

The complaint

Mr A and Mrs A complain that Lloyds Bank PLC paid outstanding disputed service charges and major works arrears, and then added the payment to their mortgage account.

What happened

Mr A and Mrs A have a buy to let mortgage with Lloyds on a leasehold property.

On 4 June 2020, Lloyds received a letter from the freeholder's solicitors explaining that they had been instructed to recover unpaid arrears due on the property for the amount of £8,470.29. The letter explained that any action taken may affect Lloyds' security over the property.

Enclosed were copies of letters sent to Mr A and Mrs A on the same day which requested payment of £8,290.29 for outstanding service charge and major works arrears, and £180 for solicitors' costs. The letters explained they were sent in accordance with the pre-action protocol for debt claims contained in the Civil Procedure rules. They requested payment within 30 days of the date of the letters, otherwise the solicitors may be instructed to commence proceedings against Mr A and Mrs A in County Court. They also explained that this action may affect the security over the property, so Lloyds as the mortgage provider had been advised of the debt.

On 5 June 2020, Lloyds wrote to Mr A and Mrs A explaining they had received the above letter. It requested that Mr A and Mrs A pay the outstanding amount within 21 days or contact it immediately if the amount was in dispute. It explained that if Mr A and Mrs A didn't contact them by 25 June 2020 it would pay the outstanding debt to protect its security, and this would be added to the mortgage account. As Lloyds hadn't heard from Mr A and Mrs A it sent a follow up letter on 12 June 2020. It received no response to this letter, so paid the outstanding debt on 26 June 2020 and added this to the mortgage account.

Unhappy Mr A and Mrs A raised a complaint. They said they didn't receive these letters as due to the Covid-19 pandemic and lockdown, they had been required to stay at their other property in Dorset and were unable to return to their London residence where the letters were sent. They questioned why Lloyds hadn't tried to contact them by other means and explained there was a dispute over the works this debt related to.

Lloyds responded saying it perceived there was a real threat to its security and as it had no response from Mr A and Mrs A, it took steps to protect its interest by paying the outstanding debt. It also explained that the charge would show as "Ground Rent Payment" on their statement as this was the general header it uses for these types of costs.

Our Investigator considered the complaint and didn't think Lloyds had acted unfairly. They explained the terms and conditions of the mortgage allowed Lloyds to make the payment for the outstanding amount. They didn't think it was unreasonable for Lloyds to make the payment in the circumstances as it felt there was a genuine threat to its security.

Mr A and Mrs A disagreed, so the complaint has been passed to me to decide.

I issued a provisional decision on this complaint on 10 January 2022 where I said:

“Mr A and Mrs A have kindly provided evidence to support their complaint. I’d like to be clear that my decision won’t address every point or comment made by either Mr A and Mrs A or Lloyds. I mean no discourtesy by this, and I would like to reassure both parties that I’ve carefully considered all the evidence provided. But my decision will only address what I see to be relevant in reaching a fair and reasonable outcome to this complaint.

I’ve seen a copy of the terms and conditions for Mr A and Mrs A’s mortgage and I’m satisfied these allow Lloyds to meet any obligations Mr A and Mrs A have with regards to their lease on their behalf – for example paying an outstanding service charge and major works payment – and charge an equivalent amount to the mortgage. However, this doesn’t mean that it was fair for Lloyds to do so in the circumstances.

I would normally only expect Lloyds to pay the amounts asked for by the freeholder’s solicitors when forfeiture of the lease is a serious possibility. This is not when there is just a threat of forfeiture, but when the disputed matter has been to court or a relevant tribunal, currently the First-tier Tribunal (Property Chamber), to determine that there has been a breach of the lease.

From the evidence provided there is nothing to suggest that either a court or a tribunal found Mr A and Mrs A breached the lease for their property, or that they had been found liable for the debt claimed by the freeholder. With this in mind, I don’t think it was necessarily reasonable for Lloyds to pay the outstanding debt when it did, as at that stage there was only a threat of forfeiture. However, this doesn’t mean that I think Lloyds should automatically refund the amount paid to Mr A and Mrs A’s mortgage account. I say this because rather than Lloyds paying a debt it shouldn’t have, it has just paid the debt sooner than it should have.

Taking into consideration that the freeholder’s solicitors had threatened forfeiture of the lease, I think it likely that if Lloyds hadn’t paid the outstanding debt when it did matters would have gone to a court or tribunal. Therefore, it’s possible it would have been found that Mr A and Mrs A had to pay this debt – including any additional court or tribunal costs.

I understand that Mr A and Mrs A were in dispute about the works carried out on their property and this is why they withheld payment. Mr A and Mrs A claimed that works completed to the outside of the property, which the outstanding debt was related to, had caused damage to the inside of the property which Mr A and Mrs A felt they were not responsible for. They have provided me with many documents to evidence the dispute, so I don’t doubt what they have told me. I also note that since the complaint has been with our service Mr A and Mrs A have pursued matters through their solicitor and have been refunded some of the costs they incurred relating to the damage inside the property.

