

## **The complaint**

Mr B's complaint about Topaz Finance Limited trading as Rosinca Mortgages (Rosinca) relates to multiple issues following the expiry of his Buy to Let mortgage (BTL).

## **What happened**

Mr B took out a BTL with Rosinca which ended on 3 October 2023. At that time Mr B's financial position was such that he could not repay the balance owed, which ultimately led Rosinca to taking Court proceedings to repossess the property. Mr B feels Rosinca have acted unfairly towards him as he has made attempts to discuss alternative ways of moving forward which were not accepted.

Rosinca say they wrote to Mr B about his account on a number of occasions, spoke to him by telephone and also made multiple attempts to contact him by telephone unsuccessfully. Of note they highlight the following,

1 September 2022 - two letters were sent (identical in content) with the heading 'Notification of loan term end' and in respect of two different accounts, ending 006 and 410. The letters advised that the mortgage would reach its end in 12 months.

14 October 2022 – an attempt to make contact by telephone without success, and so a message was left.

17 October 2022 – letter sent asking Mr B to make contact about the interest only element of his mortgage.

1 March 2023 - letters sent in respect of accounts ending 006 and 410, notifying Mr B that the loan term would end in six months.

18 April 2023 - a call was made to which there was no response.

19 April 2023 - letter sent asking Mr B to make contact about the interest only element of his mortgage.

1 August 2023 - two letters sent for account 006 and 410 advising the loan term would end the following month.

10 October 2023 - letter sent notifying Mr B that the loan term had come to an end and he was required to repay the balance of £121,621. He was asked to get in touch, was given debt advice contacts and advised to get in touch otherwise proceedings may be commenced as a last resort. He was also advised that interest would be charged at the contractual rate until the balance was settled.

16 November 2023 - contact attempted by telephone without success, and so a letter was sent advising the balance due was £121,929.58, if not settled in 10 days a field agent would

be instructed to make a personal visit, and that charges would be added to the account attracting further interest.

23 November 2023 - Mr B called asking to extend the term or be given more time to redeem the loan. He was told term extensions could not be offered. He was advised to provide evidence of him selling another of his properties before Rosinca would consider the request.

8 December 2023 - call made with the intention of discussing the sale of other property, to which there was no response.

19 December 2023 - call made to discuss the account, to which there was no response.

15 January 2024 - call made to discuss the account, to which there was no response.

29 January 2024 - call made to discuss the account, and it was noted there was a call barring system in place and no ability to leave a message.

On 5 February 2024, Rosinca gave instructions to their field agent to visit Mr B. An attempt was made on 12 February, 15 February and 20 February all of which were unsuccessful and letters were left. The agent reported that on the second and third attempts it appeared someone was in but would not answer the door.

Rosinca have denied that they acted unfairly towards Mr B, but as he was unhappy with that response he approached this service to see if we could assist in resolving the dispute, with a number of areas of complaint. These are set out in his written complaint dated 11 June 2024. Our investigator looked into the matter but ultimately thought Rosinca hadn't done anything wrong and had dealt with the complaint fairly.

Mr B didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision.

### **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.

I know the parties have provided a lot more detail than set out in my summary, but I have focussed on what I see as the key issues, because it reflects the nature of our service. So, if I've not mentioned something then this isn't because I've ignored it, it's simply because I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I also understand Mr B is unhappy that he has been unable to see all of the documentation Rosinca provided to this service. He regards this as unfair and has asked to see all such documents provided by Roscina. Whilst I understand the reasoning behind his request, I must remind Mr B that we are an informal dispute resolution service and an alternative to taking Court action. As such, unless a party agrees to disclose documents to the other, I cannot compel them to.

Naturally, I have considered the views of both Mr B and Rosinca and all the available evidence provided by Mr B and Rosinca. For ease of reference, I have used the same complaint subheadings, and in the same order as written by Mr B in his complaint to this service dated 11 June 2024.

## **Urgency**

Mr B has said that this matter was extremely urgent, and instead of dealing with the complaint and acting reasonably, Rosinca issued possession proceedings against him. I am afraid I don't agree. Rosinca began notifying Mr B that his mortgage term was coming to an end, 12 months before it did. The onus was on Mr B to arrange for repayment of the loan when the term ended. Whilst I understand Mr B's financial position, he nevertheless had a contractual agreement with Rosinca. Under the terms of that agreement Rosinca were entitled to issue proceedings when Mr B defaulted on the loan. I note that it did not do that immediately, but instead tried to discuss matters with him. So, I can't say that they have acted unfairly here in this regard.

