

The complaint

Mr L complains that AIB Group (UK) Plc paid a legal firm some money for service charges on a property he owns and has mortgaged with AIB. Mr L said this was a scam.

What happened

Mr L said his mortgage company, AIB, had been told he owed around £2,500 in service charge arrears and around £2,500 in legal fees, for a leasehold property he owns which is mortgaged with AIB. Mr L said the legal firm which wrote to AIB was threatening legal action, but he said it did this on the basis of a fees account statement which was considerably out of date. The legal firm had sent AIB a statement dated September 2021, so in February 2023 when AIB said it intended to pay this debt, the information was more than a year old.

Mr L said he wasn't in arrears. He also said that the firm had lost court proceedings against him for this money. But Mr L said AIB wrote to him saying it was going to pay the money, and add this to his mortgage, giving him a short deadline to reply if he objected.

Mr L said although he replied by AIB's deadline, telling it there were errors in what the firm had claimed, it still paid out £5,174.37 and added this to his mortgage. Mr L wanted this money taken off his mortgage again.

AIB said it had received a number of items of correspondence from lawyers acting for the management company, which looks after the property Mr L owns, and which is security for his mortgage held with AIB. Those letters told it that Mr L was substantially in arrears, and once interest and legal fees were added to that, he owed a total of £5,147.37. AIB said it asked the firm to show that it was acting on behalf of the relevant freeholder, and AIB got this confirmation on 8 February 2023. So it then wrote to Mr L, on 14 February 2023, saying it intended to pay this debt on 28 February 2023, and asking him to get in touch.

AIB said it understood Mr L had emailed it, after close of business on 28 February, to an email address only used for queries for internet business banking. This email suggested Mr L was disputing the payment, but the payment had already debited his account.

AIB said it had checked that Mr L hadn't paid recently before making this payment, and the law firm told it no payment had been made. AIB also said Mr L hadn't shown it since that he had made any such payment. So AIB didn't think it had done anything wrong.

Mr L then clarified that although the legal firm had started proceedings, and Mr L said he had replied, there had been no court hearing. Mr L said he considered this a failed legal claim, and he thought the matter was closed. Mr L also told us he'd made a number of payments towards the service charge after the statement the legal firm sent AIB, which that legal firm hadn't given any credit for.

Mr L said he'd cleared all the arrears which were claimed, before payment was made. He wanted to stress that AIB had paid on the basis of a statement which was considerably out of date, perhaps because the management of the property was moving to a new business.

Mr L then wrote again to say the new management company had received, then returned, a payment from the law firm. He has shown us that £2,564.16 was returned on 31 July, but this hadn't yet credited his mortgage account when our investigator reached his view. (I understand this money has since reached AIB and been credited to Mr L's mortgage.)

AIB also contacted us, and it said Mr L had stopped paying any monthly contribution to his mortgage. Substantial arrears were building up. AIB said it had acted in good faith, based on the information it was given by the legal firm involved, and it thought Mr L should lodge a complaint against them.

Our investigator did think this complaint should be upheld, but he didn't think AIB should just take this money back off Mr L's mortgage debt. He said that it is usually acceptable for lenders to pay service charge payments and add this debt to the mortgage. They do this to protect their security, as otherwise the lease itself can be forfeit. If that happens, ownership of any leasehold apartment then reverts to the freeholder, leaving a lender with no security for their mortgage lending.

But our investigator said that here, he couldn't see that AIB had to pay these charges. It hadn't contacted Mr L at all when it was first asked to make payment, in April 2022. Then, when it was asked again to pay, in December, it emailed Mr L and received no response.

Our investigator said he thought AIB ought to have obtained an up to date statement before making any payment. Our investigator also thought AIB ought to have waited until there was a court or a tribunal determination before paying the service charge, and that didn't happen. But he understood Mr L was still in arrears, although by a slightly smaller amount, when AIB made payment in February 2023.

