DRN-5223166

The complaint

Mr and Mrs S' complaint relates to a buy-to-let mortgage they have with Rooftop Mortgages Limited. They do not consider that Rooftop have acted appropriately since they began having difficulties paying the mortgage in mid-2023 following interest rate rises. This culminated in Rooftop appointing Law of Property Act (LPA) Receivers to manage the property, which Mr and Mrs S consider was unnecessary. In addition, Mr and Mrs S have said they believe that Rooftop's decision to take action might amount to unlawful discrimination as they are elderly, and their tenant would have been classed as vulnerable due to his health situation. Mr and Mrs S have said they believe that Rooftop was '*trying an asset grab through bullying and illegal acts*'.

What happened

The evidence in the case is of a substantial volume and very detailed. I have read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy is intended by that. It is a reflection of the informal service we provide, and if I don't mention something, it won't be because I have ignored it. It will be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Mr and Mrs S took out a joint buy-to-let (BTL) mortgage to purchase a rental property in 2007. When interest rates began to rise in recent years, they covered the shortfall between the rent and the mortgage payment for some time, but in the middle of 2023 the difference reached the point where they could no longer afford to do so. The mortgage is administered by a third-party administrator, but Rooftop is responsible for its actions and this complaint.

Mr S sent a message to Rooftop in June 2023 through its portal explaining the situation and asking for its assistance. He proposed that they pay £500 each month from July 2023 until the property was sold following the end of the tenancy in January 2024. This was just under half of the amount of the contractual payment. They asked that Rooftop agree to this arrangement and that it did not report anything negative to credit reference agencies (CRAs) while the arrangement was in place. Rooftop tried to call Mr and Mrs S, but its calls were not answered. It then sent an acknowledgement through its portal and asked Mr and Mrs S for information about the rental contract and their financial situation.

Mr and Mrs S sent an email a few days later along the same lines as the portal message. Some brief information about income and expenditure was provided, along with a copy of the rental agreement, but not everything that had been requested. Rooftop's confirmed that the message was not attached to Mr and Mrs S' account and so was not immediately responded to. It was acknowledged around six weeks after it was sent.

Mr and Mrs S have told us that they didn't receive a response to their proposals and so moved forward on the basis that Rooftop not rejecting it was implicit agreement to it. They cancelled the direct debit mandate that paid the mortgage and set up a standing order paying £500 per month. Arrears started building at that point, but as the arrears were not equivalent to a month's contractual payment until September, and Rooftop only reports to CRAs once a month, the arrears were not noted on Mr and Mrs S' credit files until October 2023.

Mr S sent a portal message in July 2023 chasing a response to the proposal he and Mrs S had made. Rooftop acknowledge the message around two weeks later. When the content of the earlier email and the portal messages were reviewed Rooftop set out again what it wanted in relation to information about Mr and Mrs S' circumstances and also asked for three months' bank statements. Rooftop's records show that no response was received to the request, and it was unable to speak to Mr or Mrs S when it tried calling them in November 2023 and January 2024.

In January 2024 Mr S contacted Rooftop again and explained that he had become aware that they needed to give the tenant in the property six months' notice of the need to quit, despite the contract expiring at the end of that month. Mr S also asked to speak to Rooftop, but when it called him, the call was not answered. Rooftop forwarded a copy of the letter it had sent asking for information – it requested the information again, along with evidence that the tenant had been given notice.

There was further correspondence exchanged in February and early March 2024. Mr S provided some information, but not all that had been requested by Rooftop. He also explained that the tenant was not paying the rent due to illness. A date for the tenant leaving the property and it being marketed was given, but neither of these things happened. Subsequently, Rooftop explained that the mortgage needed to be brought up to date, or there was the possibility of it appointing LPA Receivers to manage the property. By this time Mr and Mrs S' tenant was reported as having difficulty paying the rent, which resulted in the payments to the mortgage stopping altogether.

