

The complaint

Mr Z complains that Bank of Scotland plc unfairly paid disputed service charges related to the security property and added the cost to his mortgage.

Mr Z asks that we investigate Bank of Scotland's breach of conduct and compliance and order it to reverse the charge and freeze any interest or costs related to it.

What happened

Bank of Scotland received a letter from solicitors acting for the freeholder of Mr Z's leasehold property, asking for payment of about £17,000 for unpaid service charges.

Bank of Scotland wrote to Mr Z in early May 2025 asking him to pay the charges or to let it know if he didn't agree with the amount claimed. Mr Z didn't respond because he was overseas and didn't see the letters. Bank of Scotland paid the amount requested by the freeholder in late May 2025 and applied the charge to Mr Z's mortgage account.

Mr Z disputes the service charge. He says it was unfair for Bank of Scotland to make the payment and add it to his mortgage account.

I sent a provisional decision to the parties, to explain why I intended to uphold this complaint in part. I said Bank of Scotland should not have made the payment. The freeholder hadn't started legal action and there was no imminent risk to its security.

I said Bank of Scotland didn't allow Mr Z a reasonable amount of time to respond before making the payment. I said it should pay £250 compensation for the upset caused to Mr Z.

I said it wasn't fair to require Bank of Scotland to refund the payment, unless Mr Z provided a determination from a court or tribunal to prove that the amounts claimed were not due.

Mr Z didn't agree. He asked that no interest or charges are applied to the sum added to his mortgage, and for additional compensation to reflect the impact of Bank of Scotland's error.

Bank of Scotland didn't agree it had made an error, but did agree to pay £250.

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.

Bank of Scotland has a charge on Mr Z's leasehold property. Bank of Scotland received a letter from solicitors acting for the freeholder (a limited company in which Mr Z has a share). The letter asked for payment of about £17,000 for unpaid service charges and work to the property.

Bank of Scotland wrote to Mr Z on 1 May 2025 and 8 May 2025 asking him to pay the charges or to let it know by 22 May 2025 if he didn't agree with the amount claimed. It says it tried to send a text which wasn't delivered.

Bank of Scotland didn't hear from Mr Z. It paid the amount to the freeholder. It wrote to Mr Z on 23 May 2025 to confirm this.

Mr Z was overseas and didn't receive the letters until he returned, after Bank of Scotland had made the payment. Mr Z has provided copies of his correspondence with the freeholder's solicitors in which he disputes the service charge.

When Bank of Scotland offered the mortgage to Mr Z it did so on the basis it would have a charge (the mortgage) on his property. Ultimately, Bank of Scotland can recover the loan by taking possession and selling the property. The mortgage terms and conditions allow Bank of Scotland to take steps to protect its security.

However, we wouldn't usually consider it fair for a lender to make payments to a freeholder unless forfeiture of the lease is a genuine risk. It's not enough that a freeholder threatens to take steps to forfeit the lease. A court or a relevant tribunal must have determined that there has been a breach of the lease. That wasn't the case here.

The letter Bank of Scotland received from the solicitors said if payment wasn't received the freeholder would issue proceedings in the County Court for an order for Mr Z to pay about £6,000. It said if it needed to enforce the order, that might include steps to forfeit the lease.

I don't think it was fair for Bank of Scotland to make the payment to the freeholder (about £17,000) and apply the cost to Mr Z's mortgage in May 2025.

I don't think Bank of Scotland gave Mr Z a fair opportunity to get in contact before making the payment. Bank of Scotland says Mr Z didn't tell it he was overseas, and it gave him over three weeks to respond. I think this deadline was unreasonably short, given Bank of Scotland used post and there was no immediate risk to its security.

I don't know if (as Bank of Scotland suggests) the amount of time that Mr Z was away meant he ought, under the mortgage terms and conditions, to have notified it of his extended absence from the property. What's relevant here is that the freeholder had not started legal proceedings and there was no imminent risk to Bank of Scotland's security. I think Bank of Scotland's suggestion that Mr Z might not have returned before the freeholder started legal action to forfeit the lease is unfounded, given that Mr Z had returned and raised a complaint by mid-2025.