Whilst Lloyds, in my opinion, made the payment earlier than it should have, I don’t think this has prevented Mr A and Mrs A from pursuing their dispute with regards to the works completed and the damage this caused – and the fact they have already managed to make a claim evidences this.

However, if Mr A and Mrs A are in dispute about the amount Lloyds paid to the freeholder, they need to show Lloyds that the money wasn’t owed by them. To do this, Mr A and Mrs A could take the matter to a tribunal or other relevant authority. It’s not our place to decide which is the most appropriate forum, this would be for Mr A and Mrs A to decide.

If it is found that some, or all of, of the money paid by Lloyds to the freeholder wasn't due, but the freeholder isn't ordered to return it. Lloyds will need to refund the amount from the date the payment was made and refund any additional mortgage interest which had accrued on the amounts that were incorrectly paid.

If Mr A and Mrs M receive a refund directly, or have already received a refund, for any amounts incorrectly paid, they can choose to pay this towards the mortgage to reduce the debt. If they choose not to, Lloyds would not be expected to reduce the debt added to the mortgage balance or return any additional interest accrued. This is because Mr A and Mrs A have made use of the money Lloyds have paid.

There is the possibility that the process to prove the amount Lloyds paid could cost Mr A and Mrs A more than it would have done for them to defend any action brought by the freeholder in the first place. If this is the case, I don't think it would be fair and reasonable for Mr A and Mrs A to be responsible for these costs. If they are able to provide evidence that they have incurred additional costs to prove their case, Lloyds would need to refund these as well, minus any costs that would have been incurred if the case had gone to court or a tribunal in the first place.

I also think it would have been distressing for Mr A and Mrs A to find out the payment had been made, especially when taking into consideration the length of time they had been in dispute about the works carried out on the property – from approximately late 2018. To recognise this, I think Lloyds should pay Mr A and Mrs A £200 for any distress and inconvenience caused.

I note that Mr A and Mrs A have also raised concerns with regards to how the payment Lloyds made for the outstanding debt is recorded on their statement. Lloyds has explained that the charge is recorded as Ground Rent Payment as this is a restriction of its system. I understand this must be frustrating for Mr A and Mrs A but I don't think Lloyds have done anything wrong by recording it this way – this is because it is a limitation of their system which I'm unable to ask them to change. However, Lloyds have confirmed they are aware the amount isn't for ground rent, so I'm satisfied it's being recorded correctly."

I invited both parties to let me have any further comments and evidence they wanted to raise by 7 February 2022.

Mr A and Mrs A responded with some additional comments. They wanted to emphasise that they received no communication from Lloyds even though Mr A has a private bank manager with his email and phone number. They also explained they had between £22,000 - £29,000 in a Lloyds account at the time which was sufficient to cover what was owed, have two other buy to let mortgage accounts with Lloyds and are long standing customers. They also disagree there was a threat to Lloyds security over the matter.

Mr and Mrs A say there was no grounds to forfeit the lease as they had informed the freeholder that they were in dispute over faulty repairs – and refusing to pay was a last resort as they were unable to reach an agreement with the freeholder. They say they received a sum of £2040 that paid to repair their wall twice, but it cost them £2848.20 in legal fees which they would not have incurred if Lloyds hadn't paid the outstanding debt – and felt these should be refunded by Lloyds.

They also felt that Lloyds should refund any additional interest they incurred since it paid the outstanding debt and added this to their mortgage. Mr A and Mrs A disagreed that £200 compensation fairly reflected the time spent, hurt and distress this situation had caused. They also still had concerns over the disputed amount being recorded as ground rent, as this could allow for the freeholder to take back the lease.

Lloyds responded accepting my provisional decision.

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.

Having done so, in the circumstances I see no reason to reach a different conclusion to that which I set out in my provisional decision. I'll explain why.

In my provisional decision I set out that I didn't necessarily think it was reasonable for Lloyds to pay the outstanding debt when it did, as at the stage it was contacted by Mr A and Mrs A's freeholder, there was only a threat of forfeiture of the lease. But I explained that taking into consideration that the freeholder's solicitors had threatened forfeiture of the lease, I thought it likely that if Lloyds hadn't paid the outstanding debt when it did, matters would have gone to a court or tribunal. Therefore, this meant it possibly could have been found that Mr A and Mrs A had to pay the debt – including any additional court or tribunal costs.

With this in mind, I concluded that rather than Lloyds paying a debt it shouldn't have, it had just paid a debt sooner than it should have. I understand Mr A and Mrs A have said they had the funds to pay the outstanding debt and were long standing customers, but I don't think this is relevant to whether Lloyds should have paid the debt. Mr A and Mrs A had an ongoing dispute with the freeholder about the damage to the inside of their property and had received a potential threat to the lease in June 2020, saying that if the outstanding debt wasn't paid in 30 days further action would be taken. Taking into considering the ongoing dispute that Mr A and Mrs A had with the freeholder, and that this wasn't resolved until around January 2021 – I still think it likely that the issue would have gone to a court or tribunal.