Mr S sent a further email in March 2024 saying that he had told Rooftop that he and Mrs S would/could not supply the information requested. He said that he believed it was irrelevant as the property would be on the market and sold very soon. It was also confirmed that the tenant had not left the property and due to his illness, Mr and Mrs S had not chased him out. Mr and Mrs S asked again why Rooftop was reporting to CRAs when it was not obliged to by law. Mr S said he could see no logic for Rooftop doing this other than '*deliberately causing damage to a person's reputation*'. They also asked why Rooftop was talking about appointing an LPA Receiver, as they were not ignoring correspondence and as no rent was being paid, there was none for an LPA Receiver to collect. It was confirmed that Mr and Mrs S would start paying £500 per month again if the tenant started paying the rent again.

A complaint was set up by Rooftop to look into Mr and Mrs S' concerns.

Rooftop emailed Mr S on 15 March 2024. It said that as Mr and Mrs S had not provided the necessary information, it could not agree to their proposals.

However, on 26 March 2024, in response to further correspondence from Mr and Mrs S, Rooftop said that it would allow Mr and Mrs S a grace period on their mortgage until 30 April 2024 during which it would suspend interest payments and any fees accruing on the account, prior to taking further action. Rooftop said this would enable it to flag the account as being in an arrangement and ceasing the reporting to the CRAs. At the same time, it said that it would allow the tenant to vacate the property and for it to be marketed for sale.

Rooftop explained that it would need a copy of the sale particulars to be forwarded to it on or before 30 April 2024 so that it was able to monitor the sale and consider whether it was prepared to offer Mr and Mrs S further time to allow the sale to proceed. It said, if the property was vacant when it was marketed, it could agree to a nil payment concession, but only on the basis that Mr and Mrs S provided the documents and information it had requested. In addition, Rooftop told Mr and Mrs S that if tenant cleared the rent arrears, it expected the money to be paid to the mortgage account.

Rooftop responded to the complaint in a letter of 11 April 2024. It set out the complaint as Mr and Mrs S being unhappy that the arrears on the mortgage were being reported to credit reference agencies (CRAs), which they felt was a bullying tactic. Rooftop was satisfied that it had acted appropriately reporting what it had.

At the beginning of May 2024, given that the property had not been sold, Rooftop again wrote to Mr and Mrs S asking them to provide the sales particulars for the property. It told them that not doing so would result in it proceeding with enforcement action:

'*Unless I am able to evidence that you have taken appropriate steps to sell the property as per your repayment proposals, we will need to proceed with enforcement action in light of the breach of contract.*

I would be grateful if you would forward us the sales particulars by close of business on 9 May 2024, failure to do so will result in us proceeding with enforcement action.'

Mr S has told us that he felt this was threatening and bullying in tone.

At the end of May 2024 Rooftop's solicitors sent Mr and Mrs S a Formal Demand for the mortgage to be repaid. Later that month Rooftop decided that LPA Receivers should be appointed, but it was not until the middle of June 2024 that it instructed the appointment.

Mr and Mrs S have told us they signed an agreement with an estate agent to sell the property on 5 June 2024, with the process commencing after the tenant moved out nine days later. They have confirmed that viewing of the property started in July 2024.

On 27 June 2024 Rooftop's solicitors wrote to Mr and Mrs S to tell them it had been instructed to appoint LPA Receivers to manage the property as no sales particulars had been provided and the arrears had not been paid. The details of the LPA Receivers that had been appointed were provided.

Mr S responded to the letter and said that he and Mrs S wanted to avoid the LPA Receivers being appointed. He listed the multiple dates he had written to Rooftop in May and June 2024 and highlighted that the correspondence had not been responded to. Mr and Mrs S also confirmed that the property had been marketed for sale on 5 June 2024. Mr and Mrs S were directed to speak to the LPA Receivers.

Mr and Mrs S asked this Service to consider their complaint on 15 June 2024. When they did they said that in Mr S' experience LPA Receivers would only be appointed when the relationship between the borrower and lender had completely broken down, but that was not the case as far as they were concerned. This was because Mr S was in regular contact with Rooftop throughout. As Mr and Mrs S clearly had additional complaint points that had not been addressed in April 2024, we passed those concerns to Rooftop.

