

The complaint

Mr W had a buy-to-let mortgage with Topaz Finance Limited, trading as Rosinca Mortgages. He complains about how Rosinca treated him between February 2022 and December 2023 and, in particular, that:

- it added excessive legal fees to, and failed to deduct payments from, the mortgage;
- it took unnecessary legal action and repossessed the mortgaged property;
- its agent took part of a door handle from the property, and the keys to the property weren't returned promptly to Mr W when he repaid the mortgage.

What happened

Mr W had a buy-to-let interest-only mortgage with Rosinca which reached the end of its term in November 2017. He couldn't repay the mortgage when the term ended, so Rosinca began possession proceedings.

Mr W complained about the legal action Rosinca took and the legal costs it added to the mortgage, and also about the information it recorded on his credit file. Rosinca sent him final response letters on 12 February 2019, 19 March 2019, 15 May 2019, 28 August 2019, and 15 August 2022.

A suspended possession order was issued in October 2022. Possession was suspended on the basis that Mr W would pay Rosinca £700 a month until 1 February 2023, when he would repay the mortgage in full.

By February 2023 Mr W still wasn't in a position to repay the mortgage. He said he was still trying to arrange finance elsewhere in order to settle the mortgage, but it was taking longer than expected. Rosinca said it wasn't prepared to allow further forbearance and it would seek to enforce the court order.

In June 2023 Rosinca obtained a warrant for possession. Mr W made various applications to the court to suspend the warrant, and each time he requested a court hearing. One of those applications, in August 2023, resulted in a short suspension in order that the Judge could be satisfied the tenants in the property had received appropriate notice of eviction. The other applications were dismissed as being without merit.

On 5 December 2023 the property was taken into possession and the tenants evicted. On 6 December 2023 Rosinca received full payment of the mortgage and instructed the keys to the property to be returned to Mr W.

Mr W complained that Rosinca's agent had lost or taken part of a door handle and he wanted it back, and he wanted a refund of the £135 he paid for a locksmith in order to re-gain access to the property as quickly as possible. He also wanted a refund of a taxi fare and one night's hotel accommodation he said he had to pay for the tenants, a refund of payments which he said hadn't been taken off the mortgage balance, and a refund of legal costs which he said were excessive and unnecessary.

Rosinca sent Mr W its final response letter on 22 March 2024. It offered him £250 compensation, but it didn't uphold most of his complaint.

Mr W referred his complaint to the Financial Ombudsman Service. Our Investigator recommended that Rosinca refund costs relating to the repossession on 5 December 2023. Neither party accepted that conclusion, so the complaint was referred to me to decide.

I issued a provisional decision setting out my provisional conclusions about which parts of this complaint I can consider under the rules of the Financial Ombudsman Service, and setting out my provisional view about a fair outcome to those parts of the complaint.

I have since issued a decision confirming that I can only consider Mr W's complaint about Rosinca's treatment of him, including his complaint about the legal action and costs applied, from 15 August 2022 onwards. Mr W's complaint about the period before 15 August 2022 is time-barred, because he referred his complaint about that to us too late.

My provisional decision

In terms of the outcome of the parts of the complaint I can look into, I said in my provisional decision:

"Mr W found himself in a difficult situation, with a mortgage that had reached the end of its term and which he needed to repay, and I understand he had difficulty arranging borrowing elsewhere. He was eventually able to repay the Rosinca mortgage in December 2023 by taking out a bridging loan.

I've carefully considered Rosinca's decision to proceed with legal action from August 2022 onwards and ultimately to take possession of the property in December 2023. Possession should be a last resort but, ultimately, a lender is entitled to seek possession of a property if no agreement for repayment is reached. In the circumstances of Mr W's complaint, I don't consider the action Rosinca took was unreasonable.

The mortgage should have been repaid in November 2017, in line with Mr W's agreement with the original lender. By the time Rosinca obtained a suspended possession order in October 2022 the mortgage was almost five years overdue for repayment. The possession order was suspended on the condition that Mr W paid £700 each month – which at the time was more than the monthly mortgage interest – and that he then repaid the mortgage in full by 1 February 2023.

