

The complaint

Miss S complains that Rooftop Mortgages Limited (Rooftop) has made payments to a property management company without her authorisation and without conducting sufficient due diligence. She thinks that it shouldn't have made these payments, and that Rooftop has paid more than was demanded.

What happened

Miss S has a mortgage with Rooftop that started in 2006. Over the years, Miss S has been in dispute with a property management company about service charges it's asking her to pay in relation to the leasehold property the mortgage is secured on. Miss S complains that Rooftop has made a number of payments to this company. Rooftop has added these charges to her mortgage balance.

Miss S says that the company that is claiming these charges isn't entitled to demand these charges and that Rooftop shouldn't have paid them.

Miss S referred this complaint to us in late 2023 and two of our Investigators have looked into it. Both said that our Service had considered part of this complaint before up until August 2020 when another Ombudsman issued a final decision. And they thought that consideration of any charges applied to her account prior to this should be dismissed without considering the merits. They felt the part of the complaint we could consider, which was charges applied after the previous final decision, shouldn't be upheld.

Miss S didn't accept this and asked for an Ombudsman to consider this complaint. So, it was passed to me.

I issued a provisional decision explaining that I thought we should dismiss Miss S' complaint about Rooftop making payments to the property management company prior to the final decision of August 2020. But I said that we should consider the merits of a complaint about any service charges applied since that final decision.

Within my decision, I explained that this Service has already considered the charges that were applied to Miss S' mortgage account prior to August 2020. Miss S hasn't provided any new material evidence that wasn't available to her at the time that I think would materially affect that outcome. So, I was satisfied that any complaint about charges applied to her mortgage account prior to August 2020 shouldn't be considered again. The reason for this was that I felt it would seriously impair the effective operation of our Service – one of the reasons our rules allow us to dismiss a complaint without consideration of its merits.

Rooftop confirmed it had nothing further to add. Miss S responded in detail. But this response focussed on her belief that the company claiming the service charges isn't entitled to do so.

So, I issued a further decision confirming that I was dismissing Miss S' complaint about Rooftop making payments to the property management company prior to the final decision this Service issued in August 2020. I confirmed I would issue a further decision on any payments made since this time. This final decision focuses on that.

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.

Since the previous final decision in August 2020, Rooftop have made one further payment in relation to service charges to the company in February 2021.

I appreciate that Miss S has been in dispute with this company for some time about whether it's entitled to demand these service charges. But I can only consider whether Rooftop acted fairly when making payments to this company and adding the sum to her mortgage balance.

The mortgage terms Miss S agreed to when she took out the mortgage said she must comply with the terms of her lease. It also said Miss S must pay any expenses incurred by Rooftop in remedying any failure by Miss S to comply with her obligations. The conditions said Rooftop will add any expenses to the mortgage account as they are incurred. So, I think the mortgage terms allow Rooftop to make payments to the management company where these charges are in arrears and Rooftop believes its security is at risk.

In January 2021, Rooftop received a copy of a County Court Judgement dated 25 November 2020 saying Miss S owed money to the company in question. Rooftop wrote to Miss S and told her it had been notified her service charge payments were in arrears. It said she was in breach of her mortgage terms and conditions, and failure to bring the payments up to date may result in the forfeiture of her lease. It said if it didn't receive confirmation that Miss S had made an arrangement to make payments in ten days, it may make the payment in order to protect its security.

I think Rooftop genuinely believed its security was at risk here. The matter had been to court, and it was determined that Miss S was in breach of her lease and owed the company service charges. I know Miss S says this company isn't entitled to charge her a Service charge, but a court decided otherwise.

Rooftop was aware of Miss S' dispute with the company and called her to tell her that she needed to raise a dispute with the company regarding the judgement as soon as possible if she didn't think it should be paid, or Rooftop may need to make the payment to prevent any litigation action. I've seen that Miss S requested a breakdown of the charges Rooftop had previously made to the company. But I've not seen any evidence that Miss S took further action to have the County Court Judgement set aside or ask a suitable tribunal to rule the charges unfair.

Rooftop made the payment outlined in the judgement on 16 February 2021 and wrote to Miss S to let her know it had been added to her mortgage account. I think it was reasonable for Rooftop to pay the sum claimed by the company in the judgement and add this to Miss S' mortgage account. It reasonably believed the money was owed, Miss S had not taken action to dispute the judgement, and it believed there was a genuine risk to its security. So, I don't think Rooftop acted unfairly or unreasonably here.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 11 September 2024.

Rob Deadman
Ombudsman