Mr and Mrs S informed Rooftop that they had accepted an offer for the property in the middle of August 2024. This was agreed with the LPA Receivers and the Receivers gave them time for the sale to complete before taking over management of the property.

Rooftop issued a further complaint response on 20 September 2024. In relation to Mr and Mrs S having concerns about Rooftop's behaviour toward them in light of their age and their tenant in light of his vulnerability, it didn't consider it had done anything wrong and had not engaged in scare tactics as had been claimed. It confirmed that it had taken the actions it had because of the level of arrears on the mortgage account and the lack of proposals to address them, not Mr and Mrs S' age or other factors. In relation to providing support for customers in financial difficulties, Rooftop explained that it needed information about their financial situation before it could assess whether it could help and if it could, how. However, Mr and Mrs S had not co-operated with that process. Rooftop acknowledged that it had not dealt with the June 2023 proposal as quickly as it should have, but it pointed out that Mr and Mrs S had known from previous correspondence when they made their proposal what information it would need to try to help them if they were in financial difficulties.

In addition, Rooftop confirmed that the senior member of staff that Mr and Mrs S had been attempting to communicate with did not deal with mortgage servicing. This meant that anything sent to him, or other members of staff not involved with the servicing of the mortgage, was passed to the team that was dealing with their mortgage account. Rooftop also confirmed that it did not communicate through the business networking website Mr S had been using.

In relation to the appointment of LPA Receivers, Rooftop highlighted that the mortgage had fallen into arrears in August 2023. Mr and Mrs S had then paid less than the contractual amount until January 2024, when they stopped making any payments, other than one payment in May 2024. As an agreement had not been reached to address the arrears, Rooftop had appointed the LPA Receivers in line with the terms and conditions of the mortgage. It was satisfied this was the correct thing to do in the circumstances.

Mr and Mrs S didn't accept what Rooftop said and again asked this Service to consider their concerns. They disagreed that there had been a lack of proposals to address the arrears, as they had provided monthly and weekly, lengthy, reports and/or emails that made it clear the property would be sold and the mortgage repaid. They also said that as they were no longer a couple, they kept their financial information private from each other and so it was not possible for them to supply the financial information Rooftop had asked for in order for it to assess their situation.

Mr and Mrs S said that Rooftop's own solicitors had told Rooftop that the appointment of LPA Receivers was not necessary, but Rooftop went ahead. Mr S said that Rooftop was forgetting about his professional standing, and in doing so that underpinned that it was victimising him when full repayment of the formal demand was not practical – so it kept pressure on him and Mrs S. They also highlighted that the information they were being given was at times contradictory, such as when the final demand was issued, the covering letter said to only contact Rooftop's solicitors, but the final demand document said to contact the mortgage administrators. Mr and Mrs S also disagreed with the statement that the managing director did not get involved with the day-to-day management of mortgage accounts. This was because when Mr S had sent him messages and information through the business networking site, he had acknowledged them and asked that they be sent to his business email account. Also, Mr S highlighted he had received an email direct from the managing director in July 2024 in which an instruction to deal with Mr S' questions had been given.

One of our Investigators considered the complaint, but he didn't recommend it be upheld. Mr and Mrs S didn't accept the Investigator's conclusions. They reiterated many of their previous comments about the events and highlighted that the Investigator had not commented on the DSAR that Mr S had initiated through the Information Commissioner's Office (ICO) – Mr S said he didn't think Rooftop had fulfilled its legal obligations and that we should have reminded Rooftop of its responsibilities. They also said that Rooftop did not ask

them for information when it said it had and it had not chased that information. However, Mr S said he had provided information about their financial situation on many occasions, so he did not accept that the questions had not been answered.