If Mr A and Mrs A are in dispute about the amount Lloyds paid to the freeholder, they need to show Lloyds that the money wasn't owed by them. I said this could be done by Mr A and Mrs A taking the matter to a tribunal or other relevant authority. If it was found that some, or all, of the money paid by Lloyds to the freeholder wasn't due, but the freeholder isn't ordered to return it. Lloyds would need to refund this amount from the date the payment was made and refund any additional mortgage interest which has accrued on the amounts that were incorrectly paid.

I appreciate Mr A and Mrs A say the interest on the total amount should be refunded since Lloyds paid the debt, but in this instance, I don't agree it should be. The solicitors letter sent to Mr A and Mrs A on 4 June 2020 states that if the outstanding debt isn't paid within 30 days of the date of that letter further action would be taken. It explains that this action will increase the amount Mr A and Mrs A would be required to pay, as in addition to the current balance, court fees, solicitor's costs and additional interest will be claimed.

As Mr A and Mrs A have indicated they were withholding payment until the dispute about the damage to the inside of the property was resolved, and that I think it likely this matter would have gone to a court or tribunal. If Lloyds hadn't paid the debt when it did, it's likely Mr A and Mrs A would have incurred additional costs in any instance. Therefore, I think it's fair Lloyds only refund the interest on any amount which is established not to be due – as this is interest that Mr A and Mrs A never would have accrued.

I understand Mr A and Mrs A say the fact the freeholder has already repaid amounts they received from Lloyds, would provide proof that the amounts were not properly due, but I disagree.

The amounts Mr A and Mrs A have set out they have received from the freeholder are in relation to the claim they brought about the works they had to complete to the inside of their property – work they say wouldn't have been necessary if the works to the outside of the property had been completed correctly. I've seen no evidence to suggest that the £2040 refund Mr A and Mrs A received relates to the works to the outside of the property, or to the amount the freeholder requested from Lloyds, so I don't think Lloyds should refund this from the amount they added to Mr A and Mrs A's mortgage.

With regards to the £2848.20 of legal fees Mr A and Mrs A say they incurred pursuing the matter of the damage done to the inside of their property. Whilst I understand Mr A and Mrs A say they incurred these because of Lloyds paying the outstanding debt, I don't think this is the case. These fees don't relate to the outstanding debt Lloyds paid to the freeholder but are for the action Mr A and Mrs A took with regards to the damage they say the freeholder caused whilst completing works to the outside of their property – a dispute which was ongoing for some time after Lloyds paid the amount to the freeholder.

I understand that Mr A and Mrs A feel these costs wouldn't have been incurred if Lloyds hadn't paid the outstanding debt. However, there is no evidence to suggest they wouldn't have needed to take the action they did to recover the costs they incurred repairing their internal wall, so I can't reasonably hold Lloyds accountable for these and won't be asking it to refund them.

To clarify, the additional costs I outlined in my provisional decision that Lloyds should refund relate only to Mr A and Mrs A proving the debt Lloyds paid was incorrect through either a tribunal or other relevant authority. As explained, there is a possibility that this process could cost Mr A and Mrs A more than it would have to defend any action brought against them by the freeholder in the first place. So, I think it's fair that any additional cost in relation to this be covered by Lloyds.

I appreciate Mr A and Mrs A disagree that £200 is a fair reflection of the distress and inconvenience caused to them, but I think this fairly reflects the time Mr A and Mrs A spent on this matter and the distress they would have experienced finding out Lloyds had made the payment without their knowledge. I understand Mr A and Mrs A already had a dispute with the freeholder which they had spent time trying to resolve, and that this would have likely caused them distress and inconvenience – but this isn't something I can hold Lloyds responsible for when considering an award of compensation, I can only take into account the impact Lloyds actions had.

As for Lloyds recording the added debt as ground rent on its system, I understand the reasons why Mr A and Mrs A are concerned about this. As explained, this is a limitation of Lloyds systems and they have confirmed they are aware the amount isn't for ground rent. It also isn't what was requested of it by the freeholder's solicitors, which was major works/service charges. I therefore, won't be asking Lloyds to do anything further here as it's not the place of this service to instruct Lloyds to change its systems.

My final decision

My decision is that I uphold this complaint. Should Mr A and Mrs A provide proof from a relevant authority that any amounts paid by Lloyds weren't due, and provided the relevant authority doesn't order the freeholder to refund them directly, I direct Lloyds Bank PLC to:

- Refund the mortgage account any amount a relevant authority has determined shouldn't have been due from the date these were paid.
- Refund any mortgage interest accrued on these amounts.
- Pay any additional costs Mr A and Mrs A paid in proving the amount Lloyds paid wasn't due, which are in addition to the costs they would have incurred defending any action brought by the freeholder.

Separately from the above direction and with no pre-conditions, Lloyds Bank PLC should pay Mr A and Mrs A £200 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 23 February 2022.

Robert Woodhart
Ombudsman