

complaint

Mrs B complained about The Mortgage Business Plc (TMB). TMB had refunded arrears management fees, but Mrs B complained that:

- she had to wait for the refund, and it wasn't adequate;
- TMB had passed her details to another organisation to process the refund, when she hadn't given permission.

background

In early April 2018, TMB wrote to Mrs B about her closed mortgage account. It said that it had identified that some arrears management fees might have been inappropriately charged. It told her that it would be refunding all relevant mortgage arrears management fees charged to Mrs B's account since 1 January 2009, together with interest charged on those fees and any overpayments Mrs B had made. There was a calculation attached, and the total to be paid was £668.32.

Mrs B complained. She said that she also wanted a refund of legal costs for court proceedings, which she said had been added to her mortgage and were part of arrears management. She wanted a minimum of £1,475 extra. Mrs B also complained that the original arrears fees had caused her distress, and she complained because she'd had previous field visits from TMB's agents.

TMB told Mrs B that there hadn't been an error with the charges, which had been debited in line with the mortgage terms and conditions. However, it offered her £100 compensation for distress and inconvenience, and £41 for the cost of her phone call. TMB told Mrs B that it wasn't looking at litigation fees, though it would review this at the end of the year.

Mrs B wasn't satisfied and complained to this service. She complained that TMB had charged her £450 for instructing a solicitor and £1,170 for litigation costs, which the court hadn't sanctioned. She said she shouldn't have to wait till the end of the year to get these back. Mrs B also said that TMB had passed her personal details to its debt collection agent. She said she now wanted £1,620 costs plus interest, and substantial compensation for stress and inconvenience. Mrs B also said that the "Protection from Harassment" Act 1997 made it clear that TMB's actions in using the debt collection agency carried civil and criminal liability.

The investigator initially thought that Mrs B should receive a refund for TMB's litigation costs in advance of the bank's project assessment at the end of 2018. He didn't accept that the bank did anything wrong in using the debt collection agent. He explained that TMB was using the company as an agent, not as a third party.

Both Mrs B and TMB replied to the investigator's first view:

- Mrs B said she accepted the first part of the investigator's finding and wanted the refund immediately. But she strongly disagreed about the use of the debt collection agency. She sent a third party authority form, which she said she'd never signed.
- TMB pointed out that the Financial Conduct Authority hadn't said the fees were unfair, and they'd been in line with the mortgage terms and conditions. Effectively, the refunds

were a gesture of goodwill, and the merits of each case hadn't been individually assessed. TMS also said that litigation costs were actual costs incurred when it had taken legal action. It argued that it wasn't fair to pre-empt the outcome of its subsequent review, by refunding Mrs B at this stage. And it wanted to emphasize that the fees hadn't been charged in error.

The investigator reconsidered in the light of these responses, and issued a second view. In this, he said that he'd looked at Mrs B's mortgage account and had seen the amount of collections activity. So he could understand why TMB had instructed field agents and solicitors. So he couldn't say the litigation fees were unfair.

The investigator also said that the third party authority form, which Mrs B had refused to sign, wasn't a request for her to authorise information to the debt collection agency. It was to allow TMB to have discussions with Mrs B's solicitor. The investigator still thought considered the debt collection agency was acting as TMB's agent. He didn't think TMB had done anything wrong.

Mrs B didn't accept this. She said she wanted the investigator to process the refund he'd agreed. And she said she'd never signed a consent form for the debt collection agency, and there was an obvious breach of confidentiality and legal procedure. She said she didn't understand how the investigator could agree, then simply deny the facts in the next communication.

my findings

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

Mrs B's request for payment of litigation fees

TMB is part of the Lloyds banking group, and the refund which TMB gave Mrs B in April 2018 was part of a scheme which refunded fees to all Lloyds Bank customers who'd been charged these. It was agreed with the Financial Conduct Authority (FCA). As TMB set out, the refunds didn't mean that the fees had been wrongly charged. They'd been charged in line with the terms and conditions of the mortgage account, but the Lloyds group had accepted that it hadn't always done enough to understand customers' circumstances to be confident that their arrears payment plans were affordable and sustainable. The FCA announcement said that for customers whose mortgage went into litigation, there would also be a refund of any litigation fees – if they'd been applied unfairly.

Mrs B was charged litigation fees because TMB had to take her to court because of the sustained level of her arrears. The bank charged its litigation costs to her mortgage account. So she might qualify for a refund. But she might not, because there will have to be an assessment about whether or not the fees should have been applied. I can't say whether or not her litigation fees were unfairly applied. I can see that there was a considerable amount of collections and litigation activity on her mortgage, and TMB incurred a great deal of expense getting Mrs B's case to court. But TMB has made it clear that the part of the project which reviews litigation costs would start at the end of 2018. I find that it would be quite wrong for this service to pre-empt whatever that review might or might not find. I can't see anything wrong with Lloyds' application of fees to Mrs B's account. But I'm not aware of the parameters of the review that Lloyds is proposing to make. That could reach a different conclusion, so it wouldn't be appropriate for me to say that Mrs B shouldn't be awarded a refund. Mrs B will have to wait her turn for the review to consider her account.

So I do not uphold Mrs B's complaint for an immediate refund of the bank's litigation fees which it debited to her account, nor for interest or compensation for distress and inconvenience which might go with any such refund.

Status of the debt collection agency and whether there was need for consent

Lenders normally contract out debt collection functions such as home visits. When they do this work, the debt collection agents act as the lender's agent – in other words, they act in place of the lender. So there's no need for the borrower to have to provide consent, and Lloyds was entitled to pass on Mrs B's details to the debt collection agency. If Mrs B still considers there's a breach of data protection rules, the proper place for her to pursue this is with the Information Commissioner's Office (ICO).

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 11 February 2019.

Belinda Knight
ombudsman