

The complaint

F complains that Aldermore Bank Plc (Aldermore) paid disputed service charge arrears without its consent and refused to honour a fixed-interest rate product sent to it in error.

What happened

Aldermore sent F a letter inviting it to apply for a new fixed interest rate product in early April 2022. The rate advertised was 2.70% fixed for either two or five years. F considered it met the eligibility criteria for the rate and applied to take it out.

After some time had passed, F chased Aldermore for an update on the impending rate switch and was told that as the mortgage was taken out by a limited company rather than an individual, it was not eligible for the rate it had applied for and that the letter inviting it to apply had been sent in error.

Dissatisfied with Aldermore's response, F complained. It thought Aldermore should be made to honour the rate it had invited F to apply for.

At a similar time, F was involved in a dispute over alleged outstanding service charges on a leasehold property over which Aldermore held its security. The law firm representing the maintenance company and later, the freeholder, wrote to Aldermore in April 2022 to demand payment for the outstanding arrears. It told Aldermore that its security was at risk because it would look to start proceedings to forfeit the lease if payment was not made.

F told Aldermore it was disputing these charges and initially had its own legal representation. At this stage, Aldermore's internal notes show it was willing to wait and see if F could resolve the issue without its intervention.

As the months passed, Aldermore received more letters from the maintenance company's law firm, each demanding payment and referencing that its security was at risk. Aldermore engaged with F during this time, sought updates on the dispute and chose not to pay the sums demanded while F continued its dispute with the maintenance company.

By November 2022, the disputed debt remained, and the associated costs had grown. Court proceedings were filed, and while F appeared to have submitted an initial challenge to this hearing as being in the wrong jurisdiction, there was no evidence of a formal defence from F.

Aldermore continued to engage with F, keeping it updated with the information it was receiving from the other party's solicitors and asked F if it was going to clear the debt or if it could show it was formally defending the claim. By late December 2022 it became apparent that F was not intending to pay any more toward the arrears and that no formal defence or counterclaim had been filed. So, Aldermore paid the outstanding charges and costs in January 2023.

Unhappy that Aldermore had paid the costs without its consent while F had an on-going dispute with the management company, F complained and reiterated that it was unfair Aldermore were not honouring the rate it had sent out in error in April 2022 and were not

allowing a rate switch while the service charges remained outstanding.

Aldermore issued two final responses to F. The first, on 23 June 2022, set out that it would not be honouring the rate sent to F in error in April 2022. Aldermore also confirmed it would not permit F to switch to a new rate while service charge arrears were in dispute. Upon receipt of this letter, F went back to Aldermore to say it hadn't addressed all its complaint points and hadn't given sufficient responses on the parts of the complaint it had commented on. Aldermore confirmed it had sent F's complaint back to its legal department for reinvestigation.

Rather than refer its complaint to our service following the final response letter in June 2022, F waited for a new response to its complaint, which now included Aldermore's decision to pay the service charge arrears and add the costs to the mortgage without its consent and its continued refusal to allow it to switch to the rate offered in April.

On 12 July 2023, after chasing Aldermore for its follow up response on several occasions to no avail, F referred the complaint to our Service. Coincidentally, Aldermore issued its second final response letter on the same day. It apologised for inviting F to apply for a rate that it was not eligible for. But it did not agree to honour the rate, nor did it uphold the rest of F's complaint points.

One of our investigators looked into the case and set out that a complaint must be referred to us within six months of a valid final response letter being issued by the respondent business. However, in this case, while F had not referred its complaint to our service within six months of the final response letter issued in June 2022, Aldermore had effectively repealed that final response letter by telling F it was reinvestigating the complaint and would issue a new response. And F was in time under the new final response letter issued in July 2023.

In considering the merits of F's complaint, one of our investigators concluded that Aldermore should not have paid the service charges when it did. So, they upheld that part of F's complaint. But they went on to say that while Aldermore paid the fees too soon, it was likely that it would have had to have paid them at some point, particularly as court proceedings were imminent. So, they didn't recommend that Aldermore refund the fees at this stage. Instead, they set out that if F can show the fees were not due either via a court or tribunal finding, Aldermore should refund the fees and associated interest at that point.

