

## The complaint

Miss R complains Topaz Finance Limited trading as Jasper Mortgages (“Jasper”) treated her unfairly after she missed payments on her buy-to-let mortgage. She’s unhappy it took possession of her property and decided to sell it without telling her; and it didn’t make it clear what she needed to do to get control of the property again. She also complains The Law of Property Act 1925 (LPA) Receiver (“LPAR”) instructed by Jasper, removed her tenants so she no longer received rental income. Miss R says what’s happened has impacted her health and caused her financial loss and severe upset and anxiety.

## What happened

Miss R took out an interest only buy-to-let mortgage with Jasper around March 2008 for £83,426. The mortgage was initially taken out on a fixed rate of 6.39% until April 2011 at which point it was to move onto to the buy-to-let overseas variable rate.

In October 2017, Miss R was made bankrupt outside the United Kingdom (“UK”). Around February 2018, her mortgage account fell into arrears. Although around two months later, Miss R told Jasper she’d pay what was outstanding, her UK bank was then closed, so Jasper was unable to take payment. It says it tried contacting Miss R and sent a demand for payment. But as nothing was received, in October 2018, it instructed an LPAR. In December 2018, the LPAR suggested Jasper sell the property as there were concerns about a damp issue and a short lease. This was approved on 31 December 2018.

Miss R raised a complaint and asked Jasper to stand the LPAR down. In its final response, it said it would normally need customers to bring the balance to the position when they first got the mortgage. But instead it would consider standing the LPAR down if she explained how funds held by her letting agent would be paid to it; and how she’d make future payments.

Miss R’s given us correspondence which she thinks shows she was doing what she’d been asked. In March 2019, she told Jasper she’d paid £1,800 to cover the arrears and further payments. This wasn’t accepted as the payment was made by a third party as Miss R didn’t have a bank account. So the tenants were evicted and the property was handed to Jasper.

In April 2019, Miss R spoke to a representative of Jasper and she’s given us a recording of this call. She said she’d set up an account in the UK so she could make future payments. The representative explained Jasper was still willing to hand the property back to Miss R but she’d need to make payments first. He agreed to check whether it could accept a payment of £3,000 in total – made up of the £1,800 she already tried to pay and £1,200 from the letting agent. Miss R said she’d pay whatever was needed and asked the representative to tell the letting agent to release the funds.

Jasper has given us copies of some of its internal correspondence. The day after this conversation with Miss R, it agreed to dis-instruct the LPAR but it didn’t tell the letting agent to release the funds. It also decided Miss R would need to pay a total of £4,800 – so £3,000 of the money the letting agent held in addition to the £1,800 she’d already tried to pay. It doesn’t have evidence to show it told Miss R this.

Around June 2019, Miss R says the letting agent released the funds to her. An internal email from the representative suggests she'd been making regular payments to the account and was still keen to make a lumpsum payment once she knew how much was required. But at that point, Jasper decided not to move forward with anything as it had discovered there had been an application to have Miss R's bankruptcy recognised in the UK.

In July 2019, Miss R's bankruptcy was recognised in the UK. She's highlighted this didn't mean she'd been declared bankrupt here. As a result, Jasper told Miss R in August 2019 it planned to sell the property to protect its interest. And if she wanted it back, she needed to bring the mortgage balance to the position it was when she first got it.

Miss R says as she wasn't receiving a rental income and had been told the property would be sold, she stopped making mortgage payments in September 2019. She's also not paid the maintenance fees for the property. She made a complaint in October 2019 as she felt Jasper hadn't honoured its offer to give her property back – and it hadn't been clear about what she needed to do. Jasper didn't agree it had done anything wrong. As things weren't resolved, Miss R asked our service to look into the complaint.

Our investigator said we couldn't look at the points covered in Jasper's final response letter from January 2019 because they hadn't been brought to our service in time. But, she thought if it had made things clear to Miss R, she would've got the property back before the recognition order was issued. She also thought Jasper should've told the LPAR to hold off evicting the tenants while negotiations were ongoing. So, she suggested it pay Miss R £1,000 compensation and cover her financial loss.

