

The complaint

Mrs S's complaint is about her mortgage account with Rooftop Mortgages Limited. In particular, Mrs S is unhappy about the following matters:

- Rooftop wasn't able to locate the title deeds, as a result of which Mrs S says she lost out on the sale of the property;
- Rooftop has added a legal fee to the mortgage account;
- Rooftop expects her to continue making payment towards the mortgage after the title deeds were reconstituted;
- Rooftop has refused to accept her offer of £30,000 in full and final settlement of the mortgage balance.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mrs S being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mrs S took out her interest-only mortgage with another lender in May 2001. The mortgage term ended in May 2021 when the full balance became due. In 2019 the mortgage was transferred to Rooftop, which wrote to Mrs S reminding her that the balance (then just over £58,000) was payable on 2 May 2021. Rooftop wrote again in May 2020 to remind Mrs S of this.

In November 2021 Rooftop was told Mrs S had arranged to sell the property to her grandson. In July 2022 it transpired that the deeds couldn't be located and needed to be reconstituted. This was eventually completed in August 2023. During this period the interest rate was set at 0% and no payments were required from Mrs S either. Once the title deeds were reconstituted, Mrs S could have gone ahead and sold the property, but hasn't yet done so.

The mortgage balance remains outstanding, but pending this final decision, Rooftop has taken no further action in relation to recovering the outstanding mortgage balance.

In September 2023 Mrs S raised a complaint. She was unhappy that, after Rooftop had reconstituted the title deeds, her monthly repayments had increased. Mrs S also said she'd incurred legal costs in her abortive sale. Mrs S wanted Rooftop to accept £30,000 in settlement of the mortgage.

Rooftop didn't uphold the complaint. It explained that the interest rate when the requirement to make payments resumed was 9.4% and was subject to fluctuation in the Bank of England Base Rate. The interest rate applied was in line with that set out in the mortgage offer.

Rooftop explained that it had frozen interest and repayments while it was reconstituting the title deeds, in order to ensure Mrs S didn't lose out. However, Rooftop didn't think it was responsible for the sale not proceeding.

Rooftop also said it hadn't added any legal costs to the mortgage account. Rooftop had in error sent Mrs S an invoice for reconstituting the title deeds, but she wasn't charged this amount. Rooftop paid her £50 compensation for this error.

Rooftop also said that it wasn't prepared to agree a short settlement on the mortgage, as the balance was over £57,000 and Rooftop required the full amount to be repaid.

Dissatisfied with Rooftop's response, Mrs S raised her complaint with our service. An Investigator looked at what had happened, but didn't think the complaint should be upheld. In response, Mrs S asked the Investigator to "do a deal" with Rooftop to arrange a short settlement on the mortgage. The Investigator explained that our role wasn't to represent consumers, and reiterated his position that he wasn't recommending the complaint should be upheld. Mrs S asked for an Ombudsman to review the complaint.

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.

Title deeds: The evidence appears to show that Rooftop was never in possession of the title deeds. It seems the previous lender had sent these to solicitors and either never received them back or, if it did, mislaid them.

Either way, Rooftop arranged for the deeds to be reconstituted at no cost to Mrs S, and during the period this was happening, no interest was charged, and Mrs S wasn't required to make any payments.

Mrs S has said that the sale of the property fell through due to the missing deeds. Rooftop has said that it was told Mrs S was selling the property to her grandson. Rooftop also says that it didn't appear Mrs S was vacating the property or buying another.

I've looked at the emails Mrs S has provided in relation to the sale. This shows that Mrs S had made a Statutory Declaration in relation to the missing deeds, and that a Title Indemnity policy had been put in place. There were also copy deeds available. I'm therefore not persuaded that the sale couldn't have gone ahead, given, in particular, the indemnity policy.

However, the evidence doesn't persuade me that this was what is referred to as "an arm's length sale", in other words, a sale on the open market to an unrelated purchaser at full market value. Both Mrs S and the buyer were using the same solicitors, and Mrs S appears to have access to the buyer's personal emails, as she's forwarded some of his emails to our service. Nor is there anything in the emails Mrs S has provided about the transaction to suggest she was buying another property, or vacating the mortgaged property.

Overall, the available evidence doesn't persuade me that the sale didn't proceed as a result of the missing title deeds.

Legal fee added to the mortgage: Rooftop has accepted that, in error, an invoice was sent to Mrs S in relation to reconstitution of the title deeds. Mrs S wasn't charged for this work, and the fee wasn't added to the mortgage account. Rooftop paid Mrs S £50 for any upset caused by this mistake, which I'm satisfied is fair and reasonable in all the circumstances.

Resumption of payments: Once the reconstitution of the deeds had taken place, Rooftop expected Mrs S to resume interest payments, pending redemption of the mortgage. This is reasonable, in my opinion. The fact that the mortgage term has ended doesn't mean that interest ceases to accrue, and Mrs S is required to continue to make interest payments.

Because the mortgage term has expired, Mrs S isn't on a fixed interest rate product. Rooftop is entitled to charge interest at a variable rate of interest, linked to fluctuations in Bank of England Base Rate. Rooftop has no control over Base Rate movement. I'm satisfied that it's not unfair for Rooftop to charge Mrs S interest at a variable rate, given that the mortgage term is at an end and she is no longer eligible to take out a fixed rate product.

Short settlement: Mrs S wants Rooftop to accept £30,000 in settlement of the mortgage. I'm satisfied there is no basis on which Rooftop is required to accept a short settlement. Mrs S originally borrowed £54,400, and so was fully expecting to repay that sum at the end of the term. Over the years the balance has increased and the amount outstanding under the mortgage is about £58,000.

When Mrs S took out the mortgage she confirmed she had an endowment policy which was the intended repayment vehicle. I don't know if Mrs S subsequently cashed in or sold the policy, but I'm satisfied Mrs S would have been aware at the time she took out the mortgage of the need to ensure she had the means to repay the debt at the end of the term.

As the Investigator explained, we don't act for consumers, and so I won't be approaching Rooftop to "*do a deal*" for Mrs S. I can see no basis on which it would be fair or reasonable to expect Rooftop to expect a short settlement for the mortgage.

Overall, I'm unable to find Rooftop has done anything wrong.

I know this isn't the outcome Mrs S wanted. She is now faced with the prospect of having to find almost £60,000 to repay her mortgage, or else sell her home. It might help Mrs S to have some advice from an independent financial adviser to discuss her options, for example, an equity release mortgage. Mrs S can find details of advisers on the Financial Conduct Authority's website at www.fca.org.uk.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 8 October 2024.

Jan O'Leary
Ombudsman