

The complaint

Ms T complains that TSB Bank plc (TSB) has paid £9,312.02 to her freeholder in respect of outstanding service charges and applied this to her mortgage, despite her informing TSB that she was in an ongoing dispute about these charges.

What happened

Ms T says that the freeholder has gone to TSB on previous occasions in relation to the outstanding charges. TSB has written to her several times to ask about this and on each occasion she has responded to explain that the dispute is ongoing with the freeholder, which meant that TSB didn't pay the charges.

The freeholder wrote to Ms T on 13 July 2023 and she says that she sent TSB a letter on 21 July 2023 confirming that she was still in dispute with the freeholder. She says that TSB shouldn't have applied the payment without first speaking to her and she doesn't understand why TSB has acted differently on this occasion.

Ms T says that she made an overpayment of £10,000 to her mortgage the previous year and TSB applying this amount has undone the benefit of her using her savings in this way. She says that she is also unable to afford the new increased mortgage repayment from 1 October 2023 and this has put her under increasing financial pressure. Ms T would like TSB to reverse the payment it applied to her mortgage in respect of the service charges.

TSB says that it is able to pay any unpaid charges to the freeholder in order to protect its security under the terms and conditions of the mortgage. This is because legal action could result in forfeiture of the lease, which is something TSB says that it wished to avoid as it holds a mortgage over the property. If the lease is forfeited, this would significantly impact the value of the property and reduces the ability for it to be sold to repay the mortgage in future if necessary. However, TSB says that it must give Ms T adequate opportunity to pay the overdue charges or provide evidence of the ongoing dispute.

TSB says that its records show that the freeholder had been asking it to pay for overdue service charges on Ms T's property since 2021 in connection with her lease. At that time, TSB wrote to Ms T about the charges and she advised that there was a dispute. It therefore confirmed that it would not pay the charges to the freeholder and would leave it to resolve the dispute with Ms T.

The freeholder contacted TSB again in 2022 in relation to the increased overdue charges. TSB requested a breakdown for these and wrote to Ms T to give her the opportunity to pay them or tell it that she was disputing them before it paid on her behalf. Ms T again sent evidence of the ongoing dispute.

TSB says that it was contacted by the freeholder again in May 2023, with the letters implying that, if it did not receive payment, it would take legal action. TSB says that, as it was aware that Ms T was disputing charges with the freeholder previously, it tried to call her on 5 June 2023. There was no answer and it left a voicemail for her to call TSB. TSB says that when the issue arose the previous year, it spoke with Ms T, who asked it to write instead and this was her preferred method of communication.

Following the attempted call, TSB contacted the freeholder for a breakdown of the charges. On 13 July 2023, TSB wrote to Ms T again confirming that she had 21 days to pay the

charges or provide evidence of her dispute with the freeholder, otherwise it would make the payment on her behalf and apply this to the mortgage.

TSB says that it did not receive Ms T's letter dated 21 July 2023. As it did not receive any response, it paid the outstanding amount of £9,312.02 on 1 September 2023 and applied it to the mortgage. It wrote to Ms T confirming her new mortgage payment from 1 October 2023.

TSB says that it has correctly applied the charge to Ms T's mortgage in line with its terms and conditions as it didn't receive her letter and was unaware the matter was still being disputed. It says that it is the customer's responsibility to keep the bank informed if there is an ongoing dispute about service charges. TSB says that it could only look to reverse this if Ms T was successful in her dispute with the freeholder and the freeholder agreed to return some or all of the funds, then the charge could be reversed from the mortgage.

Our Investigator looked into Ms T's complaint and found that TSB had not acted fairly. It appeared that TSB's position was that the charges would not have been applied if it had received the letter. The Investigator was satisfied that Ms T had responded to TSB's letter dated 13 July 2023 and there was no reasonable basis to say that Ms T's letter of 21 July 2023 had not been delivered. Therefore, he didn't think that it was fair and reasonable for TSB to have applied the charges to her mortgage account.

The Investigator recommended that TSB amend Ms T's mortgage account as if the charge had not been applied, which meant removing the charge itself, along with any additional interest and administrative fees or charges applied as a result. He said that if the application of the charge had impacted how the account had been reported to credit reporting agencies then this should be amended. He also thought that TSB should pay Ms T £250 compensation for the trouble and upset caused.

TSB disagreed with this so the case came to me to make a decision. It said that there was no evidence that TSB received the letter from Ms T or that she made any calls to it to confirm receipt. It also said that it left a voicemail for Ms T to call it.

I set out in my provisional decision dated 5 June 2024 (reproduced below) why I was minded to uphold the complaint and direct that TSB should remove any administrative fees or charges added to the mortgage account as a result of the charge being applied in September 2023 (but not the charge itself). I also set out that I thought TSB should pay Ms T £500 in respect of the distress and inconvenience caused.