Jasper agreed to pay compensation and work with Miss R to reach an agreement to hand back the property. But it didn't agree it should cover the losses our investigator identified. Miss R thought Jasper should pay more – and she raised concerns about her furniture and other additional costs. As the complaint wasn't resolved, it was passed to me to decide.

I issued a provisional decision on this complaint in November 2021. I thought the complaint should be upheld in part in summary because:

- I thought Miss R did everything she was led to believe was expected to get her property back. And I didn't think Jasper made it clear what more she needed to do.
- Jasper mortgages didn't move quickly enough to release the funds the letting agent held to Miss R. And this prevented her from being able to get the property back.
- Had Jasper been clearer with Miss R and released the funds quicker, I thought she would've paid the amount required and regained control of the property.
- I thought Miss R's tenants would've likely stayed and continued paying rent if they hadn't been evicted. And Jasper could've delayed agreeing the eviction until a decision about handing the property back was made. As a result, Jasper left Miss R with an empty property which made it impossible for her to maintain the mortgage repayments.
- It's more likely Miss R would've taken control of the property around April 2019 and Jasper's actions prevented her doing that.
- I thought Miss R's credit file would've been less impacted if Jasper had acted differently.
- I didn't think Jasper should cover the cost of re-letting the property as Miss R would eventually need to have done that anyway even if nothing went wrong.

- There was no information about the condition of Miss R's items before the tenancy ended. So I didn't think Jasper should cover the cost of replacing them.
- I thought it was Miss R's responsibility to maintain her payments for the maintenance fees for the property. So I didn't think Jasper needed to cover her missed payments.

To put things right in this case, in summary I thought Jasper should pay Miss R compensation for the distress it'd caused her; cover her financial losses; remove negative markers from her file added since March 2019 and; pay towards the damp repair. I also thought it should return her property to her once she'd paid the amount decided previously.

I asked both parties to make any further comments before I reached a final decision. Jasper accepted my provisional decision if it was in full and final settlement of the complaint. It said it would calculate the settlement and return the property once Miss R paid the £3,000.

Miss R said in summary she was told her tenants wouldn't be evicted and proceedings were on hold and she tried to make payments to Jasper. She thought Jasper should cover the cost of any missing or damaged items from her property as she couldn't inspect it or reduce the deposit returned. And it should cover the rent until the property is fully repaired.

Following Miss R's response, I asked both parties for further details of any end of tenancy inspection reports carried out before the deposit was handed back. Miss R gave us emails from October 2019 where she'd authorised the full deposit be returned by the letting agent. Miss R thinks the return of the deposit shows the property was in the same condition as when the tenants moved in. So she says Jasper should be responsible for any deterioration since they moved out. Jasper let us know neither it nor the LPAR had any control over the deposit. I was also given reports from when Jasper took possession of the property; when it was being assessed for auction; and when the tenants first moved into it in 2014.

### **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.

#### *Damage by the tenants and deterioration since they left*

From what I've seen, I'm satisfied Jasper wasn't involved in the end of tenancy inspection – or the decision to return the deposit. So I don't think it should cover the cost of replacing or repairing any items damaged or taken by the tenants. Miss R and her letting agent had the opportunity to take that amount from the deposit as part of the rental agreement but didn't.

In her response to my provisional decision, Miss R said the fact her letting agent decided to return the full deposit to her tenants meant her things must have been in the same condition as they were in 2014. So she thinks any damage she identifies after returning to the property must've happened while it was left vacant and therefore should be covered by Jasper.

I accept, as the property has been left vacant since the tenants were evicted in 2019, it's possible there might've been some deterioration to Miss R's items or property over that time. But in this case, I think it will be very difficult to identify what damage was caused while the property was left vacant and what damage had already been caused.