## **Introduction**

Mr B says that his formal complaint to Rosinca was made on 8 March 2024, to which it issued a final response letter on 26 April 2024, but that nobody accepted responsibility for the letter, as it was signed only 'Customer Relations'. I have checked the letter and that is a correct factual statement. However, I cannot find fault with Rosinca for adopting that approach. There is no compulsion for them to have a named individual as a signatory to the letter. The letter can be signed in the name of the business. I feel I should clarify that any overall concerns about 'business process' would need to be raised with the Financial Conduct Authority (FCA). They take a principles-based approach to conduct regulation, letting businesses choose how they incorporate those principles into the way they deal with customers.

It's not our role to recommend how financial businesses should conduct or arrange their commercial operations and processes – that's for them to determine. We don't have the power to make rules for financial businesses, nor can we direct that they change their policy or procedures.

## **Mortgage balance**

When the mortgage term ended, interest continued to be applied to the balance outstanding. Mr B agreed to this as evidenced in the terms and conditions of the mortgage (section C2). This also provides for interest to be charged when the loan term ends, as it has here. Looking at the interest charged and payments made for the period December 2022 to January 2024 shows that Mr B was not making the full payment required, thus increasing what was owed overall.

## **Confusion**

Mr B has expressed some confusion at their being two account numbers in relation to his loan. The account ending 5006 is the mortgage account and account ending 2410 is a sub account created when Rosinca paid the ground rent in 2014 on Mr B's behalf. The mortgage terms and conditions provide the power for Rosinca to do this on application of the landlord in order to protect their security. This is therefore something Mr B agreed to (Terms and Conditions Section D.3.d and D.5.a.)

## **Interest**

Mr B is unhappy that the date upon which interest was charged each month was changed in 2005 without his knowledge, and he is concerned that the term of the mortgage may have been extended. Rosinca have explained that its predecessor changed its computer system in June 2005, altering the way interest was charged, from charging interest in arrears to charging interest in the same month. As Rosinca determined that there would be some unfairness arising from asking its customers to make two payments in a single month, one interest payment was deferred until redemption of the mortgage. This was not added to the mortgage balance in order to prevent interest being charged on that sum, and Rosinca have confirmed that Mr B has not therefore been financially disadvantaged as he is not being charged any more than he would have been. Furthermore, as prior to the change interest

had been charged in arrears, it would always have been the case that Mr B would have owed a month's interest when redeeming the mortgage at the end of the term.

Rosinca has agreed that the predecessor business had failed to notify its customers at the time, and so upheld that part of Mr B's complaint. Whilst I understand Mr B's point regarding the change of date upon which interest was calculated, I have seen no evidence that he has been financially disadvantaged. Rosinca's explanation is clear in confirming positively that he has not suffered any loss and the term has not been extended. I am satisfied with this explanation, and whilst I note Mr B seeks compensation for this failing, I feel an apology is sufficient.

### **Administration charges**

This head of complaint is dealt with under the subheading 'Service Charges'.

### **Field agent's costs**

The issue here is whether it was reasonable for Rosinca to send a field agent to see Mr B, and having done so, whether it was fair to charge him for that visit. Rosinca have said that the fee is set out in their Tariff of Mortgage Charges document which has been provided to Mr B, and so was fair. This formed part of the contractual arrangements when Mr B took the mortgage out and so I can't say it was unfair.

When the mortgage term came to an end, Rosinca wrote multiple letters to Mr B asking him to get in touch to discuss repayment of the outstanding balance. The chronology of events shows that he failed to do so until 23 November 2023 by which time Rosinca had already advised him about the possibility of instructing a field agent. After the call of 23 November there were further attempts to discuss the account with Mr B, all without success leading to the instruction of the field agent on 5 February 2024. In these circumstances I cannot agree that sending a field agent out to make a visit can objectively be seen as acting in a threatening and intimidating manner. There is no evidence the agent was personally intimidating or threatening. I do appreciate Mr B would have preferred an arranged appointment, but Rosinca were not, at that time able to communicate with Mr B.

### **Legal fees**

Having taken the decision to commence proceedings, Rosinca naturally incurred legal costs associated with such action. Mr B agreed, through accepting the terms and conditions of the loan, that he would pay such costs, and I can find no evidence that these have been inappropriately charged.

### **Ground rent**

There are some complaints we cannot look into because they have been brought to us too late. The FCA Handbook set out rules which govern the time limits for bringing complaints to us, and the rule which is relevant here is DISP 2.8.1. In summary we can only investigate a complaint if it is raised within six months after the date on which Rosinca sent Mr B its final response. Clearly the complaint was raised outside that time frame since Mr B made his complaint to Rosinca and received a response in 2014.