Mr and Mrs S also said that the mortgage did not fall into arrears. Rather reduced payments had been properly requested and a comprehensive report about the impact of the reduced payments would have on the mortgage account was provided. However, Rooftop delayed responding to the proposal that was put to it, which Mr and Mrs S said they believe had been deliberate. Mr and Mrs S said that they believed this Service was either being too sympathetic to Rooftop or we were not doing our job properly. They said that just because a customer falls into arrears it did not make them bad people and it does not excuse Rooftop ignoring correspondence for months and months, and then starting a campaign of victimisation.

Mr and Mrs S also told us in November 2024 that the sale of the mortgaged property had not completed, and they believed it might fall through, as the buyer was using the involvement of the LPA Receivers to reduce the amount offered.

The Investigator considered what Mr and Mrs S had said, but he was not persuaded to change his conclusions. As such, the complaint has been passed to me to consider.

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 appreciate Mr and Mrs S' strength of feeling regarding this complaint. I would like to assure them that I have read and considered everything they've told us. I trust they won't take it as a discourtesy that I have condensed this complaint in the way that I have.

Our enabling legislation, the Financial Services and Markets Act 2000, provides at section 225 that we are required to resolve complaints "*quickly and with minimum formality*". We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.

In reaching my decision, I will have regard for the law and good industry practice where relevant. However, it's for the courts to make findings on matters of law, and it wouldn't be appropriate for me to make a finding on whether Rooftop acted in breach of the law. My overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometimes mean reaching a different outcome from what might prevail in court.

We have no regulatory function; that's the role of the Financial Conduct Authority (FCA); nor are we a consumer protection body. We're an alternative dispute resolution body; an informal alternative to the courts for financial businesses and their customers to resolve their differences. We deal with individual disputes – when we're able to – subject to rules laid down *by* the FCA (which are known as the DISP Rules).

I note that Mr and Mrs S have commented that the Investigator didn't say anything about their dissatisfaction with the response they received to their DSAR. As Mr and Mrs S had initiated the DSAR through the ICO, and it was not a matter they raised with us in their initial complaint, it is not something that we would comment on. Even if the issue had been part of the complaint we were considering, reminding a financial business of its legal obligations

relating to such a matter, that is something that would more appropriately fall within the remit of the ICO.

This is a BTL mortgage, taken out for investment purposes. It is unregulated, and so Rooftop is not required to provide Mr and Mrs S with advice or to manage their investment for them. As this is considered a commercial mortgage, it's up to Mr and Mrs S to manage the mortgage, including ensuring that the monthly payments are made on time and to be aware of the contractual terms of the tenancy agreement they had in place.

Whilst the mortgage isn't subject to the regulatory protections available to residential mortgage customers, Rooftop is still required to treat Mr and Mrs S fairly and reasonably. The crux of this complaint is that Mr and Mrs S believe Rooftop has not done that, as it didn't accept the payment arrangement that Mr and Mrs S wanted it to and it appointed LPA Receivers, with the associated costs, despite them keeping Rooftop up to date with what was happening with the property.

Mr and Mrs S set out for Rooftop what the situation with the mortgaged property was in June 2023 – that the rent was less than the then current contractual payment. They also set out a proposal for Rooftop to consider – an arrangement where they would be paying less than half of the amount of the contractual payment, which was also less than 70% of the rent that was being received from the tenant. These payments would be made until the property was sold after the tenant moved out at the end of January 2024.

Even though this mortgage is not regulated, we would expect a lender to explore ways to help a customer in financial difficulties. Such help might consist of a reduced or nil payment arrangement for a period, or deferring interest for a period. However, any arrangements a lender enters into would need to be affordable and sustainable, based on a consideration of, amongst other things, the borrower's financial circumstances, as well as any other matters the lender needed to take into account, such as health issues. The expectation for lender to look at ways of helping doesn't mean that a borrower should be given whatever they ask for, but rather a lender needs to determine if it can put forward proposals that will actually help the borrower and not just postpone the inevitable if the mortgage is not going to be affordable and any proposed resolution to the situation is unlikely to come to fruition.