I say this because, Miss R has given us a report from 2014 when the property was first let out. And against each item, there's a description of its condition. Against many of the items, the description has been amended with handwritten notes, much of which describes them as in poor or fair condition. Several notes say the items were dirty or damaged.

I don't have a report from Miss R's letting agent showing the condition of the property or items in it at the end of the tenancy and I haven't seen anything to suggest they inspected it at that point. I note the emails about whether to return the deposit were sent around October 2019 – so several months after the tenants were evicted.

I've also been given the lender's possession report and a report about auctioning the property by another letting agent which were carried out in early 2019. These reports contain photos and descriptions of the condition of the property. Overall, they show damage and dirt – including stains on the carpets, missing wall tiles and unclean appliances. And it describes the property as being poorly maintained and in a poor condition. As these reports were from shortly after the tenants moved out, I think it's more likely the property and items were left in the condition shown in those reports by the tenants.

Taking everything together, I'm not persuaded the deposit being returned means the property was left in the same condition as in the report from 2014, as the later reports seem to show it in a worse condition. In any event, even if the property and items were left in the same state as the start of the tenancy, it's difficult to determine the precise level of damage there was at that point from the descriptions given in the initial report.

So whilst I agree it would've been fair for Jasper to cover the cost of any deterioration which has obviously been caused by the property being left vacant, I think it will be very difficult – if not impossible – for the parties to know what damage was there from the beginning of the tenancy; what was caused during the tenancy; and what has happened since.

Considering I'm directing Jasper to cover Miss R's rental income from when the tenants were evicted until now – and there's no guarantee they would've stayed that entire time – I think the overall suggested settlement is fair.

#### *Duration the rental income is covered for*

Miss R thinks Jasper should cover the rent until after the property is fully repaired. But Jasper won't be carrying out the repairs itself and so has no control over how long that takes. It's also clear from the reports that the property required further works – including damp repair – before things went wrong with Jasper. So I think it's likely Miss R would've eventually needed to carry out works to ensure the property was fit for letting anyway. And that would've either been between tenancies – so she'd lose out on rent – or she would've needed to reach an agreement with her tenants to carry out work while they were there. So I don't agree it's fair for Jasper to cover the rent while she gets works on the property done.

#### **Putting things right**

I think Jasper gave Miss R poor service and wrong information – and that's meant she's been prevented from getting her property back. I've thought about all of her foreseeable losses and the upset and confusion she's been caused at an already difficult time. To put things right in this case, I think Jasper should:

- Pay Miss R the £1,000 it's already agreed for the severe distress it's caused her.
- Work out how much Miss R would've received in rental income after her usual letting costs are deducted, from the date her tenants made their last payment until one calendar month after the date of settlement to give her time to market the property.
- Apply the above amounts to Miss R's mortgage on the date the tenants would have made the payment each month – and adjust the interest applied to reflect that.

- If the above payment brings the account up to date, pay anything left over from this amount to Miss R.
- Add 8% simple interest to that amount from the date the tenants would've made each payment until the complaint is settled.\*
- Pay half of the reasonable costs to Miss R for repairing the damp problems at the property which are linked to the original issue identified in December 2018. Jasper can either pay towards the amount Miss R is quoted or, if it doesn't agree to that, obtain its own quote and pay 50% of the average amount of the two quotes. Miss R needs to provide an itemised quote directly to Jasper.
- Return the property to Miss R once she's paid the amount decided in April 2019. That is £3,000 as she's already paid £1,800. This is unless the account remains in arrears even after the rental income is paid towards it.
- Remove any negative markers from Miss R's credit file which were added after March 2019 because she wasn't given the opportunity to regain control of the property.

\*If Jasper considers that it's required by HM Revenue & Customs to take off income tax for that interest, it should tell Miss R how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs.

### **My final decision**

For the reasons I've given above and in my provisional decision, I uphold Miss R's complaint and direct Topaz Finance Limited trading as Jasper Mortgages to put things right by doing what I've said above. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 25 February 2022.

Nadya Neve  
**Ombudsman**