I invited both parties to let me have any further comments and evidence by 19 June 2024. TSB has made no further submissions. Ms T says that – as the provisional decision found that TSB was wrong to apply the fee – it is not fair that TSB has still been allowed to apply the fee and to continue taking payments based on this fee. She also says that she has now been to the tribunal and is awaiting the judgment.

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 considered the responses to my provisional decision dated 5 June 2024, I remain of the view that TSB acted unfairly by paying the freeholder and applying the charge to Ms T's mortgage and that this complaint should be upheld.

In my provisional decision I set out the following:

I can see that the freeholder sent a letter to TSB dated 24 May 2023 advising that the sum of £9,312.02 remained outstanding in relation to unpaid service charges for the mortgaged property and that Ms T was therefore in breach of her lease. The letter set

out that unless the freeholder received the sum within ten days, it would commence legal action against the borrower to recover the debt.

TSB says that it received another letter on the same date in relation to a further £2,718.53 of outstanding service charges. I haven't seen a copy of this letter. However, I have seen a further letter from the freeholder to TSB dated 19 August 2023 setting out that there was a further outstanding amount of £2,658.53.

TSB wrote to Ms T on 13 July 2023 informing her that the freeholder had contacted it regarding outstanding service charges of £12,462.45 on the mortgaged property. The letter stated "*Please can you pay what's owed to the landlord or the landlords' agent in the next 21 days. If you don't, they might bring your lease to an early end. If you're challenging the amount they're claiming, or you or your landlord have asked a Leasehold Valuation Tribunal or a court to decide what you should pay, please let us know in the next 21 days*". The letter also said that TSB had asked the freeholder to let it know by 3 August 2023 if the charges hadn't been paid.

It is unclear how the figure of £12,462.45 in the letter to Ms T was calculated or why TSB only paid £9,312.02 when it says that Ms T didn't respond to this letter. I also note that the letter itself does not set out that, in the absence of a response from Ms T, TSB would pay the charges on her behalf and add them to the mortgage.

I have seen a further letter from TSB to Ms T dated 20 September 2023 thanking her for letting it know that she was challenging the service charges. This letter said that TSB had written to tell the freeholder this and to let them know that they wouldn't be paid until things were sorted out. The letter informed Ms T that, if the request went to a court or tribunal to decide what happens, she might have to pay what was owed, as the property acted as security for her mortgage. It stated that if payment did have to be made, the amount would be added to her mortgage account.

Given the date of this letter, it appears that this must relate to further outstanding charges once the £9,312.02 had already been paid by TSB. However, in light of the content of this letter, I am satisfied that on this occasion when TSB accepted that Ms T had told it that she was disputing the charges, it did not pay them on her behalf.

The issue in this case is whether Ms T did tell TSB that she was disputing the charges in response to its letter of 13 July 2023.

Ms T has provided a copy of the letter she sent to TSB on 21 July 2023, which set out that she was in dispute with the freeholder in relation to the charges and requested that TSB did not put any charge against her name as the matter was in dispute. Ms T has also provided a certificate of posting from the Post Office showing that she sent a letter to TSB's correct address on 21 July 2023.

TSB has said that there is no evidence that it received the letter and has asked for Ms T to provide a tracking number to show that it has been received.

When a business provides evidence that correspondence has been sent, this Service doesn't require it to provide evidence of receipt. Given that this Service is required to be impartial, I see no reason why we should request this from consumers. Ms T has provided evidence of sending the letter dated 21 July 2023 to TSB in the form of a certificate of posting from the Post Office. The certificate of posting shows that the letter was sent to the correct address. I accept that some post does go missing. But the vast majority of correctly addressed post is correctly delivered (and therefore received). And I am satisfied that the letter was sent by Ms T, informing TSB that the charges were still in dispute.

Although TSB says that it left a voicemail for Ms T to call it back, it says that this was done on 5 June 2023. The letter to her regarding the freeholder contacting it about the outstanding charges was not sent to Ms T until over five weeks later, on 13 July

2023. So I see no reason why Ms T would call TSB at this stage or contact it to confirm receipt of the letter as – as far as she was concerned – she had done what TSB asked her to do by informing it that the charges were still in dispute.

Whilst I accept that calling the customer was not part of TSB's normal process, given that Ms T had previously made TSB aware that the outstanding charges were under dispute over a number of years, I think it might have been prudent for TSB to try and contact Ms T again before it paid the £9,312.02 to the freeholder on her behalf, if it believed that it had not heard from her. I can't see that TSB made any efforts to contact Ms T again after 3 August 2023, which was the deadline it gave her to either pay the charges or respond to let it know the matter was still in dispute. As set out above, I also note that the letter of 13 July 2023 did not set out that TSB would pay the charges on Ms T's behalf if she did not respond by that date.

