted my provisional decision. Mr and Mrs S didn't respond.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither party has objected to my provisional conclusions I confirm them here.

my final decision

My decision is that I uphold this complaint and order The Royal Bank of Scotland Plc to pay Mr and Mrs S:

- the £102 legal fee;
- £250 compensation for their trouble and upset;
- interest on the £102 from the date it was paid by or deducted from Mr and Mrs S to the date of repayment to them at 8% a year simple.

If RBS considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs S how much it's taken off. It should also give them a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 15 July 2020.

Edward Callaghan
ombudsman