Rooftop asked for financial information in order to consider the proposal Mr and Mrs S had put forward. I note that Mr and Mrs S have said that is not the case, and they didn't hear anything from Rooftop for months, but the contemporaneous records, including the records from the portal would indicate that Rooftop did respond to the initial correspondence. However, it did not acknowledge the subsequent email Mr S sent to Rooftop, with the same proposal, for several weeks and didn't respond to it until October. That was not the level of service I would have expected, however, I am satisfied that throughout the period of that delay, Mr and Mrs S were aware that Rooftop wanted to consider their financial situation before responding to the proposal and they knew what information it wanted.

While I note that Mr S provided some information about his and Mrs S' financial situation, it was very general and in the case of Mrs S, it was estimates because Mr S didn't have that information. I have noted that Mr and Mrs S are separated and so they don't want the other to have details of their financial arrangements. Due to this Mr S said that they could or would not provide all the information Rooftop wanted. However, each of them could have provided their own information directly to Rooftop and did not have to share it with the other. So I don't consider their separation meant that the information Rooftop needed could not be provided.

I note that Mr S thinks Rooftop was wrong when it didn't accept that an affordability assessment was irrelevant in light of the proposals he had put forward. I don't agree that is the case. I consider that Rooftop was reasonable when it asked for the information it wanted

from Mr and Mrs S and to want to complete an affordability assessment to ensure that whatever was agreed was affordable and could be maintained. In the absence of that information, despite reminders, I don't think Rooftop acted unfairly when it decline to accept the proposal.

I note that Mr and Mrs S have said they took the lack of response to their proposal as implicit acceptance. While Mr and Mrs S may not have received an immediate acceptance or rejection of their proposals, they did receive a response which explained they needed to provide information for Rooftop to consider the proposal fully. In that situation I am not persuaded that it was reasonable for Mr and Mrs S to assume their proposal was being accepted. Indeed, given Mr S' employment background, I am satisfied that he would have known that any reaction other than a definitive acceptance should not be taken as an acceptance. Given that the proposal had not been accepted at the point Mr and Mrs S reduced the amount they were paying to the mortgage, it was not unreasonable for Rooftop to record the mortgage as being in arrears with no agreement in place on its own systems, because that is what the situation was.

Mr and Mrs S are unhappy that LPA Receivers were appointed to manage their property and deal with the arrears on the account. I would firstly confirm that the terms and conditions of the mortgage allow Rooftop to appoint LPA Receivers if a mortgage is in arrears. However, as with repossession action, we would not expect a lender to do so unless it was appropriate to do so, and other options had been exhausted.

In this case Mr and Mrs S had told Rooftop that the property would be marketed in January 2024 once the tenancy had run out. In the meantime, they wanted to pay £500 to the mortgage each month, which was less than half the contractual payment, and meant they were retaining almost £300 of the monthly rent. However, as they had not issued the appropriate notice under the tenancy agreement, even though the tenancy had expired in January 2024, the tenant did not have to leave the property and so the property was not marketed. While Mr S wrote to Rooftop on a regular basis telling Rooftop why the property was not being marketed and giving updates on the tenant's potential departure from the property, the marketing of the property just kept being delayed throughout the first half of 2024. In addition to Mr and Mrs S' plans for selling the property being repeatedly postponed, they also stopped making any payments to the mortgage. I know that they explained why this was the case, but that doesn't alter the situation – there were significant arrears on the mortgage that were increasing monthly, and the plans Mr and Mrs S had told Rooftop about to resolve that situation repeatedly failed to come to fruition.

There reaches a point where a lender has to make a decision to take action to stop a difficult situation deteriorating further. I am aware that the appointment of the LPA Receivers happened around the same time as the tenant eventually moved out of the property in June 2024. I am also aware that Rooftop's solicitors checked with Rooftop whether it wanted to delay the appointment, given the fact that Mr and Mrs S had confirmed the tenant had moved out. However, by that point the LPA Receivers had already been approached and accepted the appointment. While Rooftop could have withdrawn the appointment, I am not persuaded that it was unfair of it not to have done so. I say this as the overall situation with the mortgage had deteriorated over the previous year; it was in a significant amount of arrears and plans to deal with the situation had repeatedly been postponed. Furthermore, while Mr and Mrs S had been in regular contact with Rooftop, they had not co-operated with its attempts to assess the situation to be able to try to agree a way forward. So overall, I don't think Rooftop was wrong to take the action it did.