Our investigator didn't think AIB should charge interest on around £500 of service charges which he didn't think Mr L owed when the money was paid. But he said if this payment hadn't been made, then this debt would have been likely to be the subject of a court case, and Mr L would have had to pay it anyway. If he wanted the costs refunded, our investigator said that Mr L would need to prove to AIB that the money wasn't owed.

Our investigator said AIB should also pay £300 for the trouble and upset it caused by making what was effectively an overpayment, and by removing Mr L's ability to challenge the charges by the freeholder.

Mr L didn't accept that. He didn't think he should have to pay the legal costs, when nothing had come to court. Our investigator said Mr L would have to take up with the law firm involved whether he'd really owed those legal costs, our service couldn't look at that. We could just look at whether it was reasonable for AIB to pay those costs.

Mr L said he thought it was unreasonable for AIB to have paid these costs. Mr L said the threatened court case just never materialised, and we couldn't predict that he would have lost any such case. He thought we were biased for doing so.

As no agreement was reached, this case was passed to me for a final decision. Since then, both sides have notified our service that AIB is proposing to take legal action against Mr L, because of the outstanding arrears which have built up on his mortgage. 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:

I note that the statement I have seen, suggests that the amount Mr L owed was made up solely of service charges payable on his leasehold property. Although the relevant payment is noted on his statements from AIB as “*ground rent charge*” there doesn’t seem to me to be any element of ground rent included in this debt.

AIB’s position has been that it paid the service charge due in this case, because it was concerned to ensure it retained the security for its lending to Mr L. Although AIB hasn’t been able to show us the terms of Mr L’s mortgage, I don’t take issue with its position that it should pay both service charges and legal fees, if there is a serious risk to its security. However, at least partly, that’s because I don’t think that issue actually arises in this case.

What Mr L has told us, makes me think that when the legal firm first approached AIB about paying outstanding service fees, in early 2022, it was also considering legal action against Mr L. However, when he submitted a counter-claim, the law firm appears to have decided not to pursue its case against him. Instead, it wrote again to AIB to require payment of the outstanding service charge.

AIB was contacted for the second time in December 2022 about this debt. Although AIB had asked Mr L to make payment then, and given him a deadline to do so, it hadn’t yet received confirmation from the legal firm that it was acting for the relevant management company. AIB told us it continued to chase for this confirmation, and received it in early February 2023. So on 14 February 2023 it wrote again to Mr L, giving him 14 days to respond or make payment, and saying it would make payment if he didn’t respond. But, unlike the first time AIB wrote in these terms to Mr L, this time it did mean it. And on 28 February 2023, AIB paid the debt.

Like our investigator, I don’t think AIB should have paid the requested service charge before a court had reached a judgment on the amount to be paid. I also think it was unwise to make payment based on a statement dated a year and a half earlier, but I note that AIB says it did check with the firm that no payment had since been received, and was apparently, wrongly, told that the arrears remained.

Our investigator thought this payment by AIB was a mistake, but he thought that if it hadn’t been made, then the firm would have gone ahead with legal action, so Mr L would have owed this money anyway.

I don’t however think we can assume that any legal action by the firm would necessarily have been successful. Mr L told us he had made sizeable payments to his arrears in 2022 and early 2023, and I can see he has made further payments since. Because of this, I do not think it can be assumed that Mr L would not have paid the service charge, in advance of any court hearing. So I don’t think it’s most likely that AIB would have ended up paying this money anyway. And because AIB paid, this debt then started to incur interest, along with the rest of Mr L’s mortgage.

I understand Mr L was expecting the service fees element of his payment (or at least, most of it, as the figures do not seem to me to quite match) to be returned to AIB. He asked the new management company to return those funds to the legal firm. It showed him it had done so, on 31 July 2023. AIB has confirmed it received the amount of £2,564.16 and credited it to Mr L’s mortgage on 22 September 2023.

For the reasons set out above, I’m not clear that it was both fair and reasonable for AIB to pay this money to the relevant legal firm on 28 February 2023. So I think AIB should

refund to Mr L's mortgage account, any interest it has charged on this amount between 28 February 2023 and 22 September 2023.