There is however a provision for this service to consider complaints brought out of time if there are exceptional circumstances. I cannot see that there exist here any reasons or circumstances to explain why he delayed in bringing the complaint to us. I cannot find therefore that there are any exceptional circumstances. As such he is now well out of time for bringing this complaint to this service and this is not an area of complaint I can look into.

### **Service charges**

Mr B believes that Rosinca have erroneously charged him for 'Service Charges' and are not permitted to capitalise these charges and add interest to them. The terms and conditions

show that Mr B agreed that Rosinca could make such charges (and add interest upon them) as set out in their tariff of administration fees (Section B12). I do not therefore consider that Rosinca have acted unfairly here, since they have acted in accordance with what was agreed.

### **Communications**

Mr B made a request for all contact to be by way of email. Rosinca have said that they made a business decision to not communicate with customers by email and are not compelled to correspond in that manner. I appreciate Mr B regards this decision as unhelpful and unreasonable, but I don't have the power to make rules for financial businesses, or direct that they change their policy or procedures. How a business chooses to communicate with its customers is a matter for them, and as this is a policy which applies to all its customers, I cannot say it has treated Mr B unfairly.

### **Telephone service**

Mr B was unhappy with Rosinca's telephone system, believing that it was extremely difficult for people to make contact with them. He complained about being held on the telephone too long and the time taken to get through security clearance and to be passed to a second agent. It appears this is in relation to a call on 23 November 2023. Rosinca have analysed that call and have confirmed that it took four minutes for Mr B to complete the security protocols. Having explained the nature of his call it then took 15 minutes for an appropriate transfer to be made, which Rosinca accept was too long, and for which they have apologised. I think that is a fair resolution to this element of the complaint.

Mr B also complained that he was still asked to contact Rosinca by telephone given the delays he experienced. I don't agree that this is an unfair practice. Whilst from time to time some customers may experience delays, as did Mr B, the overall policy of requesting customers to make contact by telephone is reasonable.

During the course of corresponding with this service Mr B also raised further complaints which I have again set out under subheadings for ease.

### **Reporting to Credit Reference Agencies**

All businesses like Rosinca are required to report certain factual information to the credit reference agencies. This includes the status of and level of arrears on an account. I have seen no evidence to support the view that Rosinca have incorrectly made such a report. Mr B's account was in arrears and he was in breach of his loan agreement as he failed to redeem it when a formal demand was made.

### **Third party authority forms**

Mr B was unhappy that a third-party authority form was not sent to him after his telephone conversation on 23 November 2023. Rosinca did however send such a form that day along with a pre-paid envelope for him to use. Whilst I do not doubt Mr B when he says he did not receive it I am satisfied that Rosinca sent it out.

He was also unhappy that such forms were sent to him on 18 March 2024 with a request for evidence of the property he planned to sell. The reason for this was so that Rosinca could consider whether to grant a grace period, and the form was required so that they could speak with Mr B's broker for updates. I think that was reasonable.

### **Lack of response to his letter dated 21 March 2024**

The contact log shows that Rosinca did in fact try to speak with Mr B and so I cannot agree with this element of the complaint. A telephone call was made on 28 March without success and there was no ability for the caller to leave a message. There were further calls made on

4 and 5 April without success. Another call was made on 18 April and a message was left on that occasion.

### **Repossession threats**

I can appreciate that letters from a lender concerning repossession proceedings can be construed as threatening. However, every lender must ensure their customers are aware of the action which might be taken when a mortgage term has ended, and it has not been repaid. I can appreciate Mr B would have wished for more time to repay his loan, and I acknowledge he put forward his own proposals as to how the loan might be repaid. However, Rosinca were not bound to agree to them, and I think were entitled to reach a commercial decision on whether to do so or to seek repossession. That power is also afforded to them by virtue of the terms and conditions.

### **Requesting documentation be returned by Easter Monday; taking 17 days to respond to Mr B but asking him to respond within 3 days**

I cannot find evidence that Rosinca have taken an inordinate amount of time to respond. Equally the letter asking Mr B to respond by easter Monday (1 April) was sent on 18 March 2024, providing a very reasonable period for a response. I therefore can't agree with this element of Mr B's complaint.

### **Conclusion**

I do understand the difficulty Mr B found himself in when his mortgage term came to an end, but having thoroughly reviewed Rosinca's actions, save for the finding that its predecessor could have notified Mr B about changing the date when interest was to be applied, and the delay on transferring a call, I cannot find any other point upon which I could say it has acted unfairly. Rosinca has applied its terms and conditions correctly and treated Mr B as it would any other customer in a similar situation. As I've not seen anything showing me Rosinca acted unfairly towards Mr B I won't be asking them to do anything further about this complaint.

### **My final decision**

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 November 2024.

Jonathan Willis  
**Ombudsman**