Mr and Mrs S have made the point that Rooftop doesn't need to report to CRAs. That is true. However, Rooftop has made the decision to report to CRAs as have the majority of lenders in the industry. This is a matter of its commercial discretion and not a decision I can interfere

with. Rooftop, therefore, reports the status of all of the mortgages it has advanced to CRAs. In reporting on all mortgages, it is treating all of its customers equally and I can't find that it is unfair in doing so.

Mr S has said that falling into arrears with their mortgage does not make him and Mrs S bad people; the implication being that in reporting the arrears on the mortgage that is what Rooftop are implying about them. I can assure Mr and Mrs S that the information being reported about their mortgage in no way indicates they are bad people, that Rooftop believes them to be or is trying to imply that they are.

Mr S has said that he thinks Rooftop is discriminating against him and Mrs S because of their ages. They say that they had sufficient equity in the property to cope with the reduced payment arrangement they'd asked for, had a good payment history at the point they asked for reduced payments and have kept Rooftop up to date on the situation.

The relevant legislation on this is the Equality Act 2010 and associated regulations. I have taken that into account when considering the complaint. The law says that financial services providers can take age into account, but only in certain circumstances. That said, I think the crucial question is whether Rooftop acted fairly when it rejected the proposal Mr and Mrs S had made and then required the arrears to be addressed, which led to the LPA Receivers being appointed. In all the circumstances, for the reasons I have set out above, I think it did treat them fairly. I am also satisfied the evidence doesn't indicate Mr and Mrs S' ages were factors in the decisions that it made.

Mr and Mrs S have suggested Rooftop's actions and requirements would fall to be described as disability discrimination against their tenant. While they have suggested detriment to that third party, as that party is not an eligible complainant in relation to the complaint I am considering, I cannot comment further on this matter.

Mr S is unhappy that the managing director (MD) of Rooftop didn't respond personally to the reports he was sending directly to him. Rooftop and our Investigator explained that an individual in such a role would not be involved in the day-to-day management of an individual mortgage. Mr S doesn't accept this as he had a relationship with the MD on the business networking site and believes that the MD was 'totally involved' in his case. I am satisfied that Mr S had some direct contact from the MD in response to the reports he sent directly to him, but that does not mean that the MD was involved in the way Mr S seems to think he was. As has been explained, the information sent to the MD was passed on to the relevant team in the organisation to be dealt with, which is what I would expect to happen. I don't consider that simply because Mr S chose to communicate with the MD that means the MD should reasonably have taken responsibility for the handling of Mr and Mrs S' mortgage. I don't consider Rooftop acted inappropriately in this regard.

Mr and Mrs S have said they found the content and tone of some of Rooftop's correspondence bullying, and they believe that Rooftop was determined to take the property from them. Had the latter been the case, Rooftop could have started repossession action at a much earlier stage than the date when it decided to appoint the LPA Receivers. Despite the mortgage being a commercial one (where some lenders often take a firmer approach to arrears), I am satisfied that Rooftop showed considerable forbearance in giving Mr and Mrs S the amount of time it did to sort out the situation with the mortgage for themselves. As for the content of the correspondence, Rooftop did what I would have expected it to do – it set out what might happen in the future if the situation with the mortgage didn't improve. I have seen nothing that indicates that this was designed to upset Mr and Mrs S or to try to bully them.

Mr and Mrs S have said that they have repeatedly asked for a breakdown of the charges and fees that have been applied to their mortgage. Having read the correspondence they have sent to Rooftop, I am not sure that these questions have come across clearly, which may explain why they have not had the information they want. Mr and Mrs S might want to set out a simple list of the information they wish Rooftop to provide.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs S to accept or reject my decision before 28 February 2025.

Derry Baxter
Ombudsman