

The complaint

Miss M's complaint is about a mortgage she took out with Leeds Building Society (LBS) to purchase a share in a leasehold property, a one-bedroomed flat in a block. The owner of the remaining share is a housing association I'll refer to here as P. P is therefore both Miss M's freeholder *and* her landlord. She pays rent to P as well as making the mortgage payments to LBS.

The background to the complaint is complex, multi-layered, and arises from a long-running dispute between Miss M and P over serious defects to the property. The complaint against LBS however, is relatively straightforward; it is that LBS paid P over £12,000 of outstanding rent and service charges she had withheld from P in protest over its handling of her dispute with it. LBS then debited the amount it had paid to P to the mortgage account.

What happened

The basic background to this complaint is well known to both parties so I won't repeat all of the details here. Our decisions are published, and it's important that I don't include any information that might result in Miss M being identified. In my view, the risk of identification is higher than normal in this case, due to the uniqueness of Miss M's situation.

Instead I'll give a summary of the key events leading up to the complaint in my own words, rounding the figures, and then focus on my decision and the reasons for it. No discourtesy or lack of care is intended by that. It's simply a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me.

It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, relate to the wider dispute with P, over which I have no jurisdiction and about which I can express no value judgement whatsoever. Where I make reference to the dispute with P, or indeed any party other than Miss M or LBS, it will be for context only.

Miss M took the mortgage out in 2019. Not long after moving into the flat, serious problems began to emerge, most notably (but not confined to) dampness in the bathroom. Miss M took up her concerns with the defects with P, but the dispute became entrenched and long-lasting. The bathroom became unusable, and Miss M had to shower on her balcony for several years. Eventually she paid for the bathroom to be refurbished from her own funds. In the meantime, Miss M continued to pursue P.

The underlying dispute with P continued, and the stress caused Miss M's physical and mental health to deteriorate, to the extent that she has the support of a counsellor. Eventually, Miss M decided to withhold rent and service charges that were due, as a form of protest, and to give her, she believed, a negotiating position with P in legal action if needed. In late 2023, P wrote to LBS warning of its intention to obtain possession of the mortgaged property and asking LBS to pay the arrears.

LBS spoke to Miss M who told it she had serious health problems and needed help from her counsellor. LBS then spoke to the counsellor and secured agreement from P for legal action to be paused; this was 14 December 2023. In January 2024, LBS escalated the case to a specialist senior team; it also asked P for a further hold on its legal action. Before LBS could decide on a way forward, P wrote to say it was about to escalate its action. LBS decided the best way forward was to engage with Miss M's counsellor to discuss all possible options; to that end, P agreed a further hold to 15 February 2024. LBS then contacted Miss M's counsellor asking him and Miss M to contact it to have the discussion. Nothing was heard back and in order to avoid P going ahead with possession proceedings, LBS paid the outstanding rent and service charges. The amount paid, a little over £12,000, was added to the mortgage account. It now attracts interest and Miss M's monthly payments have gone up to reflect the increase in the mortgage balance.

Our investigator, whilst expressing empathy over Miss M's long-standing problems with P and the adverse impact they'd caused her, explained that he could only consider LBS' actions. When he did that, he wasn't persuaded LBS had done anything wrong. Miss M has asked for her complaint to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'll begin by recognising that in the years since tasking the mortgage in 2019, Miss M has faced many daunting challenges, on both a personal and financial level. She has been refreshingly open and frank about the problems she's had to deal with. I won't reveal the details here, out of respect for her privacy, but will say that I've great sympathy for Miss M for what has clearly been an immensely stressful time.

At the same time, I need to reiterate what the investigator said, which is that I cannot intervene in the underlying dispute between Miss M and P, or express any opinion whatsoever on the merits of that dispute. It's entirely outside my remit, and it would be wholly inappropriate for me to do anything other than confine my findings to the actions of LBS regarding the payment of rent and charges to P.

The starting point here is the mortgage agreement between Miss M and LBS, the terms and conditions of which include a provision allowing LBS to take the action it did if the prevailing circumstances warranted doing so. Put simply, LBS had the *right*, contractually, to pay the money to P and debit the mortgage account. But there's a further test to apply; that is, whether it was *fair* of LBS to do it, given the wider context.

Typically, the circumstances in which we see disputes of this type, are where the party requesting payment from the lender is only the borrower's freeholder. The threat usually takes the form of notice of intention to seek forfeiture of the lease, which exposes the lender to the threat of losing its security for the money it has lent. In most situations, we

typically say a lender should only pay the amount a freeholder is requesting when forfeiture of the lease is a serious possibility.

This isn't simply when a freeholder threatens to forfeit the lease, but when the matter has been to court or a relevant tribunal and it's been determined that there has been a breach of the lease. The relevant tribunal is the First-tier Tribunal (Property Chamber) or the former Leasehold Valuation Tribunal. An exception to that is where the sums being demanded are arrears of ground rent. Where the amount due is either more than £350 or has been outstanding for at least three years, where we consider a lender can pay without a determination from a court or relevant tribunal.

In Miss M's case, the situation is complicated by the fact that P is not just her freeholder, but her landlord too. And whilst the sums demanded didn't include ground rent due to P as freeholder, it did include substantial sums in rent due to it as landlord. It's quite apparent that LBS took the threat of the potential loss of its security very seriously, and given the entrenched position between Miss M and P (about which I make no comment either way) I think it was justified in doing so.

At the same time, I consider that LBS took reasonable and proportionate steps to delay P's action whilst it attempted to involve Miss M and her counsellor in a dialogue aimed at finding an alternative solution. When those attempts didn't ultimately succeed, and with the imminent threat of P going ahead with legal action for possession of the mortgaged property, I understand why LBS decided it had no option but to pay the amount being demanded by P. It is a finely-balanced issue, but, whilst a nuanced and marginal call, my conclusion must be that the wider circumstances justified LBS' actions in paying the sums demanded by P.

Miss M undoubtedly found LBS' decision unwelcome, but in all the circumstances, extenuating or otherwise, I can't find that it was unfair, which is the test I have to apply. I know this isn't the outcome Miss M wanted, and I'm very aware that she'll find my decision equally as unwelcome as she did LBS' actions.

I have great sympathy for Miss M having to endure the truly horrible events she's experienced since buying her share of the mortgaged property. But my remit requires me to be objective, impartial, take a step back and decide what is fair, reasonable and pragmatic in all the circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

My final decision

My final decision is that I don't uphold this complaint or make any order or award against Leeds Building Society.

My final decision concludes this Service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 9 September 2025.

Jeff Parrington
Ombudsman