

Payment of council rates arrears

4 November 2014

From time to time people complain to us about a bank paying their rates arrears to the local council and then taking this sum from their account. This scenario affects property owners with a mortgage.

Can a bank pay my rates arrears and then debit my account?

Local councils can require banks to take action to recoup rates arrears through two pieces of legislation:

- the Local Government (Rating) Act 2002 states that a property owner has to pay their rates
- the Property Law Act implies a covenant into all mortgages over land obliging the property owner (mortgagor) to pay rates for the property.

If a property owner does not pay their rates, the local council can notify the bank (the mortgagee) that the property owner is in default. The council is also able to demand the bank pays the rates. If a demand is made, the bank is obliged to pay.

If the bank does pay the rates arrears, this amount is then recovered from the customer, usually by debiting their account. It is standard practice for a bank to include information in its terms and conditions about the fact it can recover money from customers if it is owed to the bank.

Common complaints

Customer has not authorised the debit

Some customers complain that the bank has acted unlawfully by taking money from their account because the customer has not authorised the debit. In these cases, we review correspondence between the council and bank, and between the bank and customer. We also check whether the terms and conditions of the customer's account provide for debiting the account in such circumstances. If so, and a bank has paid rates arrears in response to a council demand, we can not take the complaint further.

Bank has failed to notify the customer

Customers may also complain the bank failed to notify them of its intention to debit their account. It is standard practice for a bank to attempt to contact a customer when it receives notice from a local

How to contact us

council that its customer is in arrears with their rates and to explain the consequences if a demand is served on the bank. We review the communications to check adequate notice was given in these cases. If we find the bank did not give adequate notice, we may consider compensation for inconvenience.

Property owner is in dispute with the council

The property owner may be in dispute with the local council and complain the bank should not pay the rates arrears or debit their account in such circumstances. If there is a dispute between council and rate-payer, the latter can challenge the validity of the rates through the courts. However, a bank is not required to become involved in the dispute, and generally speaking is entitled to rely on the council's notice that the rates are in arrears.

Case note

Mr D owned a property over which his bank had a mortgage. Because of financial difficulties he was unable to pay his rates. The council wrote to him for several months about the overdue rates. It then wrote to Mr D's bank and said it may issue a payment demand on the bank.

The bank wrote to Mr D explaining if the council made a demand on it to pay the overdue rates it was legally obliged to do so. It would then take the amount it had to pay from his account.

Mr D contacted his bank to discuss his financial situation and the rates arrears. The bank approved a \$500 overdraft, but was not prepared to provide further credit. Mr D made a small payment towards the rates arrears. The council then issued a demand on the bank to pay the balance. The bank did so and debited the amount from Mr D's account.

Mr D complained that the bank had debited his account without notice or consultation. He explained he had been negotiating with the council. We reviewed his account's terms and conditions and noted they provided authority for the bank to debit the account for amounts owed to it. Once the bank had received the demand to pay the remaining rates it was obliged to do so.

Mr D accepted our explanation on the legal position on rates arrears but felt the bank could have communicated better. We found the bank had advised him what would happen and could not, therefore, agree.

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