

The complaint

Mr S complains that Leeds Building Society unfairly and incorrectly took legal action for possession of his shared ownership property. He says Leeds didn't act promptly and fairly to resolve matters when he contacted it. Mr S says this resulted in legal costs being applied to his account, which he'd like refunded.

What happened

Mr S took out a mortgage with Leeds in 2014. His property is in shared ownership, which means Mr S pays rent to a housing association and has to comply with the lease terms.

Mr S was in dispute with the housing association from late 2014 and stopped paying rent. Leeds cleared Mr S's rent arrears in 2016, adding the cost to the mortgage balance. Mr S's dispute with the housing association continued. He wrote to Leeds in 2017 saying he was withholding rent payments and that the housing association had issued a notice of repossession. Leeds started action for possession. This was paused, to allow Mr S time to settle the matter with the housing association. Mr S didn't reach agreement with the housing association, which re-commenced possession action in early 2021.

Mr S's mortgage was also in arrears from late 2019. Mr S told Leeds he was struggling financially due to the legal costs related to the dispute with the housing association.

Mr S made a proposal to Leeds in early 2021 to repay the arrears. Mr S says he didn't know Leeds declined this. Leeds asked Mr S for information about his circumstances and confirmation that the situation with the housing association was resolved. It says it didn't receive this, despite numerous attempts to contact Mr S. Leeds proceeded with legal action in 2022. A court hearing was arranged for early 2023.

Mr S says he wasn't aware of the legal action and court hearing until December 2022. He says he thought he had a payment arrangement in place which he was maintaining. He says Leeds and its solicitors sent notices to the wrong address. Mr S says Leeds failed to find a solution when he contacted it in December 2022. Mr S says all this resulted in Leeds unfairly adding legal costs to his mortgage between early 2021 and 2023.

In May 2023 Mr S cleared the rent arrears and agreed an arrangement with Leeds to repay the mortgage arrears over 24 months. Leeds stopped further legal action.

Our investigator said Leeds had made it clear that it didn't accept the proposal Mr S made in 2021, that it needed information from him to put an arrangement in place, and that without this it would continue with legal action. He said Leeds wrote to the security property on occasion rather than Mr S's correspondence address. However, as Leeds had been told that Mr S returned to the property regularly, it didn't know that Mr S didn't receive its letters.

Our investigator said that when Mr S contacted Leeds in December 2022 it said it needed him to provide income and expenditure information. Mr S didn't provide this until after he made a proposal to repay the arrears in April 2023.

Our investigator said that Leeds should have written to Mr S at his preferred correspondence address. He said Leeds should pay £150 for the inconvenience caused.

Mr S didn't agree. He gave detailed comments, which I've referred to below where relevant.

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 S withheld rent payments from 2015 due to his dispute with the housing association. Mr S says he moved out of the property in 2017 due to problems with his neighbours.

Mr S says he didn't receive letters and notices from Leeds and its solicitors and wasn't aware of the action being taken. As this is relevant to several parts of Mr S's complaint, I'll deal with it first.

Mr S was working in a different area and gave Leeds a correspondence address. Leeds didn't initially give the solicitors Mr S's correspondence address. Leeds and its solicitors sent some letters and notices to the security property. Mr S says he didn't receive this post because he wasn't living in or visiting the security property and post wasn't forwarded to him.

Mr S accepts that he gave Leeds incorrect information about this. He told Leeds he returned to the property at least once a month. He says he wanted to avoid the housing association becoming aware that he was in breach of the lease terms (which said he had to live in the property). Leeds says when Mr S gave it his correspondence address (in February 2021) he said a friend visited the property and forwarded post to him. A field agent visited the security property in late 2021 and was told by the person living there that Mr S returned to the property at weekends. Leeds' notes of Mr S's call in mid-December 2022 say that Mr S told it he returned to the property at weekends.

Based on what it had been told, Leeds would have reasonably expected Mr S to receive post sent to the security property. I also think that Leeds gave Mr S enough information in phone calls, emails and post to his correspondence address for him to know what was happening with his account and what action he needed to take to avoid legal action.

Leeds wasn't responsible for the problems Mr S had with his neighbours or the housing association, or the difficulties Mr S says he had in resolving the dispute with the housing association. But it was reasonable for Leeds to be concerned. Failing to pay rent was a breach of Mr S's mortgage terms and conditions. The housing association could take possession action, which would put Leeds' security at risk.

I should also explain that where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Did Leeds tell Mr S that it rejected his 2021 proposal and would continue legal action?

While Mr S says Leeds accepted the proposal he made in February 2021 to repay his arrears, the available evidence doesn't support this.

Leeds wrote to Mr S saying it didn't accept the proposal. This letter was sent to the security property and Mr S says he didn't receive it. However, Leeds spoke to Mr S by phone, sent emails and sent letters to his correspondence address which made it clear that no arrangement was in place, that Mr S needed to contact Leeds and that it would continue with

action for possession.

Leeds sent an email to Mr S in February 2021 which raised concerns about the affordability of the proposal. It said Mr S's credit file would report the arrangement "*if agreed*". Leeds asked Mr S for information to "*discuss a way forward regarding the arrears*". It said if the housing association commenced possession action which put its security at risk it would look to take possession first. In early March 2021 it sent an email to Mr S saying "*Although we are not agreeing to a formal arrangement at the moment this does not stop you making contributions to reduce the arrears balance...*".