Mr W made monthly payments, but he didn't repay the mortgage in full by February 2023. I'm satisfied that Rosinca was then clear in emails it sent to Mr W in February 2023, and in particular its emails of 22 and 28 February 2023, that it would seek to enforce the possession order. Mr W assured Rosinca he would have bridging finance in place to repay the mortgage by the end of February 2023, but that didn't happen. On 1 March 2023 Rosinca confirmed in an email to Mr W that it had instructed its solicitors to proceed with an application for a warrant for possession.

By the time a warrant for possession was issued on 6 July 2023 the mortgage was still outstanding. Mr W then made various applications to the court to suspend possession. Court hearings took place in August, September, November and December 2023. Rosinca took possession of the property on 5 December 2023 and the mortgage was repaid the next day.

Against this background I don't find that Rosinca treated Mr W unfairly by proceeding with legal action and ultimately repossession. It wouldn't be reasonable to expect it to have waited indefinitely for the mortgage to be repaid. Mr W had assured it many times that he was about to make full repayment, but for various reasons that didn't happen before the repossession. Rosinca did then return the property to Mr W once it received repayment, as I'd expect.

Rosinca's records satisfy me that it didn't receive full repayment of the mortgage by or on the scheduled date for repossession of 5 December 2023. It was therefore entitled to proceed with the repossession, and it's clear from Mr W's correspondence with Rosinca and his own and Rosinca's solicitors that he knew this was the repossession date. His latest application to the court for a suspension had culminated in a hearing on 1 December 2023, at which his application was dismissed.

Rosinca told its solicitors when it received repayment of the mortgage on 6 December 2023 that the keys to the property could be released to Mr W. The solicitors relayed that message to the asset management company which handled the repossession to pass on to the estate agents, which they then did. I think this was done promptly. Mr W wants Rosinca to cover the cost (£135) of a locksmith he called to re-gain access to the property as quickly as possible. I think however that it was for him to decide to get into the property again in this way rather than wait for the keys to be released later in the day. Given my conclusion that Rosinca didn't treat him unfairly in proceeding with the repossession and that it then acted promptly to arrange for the release of the keys, I don't consider that it would be fair for me to tell it to pay the cost Mr W paid to engage a locksmith.

I also don't think it would be fair for me to tell Rosinca either to return the piece of a door handle which Mr W says went missing during the repossession or to pay for its replacement. The asset manager's report doesn't include anything about a door handle and I've seen no other supporting evidence of damage to it having been done by the asset manager rather than the locksmith Mr W employed or by other means.

Mr W has questioned the mortgage balance, because it increased between 2022 and redemption in late 2023 despite the payments he made. He says that he has overpaid, and that the legal costs Rosinca added to the mortgage were extortionate and unjustified.

I'll deal firstly with the legal costs. The terms of Mr W's mortgage entitled Rosinca to recover from Mr W legal costs it incurred in bringing or defending legal proceedings in connection with the mortgage. It could only do so however if the fees were reasonably incurred and were reasonable in amount. Rosinca has provided copies of invoices from the solicitors who acted on its behalf, as well as detailed breakdowns of how each invoice was made up.

I've considered these very carefully. Around £11,000 in legal costs was added to Mr W's mortgage during the period I can consider here. That's a considerably higher amount than might ordinarily be expected for legal proceedings to recover a mortgage debt. However, Mr W's case was not straightforward. It required more input and work from the solicitors than would be usual. This was largely as a result of Mr W's applications to the court to try to stop or suspend the repossession. I think it was reasonable for Rosinca to have instructed its solicitors to oppose those applications, and to pass on the costs of doing so to Mr W – as provided for by the mortgage terms, and especially as those applications weren't successful. Against this background, I think the fees were reasonably incurred and were reasonable in amount.

In all the circumstances, I consider that Rosinca was entitled to apply the legal fees it did to Mr W's mortgage from 15 August 2022 onwards and to charge interest on them. I also think that Mr W should reasonably have known that legal action would result in Rosinca's legal costs being added to his mortgage. Rosinca had explained that to him in final response letters in August 2019 and August 2022.

