

## The complaint

Ms G complains that when she enquired from Topaz Finance Limited trading as Rosolite Mortgages about a payment holiday, she wasn't called back as had been promised. Ms G then made a number of overpayments which affected her eligibility for such a payment holiday.

## What happened

Ms G has a mortgage with Rosolite. This mortgage was based on a mortgage offer dated 6 December 2007. It was for a loan of £365,750 on an interest only basis with a term of 25 years. It has a feature called a Choices flexible payment scheme. In July 2022, Ms G contacted Rosolite with a number of questions. The adviser told her she could make overpayments without paying any charges. The adviser said that she couldn't answer her question about a payment holiday and said that the relevant team would call her back. Ms G didn't receive a call back. In the meantime, she made two overpayments of £10,000 in total.

In November 2022, Ms G contacted Rosolite about a payment holiday. Rosolite said that as Ms G hadn't complied with the terms of the Choices product in respect of the overpayments, which required the overpayments to be made with notice and on a monthly basis in addition to the contractual monthly payments, that she wasn't eligible for a payment holiday under the terms of the Choices product. In respect of the failure to return Ms G's call it offered compensation of £25. But following our investigator's view it offered compensation of £250. Our investigator issued a number of views and in her final view recommended Rosolite's offer as a solution to the complaint. Ms G disagreed and asked for a review.

## 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.

Ms G had a mortgage with a Choices flexible payment scheme facility. My reading of the scheme documentation under the heading "*Pay more, pay less*" is that a customer can make monthly overpayments via direct debit and build up a reserve and then later pay less by an agreed amount or take a payment holiday. Ms G didn't make the overpayments along with the monthly payments in accordance with the terms of the Choices product. Ms G made two one-off payments and so didn't qualify for the payment holiday under the Choices scheme.

I have to consider whether Rosolite acted fairly. Overpayments of a mortgage don't normally entitle a customer to later use the excess as a reserve on which the customer can later draw and as the Choices documentation says "*take a break from your mortgage altogether. On the other hand you can withdraw the extra you have paid in cash.*"

Normally overpayments lead to a reduction in the mortgage balance but are otherwise irrecoverable once they are paid. They don't normally result in the ability of a customer to take a payment holiday. Payment holidays of course can be considered by lenders when dealing with customers in financial difficulties in paying their mortgage and of course there

was a wider scheme backed by the government to assist borrowers during a period of the Covid Pandemic. But the issue at stake here is whether Ms G has an entitlement to avail of the payment holiday scheme under the Choices product that she has with Rosolite. I don't believe she has as she didn't make the overpayments in accordance with the terms of the Choices scheme which meant that she couldn't use those overpayments for the payment holiday. That scheme required her to make the overpayments on a monthly basis and the amount of the overpayments were limited.

The other question is whether Rosolite mis-informed Ms G as to how the scheme operated so depriving Ms G of her ability to use the scheme. Rosolite will say that Ms G already had the information about the scheme from the original mortgage offer and the accompanying documentation and that it had provided information in that as to how the scheme worked. But this complaint relates to a phone-call in July 2022. I've listened to that call. Ms G wanted quotes on two assumptions that she would make overpayments of £10,000.00 or £25,000.00 and whether she could make those overpayments without penalty. The adviser told her that she could. Ms G later wanted information about how payments holidays worked, emphasizing that she didn't then need one and was told that there would be a call back from the payments holiday team. That call back didn't happen, but Ms G proceeded to make the overpayments anyway without a follow-up call of her own to confirm how the payment holiday works.

What's clear in the phone call is that Ms G doesn't mention that she's looking information about the Choices scheme. Her call is about making substantial overpayments, the effect on the monthly payments and whether there would be penalties and whether she could make the payments online. The adviser responds to what she's asked about. There's a moot point as to whether the adviser should have recognised that Ms G could benefit from the Choices flexible payment scheme and how Ms G could structure her overpayments to do so. But the adviser isn't asked about the scheme and Ms G's questioning was direct and business like and didn't encourage further discussion. The adviser answered what she was asked, and she wasn't asked about the Choices scheme. So, I don't find that the adviser was at fault for not advising on the operation of the scheme.

So, I don't consider that Rosolite mis-informed Ms G. There is an issue of a failure to make the call back to Ms G as to how the payment holiday worked. I agree that that was a failure on Rosolite's part for which Ms G should be compensated and I agree that £250 represents reasonable compensation for the distress suffered. But I don't agree that the failure caused Ms G financial loss. Ms G chose to proceed without knowing what the effect of the overpayment would have on a future payment holiday. If the call back didn't come, that's certainly a service failure but Ms G could have tried herself to make contact with the payment holiday team looking an answer to her query before making the overpayment. It was Ms G's choice to go ahead without getting any clarification from Rosolite about the effect of overpayments on her ability to get a payment holiday. Ms G could have persisted with her request or indeed looked out the Choices booklet for her own information. But I can't hold Rosolite responsible for Ms G's actions which made her ineligible for the payment holiday under the Choices scheme.

Besides the offer of £250 compensation, Rosolite has also offered a number of options to Ms G depending on what she wants to do with the £10,000 overpayment she made and is willing to refund that sum but that would result in a higher balance and a higher monthly payment. I will leave that choice to Ms G although I wouldn't expect Rosolite to allow Ms G a reasonable period to consider this offer but wouldn't expect it to be kept open indefinitely. So, I would expect Ms G to decide on that option within six weeks of the date of this decision.

**Putting things right**

Topaz Finance Limited trading as Rosolite Mortgages should pay Ms G £250.

**My final decision**

I uphold this complaint and require Topaz Finance Limited trading as Rosolite Mortgages to pay Ms G the compensation referred to above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 18 August 2023.

Gerard McManus  
**Ombudsman**