

complaint

Mr R and Mr G complain about charges applied to their mortgage account by Cheltenham & Gloucester Plc. Mr R has brought the complaint to us. He says Cheltenham & Gloucester should refund charges applied to the account and the refund should be paid to him not to the mortgage account.

background

Mr R and Mr G took out a joint mortgage with Cheltenham & Gloucester. The account fell into arrears and fees were applied. Cheltenham & Gloucester started possession proceedings to recover the debt in 2008. The mortgage has been on an interest only basis since 2005. Mr R says that in 2012 he sold his beneficial interest in the mortgaged property to Mr G.

Mr R contacted Cheltenham & Gloucester in 2018 when he found out it had refunded about £1,400 to the mortgage account. Cheltenham & Gloucester has confirmed this is a refund of arrears management fees. Mr R says any refunds for charges applied before 2012 should be paid to him directly as he paid the charges.

Our investigator didn't recommend that the complaint should be upheld, saying:

- It was fair for Cheltenham & Gloucester to refund charges to the mortgage account. Any dispute between the account holders isn't a matter for us to consider.
- Cheltenham & Gloucester had refunded arrears management charges from 2009 with 8% interest.
- Mr R and Mr G's account went into litigation before 1 January 2009 due to the conduct of the account. So the regulator's guidance about refunding fees between 2009 and 2016 didn't apply. And as the fees weren't applied as a result of automatic capitalisation of arrears, the regulators guidance about this didn't apply either.
- Cheltenham & Gloucester provided statements to show it had refunded charges applied before 2009 in line with the regulators guidance and added 8% interest.

The investigator said Cheltenham & Gloucester hadn't make errors when identifying and refunding charges. It offered £100 compensation for delays in responding to Mr R and the investigator said this was fair and reasonable.

Mr R said there is serious misconduct and he's relying on the ombudsman service in seeking justice.

Mr R said case law requires Cheltenham & Gloucester to calculate payment of arrears over the lifetime of the mortgage. He said it was illegal to demand payment of a lump sum and payments to clear arrears over two years. So litigation fees applied by Cheltenham & Gloucester should be refunded to him.

Mr R said it's unfair that fees applied before 2012 should be refunded to the account. He said he paid the fees. And Mr G now has the beneficial interest in the property and will benefit from the refund.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr R has brought complaints to us about other accounts with Cheltenham & Gloucester and other providers in the same banking group. I should make it clear that in this decision I'm only dealing with complaints about Mr R and Mr G's joint mortgage account with Cheltenham & Gloucester.

what charges should be refunded?

Cheltenham & Gloucester refunded about £1,360 to Mr R and Mr G's mortgage account in early 2018. This was a refund of arrears management charges applied since January 2009, plus interest. This is consistent with the regulator's guidelines.

Cheltenham & Gloucester also refunded some charges applied before 2009 with interest at 8% (about £930).

Cheltenham & Gloucester says charges related to litigation were properly applied to the account. It says legal action was taken because of the conduct of the account. It provided evidence to support this.

Mr R says Cheltenham & Gloucester should also refund costs and charges related to litigation. He says it was illegal for Cheltenham & Gloucester to ask for the arrears to be repaid as a lump sum or over a short period. We're an informal dispute resolution service. Only a court can say whether action taken by Cheltenham & Gloucester was illegal. A court issued an order for possession and orders about the payments to be made by Mr R and Mr G to repay the arrears.

Cheltenham & Gloucester confirmed Mr R and Mr G's mortgage account hadn't been affected by automatic capitalisation of arrears. I haven't seen anything to suggest this is incorrect.

Cheltenham & Gloucester provided evidence to show the charges that were applied to the account. It's explained why charges were – or were not – refunded and provided calculations of the refunds and interest. I haven't seen anything to suggest it made an error. So I won't be requiring it to refund further charges.

how should the charges be refunded?

Mr R says any refund of charges applied before 2012 should be paid directly to him. He says he paid the charges. Mr R says he reached an agreement with Mr G in 2012 about the beneficial ownership of the property which means he won't benefit from the refund if it's paid to the mortgage account.

I've considered what Mr R has said. But any agreement between Mr R and Mr G about how their assets are shared is for them to determine. As the charges were applied to the

mortgage account, I think it's fair that Cheltenham & Gloucester makes the refunds to the mortgage account.

Cheltenham & Gloucester offered £100 compensation for delays in responding to Mr R. I think this is fair and reasonable.

my final decision

My decision is that I do not uphold this complaint as I find Cheltenham & Gloucester Plc's offer to pay £100 to Mr R is fair and reasonable in the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mr G to accept or reject my decision before 15 March 2019.

Ruth Stevenson
ombudsman