I don't think the 17 November 2023 hearing was redundant, as Mr W has argued it was on the basis that Rosinca didn't provide a redemption statement for the mortgage before the hearing. The application the court was asked to consider at that hearing was made by Mr W, not Rosinca. It was an application to suspend the repossession on the basis that Mr W had finance in place to repay the mortgage. A redemption statement wasn't needed for the court to make a decision about that, and the court dismissed Mr W's application as being without merit. I think it was reasonable for Rosinca to pass on its costs in connection with this hearing to Mr W.

I nevertheless think that Rosinca took longer than it should have done to issue a redemption statement in November 2023. It has accepted that there was a delay of just over a week, because it was gathering details of all costs in order to provide a redemption figure. However, it issued a redemption statement on 28 November 2023, and I don't find that the delay in doing so meant that Mr W was unable to settle the mortgage before 6 December 2023. The statement was provided to Mr W and his solicitors a week before the repossession date, and that should have been enough time for Mr W to make arrangements with his new lender for the new loan to complete and repay the Rosinca mortgage in time to avoid repossession.

Mr W has said that he wants the mortgage account to be reconstructed to reflect all the payments he made to it. Rosinca's records say that it has sent Mr W transaction summaries at various points, as well as annual statements. Having examined those, I find nothing to indicate that Mr W's payments are missing or weren't credited to the mortgage when they were received. The mortgage balance increased between August 2022 and December 2023 as a result of the addition of costs – mainly legal costs – and increases in the mortgage interest rate. I've already said that I think Rosinca was reasonable in applying the legal costs, and the mortgage interest rate isn't the subject of this complaint.

I think that Rosinca did make some mistakes. As well as the delay in issuing the redemption statement, it took longer than it should have to respond to Mr W's complaint. Rosinca has offered Mr W £250 by way of compensation. I know Mr W considers that insulting, but I don't find grounds on which I can fairly require Rosinca to increase its offer. I don't consider that Rosinca should compensate Mr W for the financial losses he has claimed, for the reasons I've already explained, and I think £250 is fair and reasonable in recognition of the inconvenience and upset he was caused by Rosinca's delays. There is more information on the Financial Ombudsman Service's website about our approach to awards for non-financial loss¹."

I invited Mr W and Rosinca to let me have any further evidence or arguments they wanted me to consider before I made my final decision.

Mr W didn't accept my provisional decision. He still considered that I must look at the legal action Rosinca took from February 2022 onwards, not from August 2022, and the way the resulting costs inflated the mortgage balance. He also said it would be helpful to meet in person to discuss his complaint.

¹ <https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience>

Rosinca accepted my provisional 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've carefully considered Mr W's further comments, including what he told our Investigator by phone, but I've come to the same conclusion I set out in my provisional decision. Mr W has emphasized why he considers I need to look into his complaint about what happened between February and August 2022 and has said that this complaint is largely about the payments he began making to the mortgage during that period in order to reduce the debt. I've explained separately why I can't consider a complaint about that. Mr W's strength of feeling isn't grounds on which I can set aside the time limit rules I must apply.

Mr W has said he also rejects my conclusions about the costs he incurred as a result of the repossession. He still wants a refund of the locksmith's charge plus interest and hotel costs for his tenants, and he still considers that repossession would have been avoided had Rosinca provided a redemption statement promptly.

Mr W hasn't said anything new or provided any new evidence which leads me to reach different conclusions to those I explained in my provisional decision. I said in my provisional decision that I considered Rosinca hadn't treated him unfairly in going ahead with the repossession when it did, and that when it received full repayment it then acted promptly to arrange for the release of the keys. I provisionally found that there was a delay in Rosinca issuing a redemption statement (a delay of around a week, not six weeks as Mr W has said), but that there should still have been enough time before the repossession date for Mr W to have made arrangements with his new lender for the new loan to complete. I haven't changed my provisional view about any of this, or the reasons I set out in my provisional decision.

Finally, I'm satisfied that I can fairly decide this complaint without the need to hear from Mr W in person. Mr W has set out his position at some length, he has had the opportunity to make final submissions, and I have enough information and evidence to make my decision.

My final decision

My final decision is that Topaz Finance Limited, trading as Rosinca Mortgages, has made a fair offer of compensation. It must pay Mr W £250 if he accepts this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 March 2025.

Janet Millington
Ombudsman