

## **The complaint**

Mr T complains that Yorkshire Bank Home Loans Limited (“YBHL”) failed to remove the charge over his investment property, when he paid off the mortgage in full. Mr T said this was discovered as part of a sale, and the sale was delayed while the charge was removed.

## **What happened**

Mr T told us he had a mortgage with YBHL on an investment property. The mortgage was redeemed in late 2021, when Mr T paid a security release fee. Mr T said in late 2023, he was selling the property, but found out the charge over the property in favour of YBHL had not been removed.

Mr T said YBHL had no right to have retained this charge, and he said this delayed his sale, putting him at risk of being sued. He said YBHL took from 21 December 2023 to 9 January 2024 to remove the charge.

YBHL didn’t think it had done anything wrong. It said its policy at the time was not to remove the charge right away when a mortgage was redeemed on an investment property, as leaving the charge in place would save legal costs if the owner wanted to remortgage again afterwards. YBHL said it had alerted Mr T to the need to ask specifically for the charge to be removed, if he wanted that, and he hadn’t done so.

YBHL said it had never promised to turn around Mr T’s more recent request to remove the charge within a couple of days. It thought that it had taken a reasonable time to resolve this, especially given the intervening holiday period.

Our investigator didn’t think this complaint should be upheld. She said the redemption statements sent to Mr T stated clearly that the legal charge wouldn’t be removed unless Mr T requested this. And she said YBHL had followed this policy. She thought the charge was removed promptly when Mr T later asked.

Mr T disagreed. He argued that unless the right to leave the charge in place was part of the mortgage contract, YBHL would be in breach of that contract. And he said mentioning a requirement to make a specific request for removal of the charge in the redemption statement wasn’t enough. Mr T said he’d paid the £195 release fee, and YBHL should have released the charge when it got that money. He also said that this demand for money as a release fee wasn’t in the mortgage contract itself, so was also unlawful.

Because no agreement was reached, this case then came to me for a final decision. And I then reached my provisional decision on this case.

## **My provisional decision**

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

The mortgage offer Mr T originally received, set out that he would need to pay a mortgage redemption fee of £195. That's what he was later charged. I don't think it was a mistake for YBHL to charge this, or that it has to pay this back to Mr T.

I have read the terms of Mr T's original agreement with YBHL. Those include this provision –

*“We will release the charge over your property when all sums due to us have been paid.”*

I don't think YBHL has ever suggested that there were sums remaining due to it, which Mr T had not paid. So I think it was a mistake in this case for YBHL not to have removed the charge when the mortgage was redeemed, and I think that Mr T's complaint about this should be upheld.

However, when I'm thinking about compensation in this case, I do have to consider that Mr T was informed that YBHL didn't intend to remove the charge unless it was specifically asked to do so. The redemption statement he was sent has a final page which says this –

*How to have the Bank's Charge removed  
Yorkshire Bank will not remove the Legal Charge (England & Wales) over the property unless requested to do so by you or your solicitor/branch, once the mortgage has been redeemed in full.*

Details of how to request removal of the charge were included.

Although I don't think this provision is consistent with the terms of the mortgage, to reach a fair and reasonable decision here, I do have to take account of the whole circumstances of this case. And that includes that Mr T or his solicitor did have the opportunity to avoid the problems which later arose. If Mr T or his solicitor had read the redemption statement in full, they would have been aware that YBHL wouldn't remove the charge unless asked to do so, and the problems that Mr T later encountered could have been avoided altogether.

I also note that YBHL has sent us documentation which suggests a request for removal of the charge after redemption was made for at least one other property that Mr T had mortgaged with it. This other mortgage was redeemed not long after the mortgage in question here.

I also have to bear in mind that, whilst there was a short delay in achieving the sale, and Mr T tells us he was technically in breach of contract during this time, the sale did then go ahead and no formal legal action was taken against Mr T for this breach.

With the above in mind, I think a payment of £200 would provide a fair and reasonable outcome to this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

### **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.

YBHL said it had no new comments to make, and it would accept the provisional decision.

Mr T set out his reply in two parts. He said that if I was satisfied that the requirement to pay £195 as a release fee was set out in the original mortgage contract, he would accept that. I have seen the original mortgage contract, and this is set out therein.

On the issue of whether the charge ought to have been removed, Mr T said it was not a mistake for YBHL not to remove the charge, it was a deliberate policy, and he said YBHL didn't have a legal right to retain the charge, after the debt it related to was paid. He said this also undermined the function of the Land Registry, which is to provide "*a reliable record of information about ownership of and interests affecting land and property*".

Mr T didn't feel it was relevant that the redemption statement told him how to remove the charge, he said it wasn't part of the original contract, and he hadn't read the redemption statement anyway.

Mr T said my proposed award of £200 appeared to him to be just a gesture. He said although his sale had gone through, in other circumstances this could have stopped the sale, or even a chain of sales. And he said even in his circumstances, this caused extra stress and wasted time, and meant he had to pay additional weeks of council tax.

Mr T said his goal was to make sure banks removed charges on properties in which they have no legitimate financial interest. He said banks should be penalised for this, so the practice was ended. He wanted me to increase the compensation, so that it was enough to make sure YBHL and other banks cleared their books of any remaining illegitimate charges, before this happened again to someone else.

I think I should pause to set out briefly the role of our service here, to explain why the request Mr T makes now isn't within our remit.

Our service is not a regulator, and we don't issue overarching instructions to banks or building societies on how they must operate. All I can do, when I consider a complaint, is to look at the circumstances of that complaint, decide whether something has gone wrong, and if so, assess the impact in that particular case. I can't base my compensation decisions on what the effect of any mistake could have been, in other circumstances. Nor can I increase compensation awards so that they could have a punitive or deterrent effect.

So, although I note Mr T's strength of feeling on the importance of ensuring the problems he's experienced don't affect other people, I'm not able to increase my award in the way he has suggested.

Mr T also said the core of this issue was that YBHL's actions were unlawful. I have said I don't think what YBHL did here was in line with the original mortgage terms. That's clearly one of the circumstances of this case. But I am required to reach a decision which is fair and reasonable in all the circumstances of this case. And I explained in my provisional decision why I thought that included the clear warning to Mr T, in the redemption statement, about how to remove the charge.

I don't think the position on that is changed because Mr T has told us there was no solicitor involved in this redemption, or because he has told us that he didn't read the statement documentation in full. I appreciate Mr T's sale was slightly delayed, and that would inevitably mean Mr T had some additional costs in maintaining the property until it was sold, but I still think the award I proposed provides a fair and reasonable outcome in the particular circumstances of this complaint.

I understand that Mr T is likely to be disappointed by this decision, but I haven't changed my mind. I'll now make the decision I originally proposed.

**My final decision**

My final decision is that Yorkshire Bank Home Loans Ltd must pay Mr T £200 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 11 September 2024.

Esther Absalom-Gough

**Ombudsman**