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| Public Trust’s practice of charging release fee on mortgage contrary to law |
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| Legislation Ombudsmen Act 1975  Agency Public Trust  Ombudsman Nadja Tollemache  Case number(s) W27402  Date 1992 |

*Mortgagee–mortgage release fee–implied condition to recover expenses–whether extends to mortgagee charging fee for work of in-house solicitor*

The Ombudsman received a complaint relating to the Public Trustee’s powers to charge a release fee on the repayment of a mortgage when there was no condition in the mortgage to that effect.

The Public Trustee relied on the implied condition at common law whereby mortgagees had the right to recover from mortgagors any costs and expenses incurred by them relating to a mortgage and its redemption as entitling him to charge a release fee. The Ombudsman did not accept that the common law indemnity applied to a situation where the mortgagee did not employ services of anyone to whom a fee was in fact paid in connection with the release of mortgage but used salaried staff, the costs of which formed part of the Public Trustee’s overheads. Further, the practice was inconsistent with that of the only major bank with its own legal staff. That bank did not find it necessary to pass the release of mortgages through its legal staff and consequently the Ombudsman was of the opinion that the Public Trustee’s practice of charging a release fee, in the absence of an express condition to that effect in the mortgage itself, was contrary to law and/or unreasonable.

Accordingly the Ombudsman recommended that the practice be discontinued. The Public Trustee not only accepted the recommendation but advised that release fees would no longer be charged, whether or not there was a condition to that effect in the mortgage document.

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