However, the service fees element makes up a little less than half of the payment that AIB made, which totalled £5,174.37. The other half was made up of a small amount of added interest, and around £2,500 in legal costs. I note that the law firm's letter asserts these amounts are contractually owed by Mr L, but it appears to have taken no steps to show that it is, without a court judgment, entitled to ask Mr L to cover its fees. Nor does AIB appear to have recognised any difference between a service charge and the legal fees involved in the management company pursuing that fee.

In short, I've not seen anything to make me think that, in advance of any court judgment on an outstanding debt, Mr L was also liable for the legal costs of recovering that debt, or for the modest amount of interest which I can also see had been added to his debt. For that reason, I do not think it was fair and reasonable for AIB to pay these amounts.

I don't think it's reasonable, in these circumstances, to put Mr L to both the trouble and the cost of seeking to recover that money from the firm which was paid. I think that AIB should remove the outstanding amount of £2,610.21 in respect of the legal costs element of the payment it made on 28 February 2023, from Mr L's mortgage. AIB should also refund to Mr L's mortgage any interest it has charged on this amount between 28 February 2023 and the date it makes this refund.

I do think the payment AIB made on 28 February 2023 has put Mr L to some trouble, and I've asked it to make adjustments to Mr L's mortgage in order to put things right. But I also note that Mr L was contacted in December 2022 about this debt, and doesn't appear to have responded. I understand he did receive AIB's letter of 14 February 2023. He responded by email well after close of business on 28 February, to an email address not listed on the letter, and without, in my view, providing sufficient details of why this payment shouldn't be made. So I consider Mr L has also missed some opportunities to avoid this payment being made by AIB, and for that reason, I make no award of compensation in this case.

I also note that when AIB told Mr L his monthly mortgage payments would be increasing, he refused to pay the increased amount. Mr L says he told AIB that he would pay the amount due without the recent payment made to the law firm, but he appears to have taken no steps to ensure such payment reached AIB. I consider that in circumstances where Mr L isn't paying the amount requested by direct debit, if he did wish to make payment of a lower amount, it was primarily Mr L's responsibility to ensure this payment reached AIB each month.

The decision I've reached above would mean AIB would have to amend Mr L's mortgage, and the amended debt may need to be reflected on his credit file. But AIB may continue to reflect that Mr L has not made payment to his mortgage since 3 March 2023. I don't think it would be fair and reasonable in the circumstances of this case for me to require otherwise.

Mr L says that AIB is now threatening to repossess his property. I note that Mr L's current arrears are substantially more than the amount of any refund or interest adjustment which may be required by my eventual decision in this case. So, although AIB will no doubt wish to notify Mr L of the revised position on his mortgage, I don't think AIB is prevented by this decision from taking action in the future to recover the outstanding amount on Mr L's mortgage.

I hope that, once this issue is resolved, Mr L and AIB can then come to agreement on how Mr L pays the remaining arrears, so that court action will not be necessary. However, that remains outside of the scope of this decision.

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

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.

Mr L said he was upset by what he considered to be references in my provisional decision to him having refused to offer to make payments of what he described as the legitimate remainder of his mortgage. He said he had made multiple offers to pay off the remaining debt, minus the amount AIB had paid for service charges and legal fees, and he said he would send us evidence of this.

Mr L wanted to stress that the letter he received from AIB, warning him it might pay this debt, didn't contain an email address. It only had an address, phone number and website address. And there was no time of day specified by which Mr L had to reply.

Mr L asked our service to send him all the correspondence we'd had with AIB. Our service shared information with him. Mr L then replied again, and sent our service further evidence.

Mr L went through the factual background set out in my provisional decision, and noted where he disagreed with this. That factual background consists largely of the arguments of both parties, and the views expressed by our investigator, all of which I summarised.

I haven't adopted our investigators' views, or his conclusions. Those are included only for the purposes of summarising the case to date, and informing both sides as to why my provisional decision differed. With that in mind, I won't respond to Mr L's individual comments on my summary of those views.

