

## **The complaint**

Ms S complains that Rooftop Mortgages Limited confirmed there was a shortfall balance of £69,800.45 in May 2023 but had informed her that she was no longer a customer and so she says she shouldn't be responsible for the shortfall. Ms S also complains that Rooftop Mortgages colluded with or permitted the LPA Receivers to undersell her property resulting in the shortfall.

## **What happened**

Ms S had a buy to let mortgage with Rooftop on a property. Rooftop appointed a firm that I shall call Y as LPA Receivers in relation to the property in April 2022. Y told Rooftop that as the property was being rented undervalue they would attempt to sell the property but there would likely be a shortfall. The property was marketed but, with limited interest, it was put into a couple of auctions and then sold after a post auction offer was received. The sale completed in February 2023 and Y told Rooftop that they were no longer acting as receivers and forwarded Rooftop the balance sale funds later that month.

Our investigator's view was that we could not consider a complaint about the sale of the property as the sale was conducted by Y acting as Ms S's agent. In respect of the other complaint, our investigator's view that as Ms S had agreed to repay Rooftop the amount due under the terms of the mortgage that she would still be liable for the shortfall following the sale of the property. Whilst Ms S accepted the first part of our investigator's view, she disagreed with the second part saying that she was no longer the mortgagor as described by Rooftop in its final response and that as her account was closed with Rooftop she had no further liability to the lender.

## **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 S has several complaints about Rooftop including some made quite recently. In this decision I'm dealing with the complaints listed above and set out in our investigator's summary in her email to Ms S of 7 December 2023 and confirmed by Ms S in her email of 13 March 2024. As our investigator indicated I cannot investigate a complaint about the sale of the property, which was conducted by Y, the LPA receiver, acting as agent of Ms S. We are unable to consider a complaint against Rooftop who weren't involved in the sale.

Ms S's other complaint that I'm able to consider here is that because of the phrasing and words contained in Rooftop's final response letter to her complaint she is not required to pay the shortfall to Rooftop. Ms S makes several submissions and has asked me to look at evidence in support of her submissions which I've done. Her submissions may be summarised as follows:

- The final response letter and our investigator's view referred to her as a mortgagee when she in fact was the mortgagor.

- The sale took place on the 10 February 2023 and 12 months later Rooftop issued a final response letter. In the letter Rooftop said Ms S was no longer their customer, no longer their client, Ms S had no relationship or further business with Rooftop and that her account was closing. Ms S says that this legally binding final response letter superseded all previous agreements and meant Ms S owed no money to Rooftop.
- As Ms S was no longer a customer and Rooftop says it cannot have any dealings with her, she should not have to pay the shortfall.

The main issue here is whether Ms S still owes a debt to Rooftop after the sale. Ms S took out a mortgage in 2007 and agreed to repay the borrowing on an interest-only basis. Rooftop has shown us the terms and conditions that applied to this mortgage in 2007 and I note that at 14.9 it says:

*“if we, or any receiver appointed by us sells the property under the mortgage and the net proceeds of sale are insufficient to repay the mortgage debt in full you will continue to be responsible for the shortfall and we will charge interest on the shortfall until it is repaid in full”*

This is not an unusual situation unfortunately where there is a shortfall after the sale. But when Ms S agreed to take this loan from Rooftop, these were the terms that applied. As I understand it Ms S is saying that Rooftop by the language it uses in its final response letter to her complaints has accepted her debt is no longer due.

If I look at the final response letter, it's a fairly lengthy response to what it says are 2 complaints and 13 complaint points that Ms S is making. Rooftop tells Ms S that it received redemption funds from the sale of the property and that those *“funds were applied to your account leaving a shortfall (the total amount of the shortfall is yet to be calculated).”*

One of Ms S's points described as Complaint 3 is that she sent about 50 emails and copious attachments to Rooftop but it wasn't engaging with her and she says it should do as it has a relationship with her, she is their *“client, mortgagee”* and the property's *“sole owner and Proprietor”*, and that it's mandatory for Rooftop to engage with her. I note in this that Ms S refers to herself as mortgagee although she was mortgagor. Rooftop replies *“We no longer have a relationship with you, you are no longer a client or a mortgagee and you are no longer the property owner. We have not however refused to engage with you and if you wish to discuss anything you can telephone the Buy to Let team ..”*

But does that mean that Rooftop waived its right to collect the shortfall under the terms of the mortgage contract? The context of the letter is that it's a response to Ms S's complaint and in this particular instance a complaint about its failure to communicate with her several emails. Rooftop seems to be making the point that the relationship with Ms S has now changed as it would do as the property subject of the mortgage was now sold. Although it says it has no relationship with Ms S it then invites her to contact the Buy to Let team.

On the basis of that correspondence, Ms S believes that it follows that as Rooftop says there is no relationship, it has relinquished any requirement for her to repay the shortfall. But the letter is clearly not intended as a renegotiation of the terms of the mortgage contract or an agreement to waive the shortfall liability. This is a response letter to a complaint not a new binding legal agreement superseding the terms of the mortgage contract, which still stand. In the portion quoted above, it's about the level of the communication requirements not about whether the money is still owed and could not reasonably be seen as a decision by Rooftop to waive the money still owed by Ms S to it. So, I can't fairly uphold this complaint.

## **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 27 June 2024.

Gerard McManus  
**Ombudsman**