The investigator did not uphold F's complaint that Aldermore should be made to honour the rate it invited F to apply for in April 2022 as this was a mistake. The investigator also thought Aldermore had acted fairly in not allowing F to switch to a new rate while it had ongoing service charge arrears. While the absence of service charge arrears was not expressly mentioned in Aldermore's switching criteria, the investigator was satisfied Aldermore had acted reasonably in wanting this issue resolved before F could take out a new rate.

Aldermore responded to the investigator's assessment disagreeing with the finding that it had paid the service charges too soon. It said it would not be practical from a resource, time or risk perspective to wait until each case had a determination by a court or a tribunal before making payment.

F responded to say it disagreed with the investigator's findings. It points to Aldermore being an institution with considerable resources as a reason why it should be made to honour the rate it advertised in April 2022. And it disputes that Aldermore is acting fairly in preventing it from moving on to a new interest rate product given it cannot show that the absence of service charge arrears is expressly stated in its eligibility criteria. It has also explained that Aldermore paying the service charges when it did, has prejudiced its position with any potential court or tribunal hearing in the future.

As the complaint could not be resolved informally, it has now been passed to me for a final 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.

Although I have read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on a specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I should first note that while there were initial concerns as to whether F had referred its complaint to our Service in time, Aldermore now consents to us considering the full complaint by F given its decision to tell F it would reinvestigate its complaint and issue a follow up response. So, I am satisfied that this Service has the power to consider this complaint.

Turning to the merits of F's complaint, I acknowledge how frustrating it is when a business makes a mistake, but mistakes do happen. In this case, F was sent a mailing intended for individual consumers, not limited companies advertising an interest rate of 2.70%. This led to F filling out an application that was always going to fail and incorrect information being shared about the interest rates available to it at the time.

When we're looking at complaints of this type, we consider that the appropriate remedy is to put the consumer in the position they would be in if the correct information had been given in the first place.

In this case, if the correct information had been given, F would have been made aware in April 2022 that it could apply for a new fixed interest rate at 2.95%. F could never have been in the position of being able to apply for a fixed interest rate with Aldermore at 2.70% as it was not eligible for such a rate. As such, it would not be reasonable for me to direct Aldermore to give F a rate to which it was never entitled.

Aldermore accepts it made a mistake and it apologised as I would expect it to do. I am not persuaded it needs to do anything else on this point. While F thinks Aldermore should be forced to honour the rate as a penalty for its mistake, I disagree. It is not the role of this Service to punish businesses, so it would not be appropriate to make a punitive award.

F says that Aldermore acted unfairly in keeping it on the variable rate while the dispute regarding the service charge arrears was ongoing. However, from reviewing this case carefully I can see F had been on Aldermore's variable rate before the incidents in 2022 started. F suggests this is because Aldermore did not offer it a new rate prior to April 2022, but a lender isn't obligated to proactively offer new rates to customers. Instead, it can advertise its new rates and should give any application for a rate switch fair consideration.

I can also see that when F was notified the rate available was 2.95% and not 2.70%, it said it would not accept a rate higher than the 2.70% offered in April. So, irrespective of Aldermore's criteria for rate switches, it appears F chose to remain on the variable rate up to 2022 without enquiring about a new rate and then stated it would not be willing to accept a new rate that was higher than 2.70%. So even if F was eligible to apply for a new rate with Aldermore, I am not persuaded it would have taken such action given its strength of feeling that Aldermore should be made to honour its prior mistake. As such, I do not agree that Aldermore's actions are what led to F being on a variable rate between April 2022 and the date of this complaint.

It is also worth noting that while F remains on Aldermore's variable rate, it is not tied in and can choose to move to a different lender without incurring an early repayment charge.

I am aware F thinks Aldermore is acting outside of its policy by not permitting a rate switch while there was an ongoing dispute regarding service charge arrears. For the reasons set out above, I am not persuaded F would have switched to a new rate after April 2022 even if it was eligible, but I will address this point in any event.