Mr L advanced arguments about the letter sent to him on 14 February 2023, which I understand to be aimed at establishing that an email was a reasonable way to respond to this letter, and that AIB may well have received his response before it paid the legal firm. On that, I appreciate the points Mr L has made, but I don't think a two week deadline for replies by post is unreasonable. And I don't think the email Mr L sent, to an address not listed on the letter, was likely to have been safely received by the relevant team in AIB by the deadline. Even if it had been, I have previously noted the email didn't explain to AIB why this payment shouldn't be made. So I still think Mr L didn't take up the opportunity provided by AIB to avoid this payment being made.

I should also note that the background to my decision records Mr L's view that the legal firm had failed in its claim. However, my decision is only that the legal firm appeared to have decided not to pursue its claim against him, but to ask AIB to make payment instead.

Mr L asserts here that there was no danger to AIB's security. But the reason for my decision above is not that there was no such danger. Rather, it was that AIB had not established this danger was sufficiently pressing (judgment hadn't been given, and didn't appear imminent) to make it reasonable for AIB to make payment of the service charges. And AIB hadn't been shown that Mr L also owed legal fees.

Mr L criticised AIB for accepting out of date documents. I did take that into account in my provisional decision. Mr L also said AIB hadn't tried to contact the freeholder before making payment. I would not have expected AIB to do that, I think it's reasonable for AIB to have established that the legal firm did represent the freeholder, then to rely on what that legal representative told it.

Mr L also repeated that he'd offered to make payment of the outstanding amount of his mortgage, without the added service charge and legal fees, and he'd offered this either as a lump sum or as a monthly payment. He has evidenced this offer. However, the evidence suggests Mr L was only offering payment, if he could reach agreement with AIB about how much he owed – so it appears Mr L would only pay if AIB agreed to reduce his debt.

I said in my provisional decision that in circumstances where Mr L isn't paying the amount requested by direct debit, if he did wish to make payment of a lower amount, it was primarily his responsibility to ensure this payment reached AIB each month.

AIB has shown our service a very considerable number of letters which it has written to Mr L over the lifetime of this mortgage, asking him to pay arrears. The majority of those letters give Mr L a number of options to make payment. So I do consider that Mr L was aware of a number of different ways he could make a payment to his mortgage. I have not been able to see any evidence that Mr L did take steps to ensure this money reached AIB.

Mr L has never suggested he didn't owe AIB any money at all. But for several months, he made no payment. So he didn't pay the amount AIB requested, but importantly, he also didn't pay that smaller amount which Mr L has always accepted he owed.

I don't think Mr L's offers of settlement to AIB absolve him of any responsibility to make some payment in the meantime. And I don't think it's unfair or unreasonable for AIB to note the months where Mr L made no payments at all, as months of arrears. I said in my provisional decision that AIB may need to amend those arrears, to reflect the amendments to Mr L's debt that my decision requires. But my decision doesn't require AIB to simply remove those markers from Mr L's credit file. And any legal action that AIB takes in future, on Mr L's amended debt, would be outside the scope of this decision.

AIB said it would accept the provisional decision, and its proposed refund was as follows –

Legal fee:	£2,610.21
Interest on legal fee:	£202.29
Interest on service charge:	£198.72
Total:	£3,011.22

AIB said that included interest refunds for 12 months. I have included these figures as Mr L may find them useful, but my decision requires AIB to calculate interest between dates provided for in that decision, so the final figure may vary slightly from the above.

For the reasons set out above, I haven't changed my mind on the appropriate outcome for this case. I'll now make the decision I originally proposed.

My final decision

My final decision is that AIB Group (UK) Plc must –

- refund to Mr L's mortgage account, any interest it has charged on the returned service charge amount of £2,564.16, between 28 February 2023 and 22 September 2023,
- credit Mr L's mortgage account with £2,610.21 in respect of the legal costs element of the payment it made on 28 February 2023, and
- refund to Mr L's mortgage any interest it has charged on the amount of £2,610.21 between 28 February 2023 and the date it makes this refund.
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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 May 2024.

Esther Absalom-Gough
Ombudsman