Bank of Scotland says other parts of the bank tried to send a text messages to Mr Z at this time, which were not delivered. It says text messages to Mr Z are usually delivered successfully. This might have alerted Bank of Scotland to the possibility that Mr Z was overseas, or for some other reason not contactable by text in May 2025.

Bank of Scotland says it asked the solicitors acting for the freeholder to tell it if the amount was disputed. I don't think that was enough. I think Bank of Scotland should have made more effort to contact Mr Z and/or allowed him more time to respond.

In response to my provisional decision, Bank of Scotland said "*time is of the essence in such cases as any delay can lead to forfeiture*". That wasn't the case here. It's clear from the letter Bank of Scotland received from the solicitors that any forfeiture proceedings were some distance away. There was no imminent risk to Bank of Scotland's security, that would have made it reasonable to make the payment to the freeholder in May 2025.

So the issue is what, if anything, Bank of Scotland should fairly do to put matters right.

If Bank of Scotland hadn't made the payment, it's possible that the freeholder would have

taken the matter to court. It's possible that the court would have determined that Mr Z owed all or some of the amounts claimed. If Mr Z was unable or unwilling to make the payment, it's likely Bank of Scotland would have ended up making the payment. Mr Z would be in the same situation as now. He might have incurred additional legal costs. A county court judgement could impact Mr Z's credit file. Bank of Scotland says it might have taken legal advice to protect its position, and would have added the cost to the mortgage account.

Our usual approach in situations like this is to say that Bank of Scotland should refund the money (with related interest and costs) if Mr Z provides evidence that the amount claimed by the freeholder was not due. I think that's fair here. Mr Z would need to provide a determination from a court or an appropriate tribunal.

I understand Mr Z's point that this puts the onus on him to prove the debt wasn't owed, instead of the freeholder being required to prove that the debt was owed. And he will pay interest on the amount added to his mortgage. But, unfortunately, the payment to the freeholder was made before the complaint came to us. I can't fairly make a finding as to whether the amounts were or were not owed – it's for a court or appropriate tribunal to make that determination. Until it does, I can't be sure that Mr Z is actually out of pocket (or by how much) as a result of the payment to the freeholder.

I'd add that, if Mr Z takes the matter to a tribunal and is successful, it might be fair for Bank of Scotland to compensate him for any legal costs over and above the costs he'd likely have incurred defending a claim from the freeholder. The amount of any refund (including any interest and charges) and compensation can only be fairly assessed after a tribunal has made a determination.

Mr Z says about a third of the amount claimed by the freeholder relates to legal fees. If Mr Z takes the matter to a court or tribunal, he can ask it whether those fees were correctly applied. He can also raise with the court or tribunal his concerns that the solicitors were aware that he disputed the sums claimed and knew he was overseas when they contacted Bank of Scotland.

Bank of Scotland offered to contact the freeholder and ask it to refund the money. I appreciate that Mr Z wasn't happy with this when he discussed it with Bank of Scotland, but he should contact Bank of Scotland if he wants it to do this.

I don't think it's fair and reasonable to require Bank of Scotland to refund the payment to the freeholder at this point. But I do think it's fair and reasonable to require Bank of Scotland to pay compensation for the upset and inconvenience its error caused.

Bank of Scotland ought not to have made the payment to the freeholder without a determination from a court or tribunal. And I don't think the deadline it gave Mr Z to respond prior to making the payment was reasonable in the circumstances. It must have been upsetting for Mr Z to return home and find the payment had been made without him having an opportunity to tell Bank of Scotland he disputed it. In the circumstances, I think Bank of Scotland should pay £250 to Mr Z.

My final decision

My decision is that Bank of Scotland plc should pay £250 to Mr Z.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 15 May 2026.

Ruth Stevenson
Ombudsman