It is a condition of F's mortgage with Aldermore that F will pay all monies due for the property on time. As service charges have been levied and not paid, F has not met this condition of its mortgage and Aldermore could have chosen to call in the full debt if it so wished. Instead, it has paid these charges to protect its security and has added them to the mortgage balance for F to repay. As a result, F has outstanding arrears on his mortgage and at the time of this complaint, the account was not up to date. In light of this, its decision to not allow F to switch to a new rate while the dispute regarding the service charges was ongoing was not an unreasonable approach and as such, I am not going to uphold this element of F's complaint.

I will now turn to the disputed service charges and Aldermore's decision to pay these in the absence of a court order or a determination by a relevant tribunal.

Under the terms and conditions of F's mortgage, Aldermore is entitled to pay any costs necessary to protect its security, and pass those costs on to F by adding them to the mortgage balance. However, this doesn't mean it was fair for Aldermore to do so in the circumstances of this case.

I would normally only expect Aldermore to pay the amounts asked for when forfeiture of the lease was 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, to determine there has been a breach. In respect of service charges, and unlike some ground rent charges, a freeholder must obtain a judgement for the debt before it can forfeit the lease.

From the evidence provided, there is nothing to suggest that either a court or tribunal found that F breached the lease on the property, or that it had been found liable for the debt claimed by the freeholder & maintenance company. With this in mind, I don't think it was reasonable for Aldermore to pay the outstanding debt when it did, as at that stage, there was only threat of forfeiture. So, it follows that I uphold this element of F's complaint. However, this does not mean that I think Aldermore should automatically refund the amount charged to F's mortgage account. I say this because rather than Aldermore paying a debt it shouldn't have, it just paid the debt sooner than it should have.

In this case, the evidence suggests the freeholder (represented by the maintenance company) had threatened forfeiture of the lease, F had made a part-payment but had not submitted a formal defence to the claim, had made no other payments toward the sum claimed and had told its solicitors that it did not intend to respond and would instead defend the case in court should it get to that stage. Taking this into account, I think it likely that if

Aldermore hadn't paid the debt when it did, matters would have gone to court or tribunal. Therefore, it's possible it would have been found that F had to pay this debt – incurring any additional court or tribunal costs.

I understand that F was in dispute over the fees for several reasons and this is why it withheld full payment. Whilst Aldermore, in my opinion, made the payment sooner than it should have, I don't think this has prevented F from continuing to pursue its dispute in the relevant tribunal or other appropriate forum as it has suggested.

If F continues to dispute that these charges were valid, it needs to show Aldermore that the money was not owed. To do this, F could take the matter to a tribunal or other relevant authority.

If it is found some or all of the money paid by Aldermore wasn't due, but the freeholder isn't ordered to return it, Aldermore 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 incorrectly paid.

If F receives a refund directly, or has already received a refund, for any amounts incorrectly paid, it can choose to pay this towards the mortgage to reduce the debt. If it chooses not to do this, Aldermore would not be expected to reduce the debt added to the mortgage balance or return any additional interest accrued. This is because F will have made use of the money Aldermore paid.

There is the possibility that the process to prove the amount Aldermore paid was not due could cost more than it would have done for F 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 or reasonable for F to be responsible for these costs. If it is able to provide evidence that it has incurred additional costs to prove the case, Aldermore would need to refund these as well, minus any costs that would have been incurred had the case gone to court or tribunal in the first place.

Putting things right

Should F provide proof from a relevant authority that any amounts paid by Aldermore in respect of the service charges and associated costs weren't due, and provided the relevant authority does not order the freeholder or its representative to refund them directly, I direct Aldermore Bank Plc to:

- Refund the mortgage account any amount a relevant authority has determined shouldn't have been due from the date this was paid.
- Refund any mortgage interest accrued on these amounts.
- Pay any additional costs F paid in proving the amount Aldermore paid wasn't due, which are in addition to the costs it would have incurred defending any action brought by the freeholder or its representative.

My final decision

For the reasons detailed above, I uphold F's complaint that Aldermore Bank Plc paid outstanding service charges sooner than it should have. Should it be shown that these fees were not due, Aldermore Bank Plc should put things right as I have set out above.

I do not uphold F's complaint that Aldermore Bank Plc has acted unfairly in not honouring the interest rate it advertised in error in April 2022 or by not allowing F to move to a new rate

while the dispute regarding the service charge was ongoing.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 17 September 2024.

Lucy Wilson
Ombudsman