

The complaint

Mr O complains that Coventry Building Society (CBS) said it would pay ground rent and service charges on his behalf, adding the costs to his mortgage balance, even though he was in dispute with the freeholder of his property at the time.

What happened

Mr O has a buy to let mortgage with CBS, secured over his leasehold property. The freeholder has asked Mr O to make payment of ground rent and service charges, but Mr O has refused to pay because he doesn't think the freeholder's demands comply with statutory requirements, and that as a result the demands are unlawful. Mr O says he had not made payment for a couple of years.

The freeholder contacted CBS to say that it would start proceedings for forfeiture of Mr O's lease unless payment was made. The freeholder invited CBS to make payment on Mr O's behalf.

CBS contacted Mr O. Mr O says he told CBS that the freeholder's demands were unlawful and he was in dispute with the freeholder. CBS told him that, even so, it would make payment on his behalf and add the costs to the mortgage balance, as well as its own fees for investigating. Under protest, Mr O therefore paid the freeholder himself.

Mr O complained. He said that CBS couldn't rely on the term of the mortgage contract obliging him to make payments that were due and saying that CBS could pay them on his behalf, because no payments were in fact due in the absence of a lawful demand that complied with statutory obligations. He said CBS repeatedly told him that if he didn't pay it would, so he was left with no choice. He said CBS should have investigated the freeholder's demand and concluded it wasn't lawful, not pressurised him to pay. He said that as a result he'd lost the chance to continue his dispute with the freeholder. He said that CBS should refund him the money he'd paid. CBS had coerced him into paying an unlawful demand, which had caused him financial difficulty.

CBS said that it had been contacted by the freeholder because the freeholder was contemplating forfeiture. It said it had an obligation to protect its security. But it said that it hadn't made payment, and hadn't pressurised Mr O into doing so – it had merely told him what the situation was.

Our investigator didn't think CBS had acted unfairly. So Mr O asked for an ombudsman to review his complaint.

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 done so, I'm not persuaded that CBS acted unfairly here.

Under the terms and conditions, CBS is entitled to pay any costs necessary to protect its security, and pass those costs on to Mr O by adding them to the mortgage balance.

In respect of ground rent, a freeholder can forfeit a lease where the amount outstanding is more than £350 or has been outstanding for more than three years. In the case of service charges, a freeholder must obtain a judgment for the debt before it can forfeit the lease.

CBS's policy is that where there is a mortgage over leasehold property, it will pay unpaid ground rent and service charges where there is a risk the lease can be forfeited. This means it will pay unpaid ground rent, and will pay service charges where there is a judgment for the debt. Separately, CBS will also pay the buildings insurance element of a service charge – because the absence of insurance also puts its security at risk even if the lease isn't at immediate risk of forfeiture.

The freeholder contacted CBS and told it that Mr O was in arrears of ground rent and service charges and it was intending to seek forfeiture. In such situations, CBS contacts its borrower to find out the situation and what the borrower's intentions are.

CBS did that in this case. It sent letters to Mr O notifying him that it had received a demand, and asking him to consider paying it or to contact CBS if he couldn't, or was in dispute. CBS then called Mr O on 9 February 2022 to discuss matters with him.

Mr O says he was coerced into making payment to avoid the disputed sums being added to his mortgage balance, and did so under duress. I've listened to the call, and I don't think Mr O was pressurised or coerced into making payment. CBS asked him what was happening, and what his intentions were. It listened to Mr O's concerns about the format of the demands the freeholder was making. It explained that it might need to take action to protect its security – but it didn't say that Mr O must make payment there and then, or that it would do so immediately if he didn't.

The representative said that she also had some concerns about the approach from the freeholder. CBS said that it had a call with the freeholder arranged for later that afternoon and it would be helpful to understand Mr O's intentions first. Mr O did say that in light of the conversation he would make payment that day, to avoid the costs being added to his mortgage. But I don't think it pressured or threatened him into making payment. I think the call was handled appropriately, as an attempt to investigate what had happened and ensure Mr O understood what might happen next.

Mr O did go on to make payment. But I don't hold CBS responsible for his decision to do so, and I don't think it would be fair and reasonable to require CBS to refund the money he paid to the freeholder. If Mr O is in dispute with the freeholder, it's a matter for him to progress that dispute and seek to reclaim any money he thinks was unlawfully demanded from him if appropriate. I'm satisfied that CBS's actions were a fair attempt to understand his position and warn him of what might happen next – not an unreasonable demand forcing him to make payment there and then.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 April 2024.

Simon Pugh

Ombudsman