Mr S told us that he received a letter from Leeds in June 2021 which said Leeds wouldn't accept his repayment plan until the matter with the housing association was resolved. Leeds provided a copy of the letter, which says Mr S was in breach of his mortgage terms and conditions and if the matter with the housing association wasn't resolved promptly a summons for possession may be issued without further notice.

Mr S says when he declined to settle the matter with the housing association Leeds said it would continue with legal action. He says Leeds called him persistently, sent a field agent to the property and asked for updated income and expenditure information.

I think Leeds made Mr S aware that he didn't have an arrangement in place, that he needed to settle the dispute with the housing association and contact Leeds with the information it requested before it could agree an arrangement and that without this it would continue with legal action. I think Leeds provided clear information to Mr S about its intention to take legal action and what he could do to avoid this.

Did Leeds give Mr S notice of legal action, and the need to put an arrangement in place to avoid this?

The solicitors instructed by Leeds sent correspondence to the security property. Mr S says he didn't receive this.

There was a court hearing in mid-2022. Mr S didn't file a defence. Mr S said this should have alerted Leeds and its solicitors to the fact that he was unaware of the proceedings. I have some sympathy with that argument. But, in fairness, I need to take into account that Leeds didn't know that Mr S wouldn't receive post sent to the security address, given he'd said he visited regularly and a friend forwarded post. And Leeds had made Mr S aware that it would continue with legal proceedings.

In November 2022, after a directions hearing was scheduled for January 2023, Leeds tried to call Mr S. Mr S said it was inconvenient and he'd call back, although there's no record he did so. In mid-December 2022 Mr S received a text saying a hearing had been adjourned due to staff shortages at the court. At this point, Mr S was aware that matters had progressed to a court hearing. He still didn't provide income and expenditure information and evidence he'd resolved the situation with the housing association to Leeds. It was some months later before he did this.

In the circumstances, I don't think I can fairly find that matters would have been substantially different if the solicitors had written to Mr S at his correspondence address.

Did Leeds act fairly to try to find a solution in December 2022?

Mr S says when he called Leeds in December 2022 he wasn't given the information he requested. He says he told Leeds he had an agreement in place and so wanted to know the reason for the hearing, whether it was Leeds or the housing association that was seeking

possession of the property, and how much he needed to pay. Mr S says the call handler was bewildered and didn't know the answers.

Mr S says he was asked to provide income and expenditure information. He says as he was told this wouldn't prevent the court hearing going ahead, he couldn't see the point of calling back to provide this. Mr S says if he'd been told the hearing would be suspended if he paid the rent arrears he'd have made the payment immediately. He says this would have avoided costs of about £7,500 being added to his mortgage account between January 2023 and July 2023.

I've read Leeds record of the call. It says Mr S was told no arrangement was in place and he was given an account update. Mr S wanted to know the course of events that led to a court hearing. I can understand if that wasn't something the call handler could provide as this would have been dealt with by the solicitors. Leeds notes say it asked Mr S for income and expenditure information to establish a way forward and suggested he get in contact with the housing association. It made him aware that legal action would continue. During this call, Mr S said he returned to the security property at weekends.

Leeds had made Mr S aware that no arrangement was in place and that it intended to continue with legal action. It asked Mr S a number of times – including when he called in December 2022 – for income and expenditure information. It told him previously that it couldn't agree an arrangement until it had this and evidence that the dispute with the housing association was resolved. As Leeds didn't receive the information it asked for (and which it had requested a number of times during 2021 and 2022) I don't think it was unreasonable or unfair for it to continue with legal action.

Mr S says Leeds could have offered a mortgage holiday or reduced payments while he paid the rent arrears. Leeds would have needed income and expenditure information from Mr S before it could consider this. Mr S says Leeds could itself have paid the rent arrears, to protect its security, as it had done previously. Leeds had paid the rent arrears in 2016. However, further rent arrears and mortgage arrears had built up after this. I don't think it's reasonable to say that Leeds should have paid the rent arrears when the dispute with the housing association hadn't been resolved and it was unclear whether Mr S could (and would) maintain rent payments and mortgage payments afterwards.

Was it unfair for Leeds to add fees and charges to Mr S's account since 2021?

In April 2023 Mr S made a proposal to clear the rent arrears immediately and agree an arrangement to repay his mortgage arrears over 24 months. He provided the information and evidence requested by Leeds. Leeds agreed to the proposal and the terms were included in a consent order. There's no reason to think that Leeds wouldn't have given fair consideration to a similar proposal in 2021 or 2022, if Mr S had provided the information and evidence it requested.

Leeds didn't agree to refund legal costs applied to Mr S's mortgage account. This matter was ongoing for some time and the legal work was increased due to the solicitors having to liaise with the housing association. I appreciate that this resulted in higher legal costs. But I don't think it was unreasonable or unfair for Leeds to proceed with legal action and it was entitled under the mortgage terms and conditions to add the costs to the balance. It follows that I don't think it's fair and reasonable to require Leeds to refund the legal costs.

Putting things right

Leeds didn't give its solicitors Mr S's correspondence address. Leeds also sent some letters to the security property after Mr S had given it his correspondence address. For the reasons

set out above, I don't think this had a significant impact on how events unfolded. And Leeds would reasonably expect, given what Mr S had told it, that he'd receive post sent to the security property. In the circumstances, I think it's fair and reasonable to require Leeds to pay £150 for the inconvenience caused to Mr S by it failing to ensure post was sent to his correspondence address.

My final decision

My decision is that I uphold this complaint and order Leeds Building Society to pay £150 to Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 July 2024.

Ruth Stevenson
Ombudsman