Overall, I'm satisfied that Ms T notified TSB that the charges were still in dispute and therefore TSB should not have paid the freeholder and applied the charge to Ms T's mortgage. I'm minded to find that it acted unfairly by doing so.

Our Investigator found that TSB should recalculate the mortgage account as if the charges had not been paid to the freeholder on 1 September 2023 and applied to Ms T's mortgage. He also said that TSB should also reverse any further consequences caused to by the charge being applied to the mortgage.

However, I disagree with this. Whilst TSB shouldn't have done what it did in paying the service charges when it did, this doesn't mean that it should now refund the money it has applied to the mortgage account in respect of this. This is because, had TSB not paid the money, the matter would likely have gone to court or tribunal and it's entirely possible that this would have been found to be payable by Ms T. So, although TSB should not have paid the money to the freeholder when it did, it's possible that it would have ended up paying it eventually.

If I were to ask TSB to refund the money to Ms T's mortgage account, this would mean that TSB would still have paid these outstanding service charges and Ms T would no longer be responsible for paying them, even if she were later found to be liable to pay them by a tribunal. I note that TSB hasn't paid all of the outstanding charges to the freeholder so it seems that there may still be a tribunal in respect of the matter in any event.

If Ms T wants the money to be refunded, then she will need to provide TSB with evidence that the money it paid on her behalf was not owed to the freeholder, which means that she will need to pursue the matter through a tribunal. If the tribunal decides that some or all of the money paid by TSB wasn't owed to the freeholder, then once the funds have been returned to TSB, it would need to refund the money to the mortgage account as at the date it was applied. TSB would also need to refund any mortgage interest that had accrued on it at that stage.

Although I will not be asking TSB to remove the amount paid to the freeholder from the mortgage, as TSB shouldn't have paid this at this stage, I don't think it's fair for Ms T to have to cover the cost of it doing so. So TSB should refund any administration costs it has added to the mortgage due to it paying the charges to the freeholder.

Whilst I don't think TSB should refund the money to Ms T's mortgage account, I've gone on to consider the impact to Ms T as a result of the charges being paid to her freeholder and applied to her mortgage. Ms T says that this has put her under increasing financial pressure as it has resulted in her mortgage repayments being significantly higher every month, which she is struggling to afford. She used her savings to make a part-repayment of £10,000 to her mortgage the previous year which means she no longer has this available and the addition of the charges to the

mortgage means that she has lost the benefit of this as the monthly repayments are now more than they were before she made this payment.

As a result of TSB paying the charge and applying it to Ms T's mortgage, Ms T is now in a position where she is struggling to pay the increased monthly repayments, particularly in light of the fact that she had previously used her savings to make a part repayment. In light of this, I am of the view that TSB should compensate Ms T for the distress and inconvenience caused in the sum of £500.

As set out above, TSB has made no further submissions. Ms T has questioned why TSB has still been allowed to apply the fee and to continue taking payments based on this fee, even though I found that TSB was wrong to apply the fee in my provisional decision

In order for Ms T's mortgage payments to be reduced, TSB would have to refund the money it paid to the freeholder back to Ms T's mortgage account. As set out in my provisional decision, although I don't think TSB should have paid the outstanding service charges to the freeholder as they were still in dispute, it's possible that a tribunal would still find the amount to be payable by Ms T. If TSB refunded the money, this would mean that TSB had still paid the outstanding service charges and Ms T would no longer be responsible for paying them back, even if a tribunal later found that she was liable to pay them.

I note that Ms T says that she has now been to the tribunal and is awaiting the judgment. If the tribunal finds that she did not owe some or all of the money paid by TSB to the freeholder, then once the funds have been returned to TSB, it would need to put Ms T back in the position she would have been in had it not paid these funds. This means that it would need to refund the money to the mortgage account as at the date it was applied and also refund any mortgage interest that had accrued on it at that stage.

Having considered the further representations, these do not change my provisional view.

Putting things right

For the reasons set out above and in my provisional decision, I uphold this complaint and require TSB to do the following to put things right:

- Refund to Ms T any administrative fees or charges added to the mortgage account as a result of the charge being applied in September 2023.
- Pay Ms T 8%* simple annual interest in respect of the first bullet point above, calculated from the date the fee/ charge was applied until the date of settlement.
- Pay Ms T £500 in respect of the distress and inconvenience caused.

* HM Revenue & Customs requires TSB to take off tax from this interest. TSB must give Ms T a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've explained in my provisional decision and above I uphold this complaint against TSB Bank plc and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 19 July 2024.

Rachel Ellis
Ombudsman