

The complaint

Mrs M, Mr M and Mr W complain about their buy to let mortgages with Topaz Finance Limited trading as Rosinca Mortgages. In particular, they're unhappy that the properties secured by the mortgages have fallen in value and say that Rosinca should have shared the outcome of annual reviews of loan to value with them.

What happened

Mr and Mrs M, and Mr and Mrs W, jointly took out four buy to let mortgages with a predecessor lender. The loans have since been transferred to Rosinca, which is therefore responsible for answering this complaint.

Mrs W has since passed away and Mr and Mrs M are no longer married. This complaint has been brought primarily by Mr W and Mr M, though Mrs M has consented to it being made.

The mortgages were taken out in 2006 on an interest only basis, over a term of fifteen years – ending in 2021.

Around the end of the term of the mortgages, Mr M Mr W and Mrs M arranged for one of the properties to be valued to help them decide what to do with the properties and the mortgages. The valuation said that the property was worth significantly less than they had paid for it in 2006. As a result, the property was in negative equity.

Based on this, Mr M Mr W and Mrs M concluded that the properties had been over-valued and the mortgages had been mis-sold as a result. They complained about that to Rosinca and then to the Financial Ombudsman Service. That complaint was considered by another ombudsman, who issued a final decision in 2023. The ombudsman said:

- The valuations at the time of the original lending were carried out by a qualified surveyor instructed by and acting on behalf of the lender only. The sole purpose of the valuations was to advise the lender whether the properties were adequate security for the lending. Having considered the valuations, the lender agreed to lend.
- The valuations were not carried out on behalf of, or for the benefit of, Mr and Mrs M and Mr and Mrs W. They could not reasonably have placed any reliance on them. In any case, copies of the valuations were not given to them at the time.
- The lender was entitled to rely on the opinion of the qualified surveyor it instructed in deciding whether to lend.
- The ombudsman did not make any finding on whether the valuation reports were accurate, as they were carried out by a qualified professional surveyor who did not come within our jurisdiction. But in any case the lender was entitled to rely on them and neither the surveyor nor the lender owed any duty to Mr and Mrs M and Mr and Mrs W in respect of the valuations.
- As a result Rosinca is not liable for any matter arising out of the valuations. So the

ombudsman did not uphold the complaint.

Mr M and Mr W made a further complaint to Rosinca, and Mrs M has consented to it being considered by the Financial Ombudsman Service. That complaint is that the mortgage terms and conditions say that the lender will carry out annual reviews of the loan to value. That didn't happen, or if it did they were not informed of the outcome of the reviews – if they had been, they would have learned about, and could have acted on, the negative equity much sooner.

Rosinca said that it understood that the properties were not in negative equity. It said that all four had loans to value of under 60%, based on index values.

Our investigator said that he could only consider whether Rosinca had acted fairly in the six years before this complaint was first made in July 2023. He said that the terms and conditions did not require Rosinca to share the outcome of the reviews. The reviews were carried out for its benefit as lender. So he didn't think Rosinca had acted unfairly in not notifying Mrs M, Mr M and Mr W of the outcome of the periodic reviews.

Mr M and Mr W didn't agree, and asked for an ombudsman to review their complaint. Mrs M said she had no further comments to make. Mr M and Mr W asked for further extensions of time to reply in more detail to the investigator's view. In response to the most recent extension request, I set out what information I would require for me to consider a further extension.

Mr M and Mr W have again requested an extension but did not provide the information I had asked for to allow me to decide whether granting a further extension would be appropriate. I am mindful of my statutory obligation to resolve complaints quickly, and I am mindful of the obligations of fairness to all the parties to this complaint requiring me to bring it to a conclusion – noting that three months has now passed since the investigator set out his view.

I am satisfied that I have all the relevant evidence I need to be able to fairly resolve this case, including an understanding of the basis of Mr M Mr W and Mrs M's complaint. I have noted what Mr M says about his ill health – but I have not seen medical evidence of that, nor have I seen any reason why Mr W could not have responded to the investigator's view. In the absence of the evidence justifying the need for a further extension that I asked for, I am not prepared to allow a further extension. I have sufficient information to reach a final decision on this complaint, and in what follows that is what I will do.

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.

The mortgage offers include similar information about the interest rate and loan to value, in the following terms (the specific figures are taken from one offer, but the general content is the same in each):

Loan to value: You will be borrowing 82.77% of the valuation of the property.

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Product:

BuytoLet 5.39% Fxd 30/6/09 Free ValComp – a fixed rate of 5.39% until

30/06/09

Buy-to-Let Variable Rate, currently 6.50%, then applies for the remainder of the term.

Maximum %: The mortgage is available up to a maximum of 85% of the property valuation.

How we review your interest rate and Loan to Value (LTV)

On each anniversary of your loan release date, your property value and its LTV will be reviewed and reset.

We will review your account, on the first day of each interest period (or if not a working day, on the next working day) and the interest rate will be set according to bank base rate at that time and the LTV at the last anniversary of your loan release date. Any changes in bank base rate will not affect the interest rate or the monthly payment until the next interest period following the change.

This requires the lender to keep the LTV under review and – where it impacts the interest rate – make any required changes to the interest rate and monthly payment.

However, where there are no changes to the LTV which impact the interest rate or monthly payment, there's no obligation on the lender to share the outcome of the LTV review with the borrowers.

The LTV review does not involve a further physical inspection or valuation of the property. Rather, it involves applying house price inflation using a recognised house price index to the original valuation from the time of the lending decision.

Rosinca's view is that, according to the index valuation, the properties are not in negative equity. But Mr M and Mr W believe they are. It's not for me to determine which is correct, and in any case that's not directly relevant to the outcome of this complaint.

Just as the previous ombudsman explained that the original valuations were solely for the purpose of helping the lender to decide whether to lend (based on whether the properties were adequate security for the lending), the LTV reviews were to help the lender determine whether the properties were within the acceptable LTV band – or had moved outside it, which might require a change to the interest rate.

Mr M, Mr W and Mrs M have made this complaint about the annual reviews now – but I've not seen any evidence that not receiving them is something they have raised with Rosinca before 2023. It therefore doesn't seem that they were relying on the expectation of receiving the annual reviews regularly during the life of the mortgages.

The mortgages are separate to Mr M, Mr W and Mrs M's property letting business. The properties are an asset of the business, and the mortgages are a liability. But Rosinca is not involved in that business other than as the lender of the mortgages.

The purpose of the original valuation and the LTV reviews is solely to advise the lender whether the mortgage is adequately secured. Their purpose is not to advise Mr M, Mr W and Mrs M whether their property letting business is in good health, or whether its liabilities exceed its assets. Nor is that something Rosinca, as a mortgage lender, could be expected to advise them about. As diligent business people running a property letting business, this is something it's reasonable to have expected Mr M, Mr W and Mrs M to have monitored for

themselves, enabling them to have taken appropriate action if the liabilities of their business exceeded its assets and income. I'm not persuaded that they actually did rely on Rosinca monitoring the LTV for them – and even if they did, I'm not persuaded that they were reasonably entitled to rely on this, or that Rosinca acted unfairly in not sharing the outcome of the reviews with them.

As I say, I don't know whether the properties actually are in negative equity or not – but if they are, that is not something that Rosinca is responsible for. And nor is Rosinca responsible for Mr M, Mr W and Mrs M having been unaware of any negative equity until recently. For all those reasons, I don't uphold this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M, Mr M and Mr W to accept or reject my decision before 7 January 2025.

Simon Pugh
Ombudsman