

The complaint

Mr U complains that Topaz Finance Limited, trading as Rosinca Mortgages, wrongly told him that it wouldn't consent to buy-to-let mortgage borrowers taking second charge secured loans. As a result, he says he was left with no choice but to redeem his buy-to-let mortgage with Rosinca in order to borrow more money from a new lender, and he has incurred significant financial loss.

What happened

Mr U had a buy-to-let mortgage which he had taken out in 2007. In July 2023 he applied to another lender for a second charge bridging loan, secured on the mortgaged property. On 18 July 2023 his solicitors wrote to Rosinca requesting a redemption statement and its consent to a second charge. On 20 July 2023 Rosinca issued a redemption statement. On 26 July 2023 Mr U phoned Rosinca to chase up its response to his request for its consent to a second charge. Rosinca told him its policy was not to consent to second charges on buy-to-let mortgages.

Mr U complained. He said the second charge loan he wanted to take out was to pay for urgent renovations to the mortgaged property and to enable him to maintain the monthly mortgage payments to Rosinca during the renovation work. He then planned to sell the property or re-let it for a higher monthly rental once work had been completed.

In August 2023 Mr U repaid the Rosinca mortgage in full. He did so by taking out a first charge bridging loan with a new lender. The new loan had a term of 12 months and Mr U borrowed around £50,000 more than the total amount he needed to repay Rosinca plus the amount he had applied to borrow on the second charge bridging loan; he has since said the extra amount was for contingencies.

In September 2023 Rosinca responded to Mr U's complaint. It said it had given him the wrong information when he called in July 2023, and it does in fact consider allowing second charges on buy-to-let properties. It apologised and offered him £100 compensation.

Mr U referred his complaint to us. He estimated his losses at more than £20,000 and said Rosinca's mistake had also caused him a great deal of stress. Our Investigator said that the complaint should be upheld and recommended that Rosinca compensate Mr U for some of the costs of the bridging loan he took out, and pay £300 for non-financial loss.

Mr U didn't say whether or not he accepted that conclusion, but Rosinca did not accept it. Rosinca said that it accepted it had made a mistake, but it didn't think it should be responsible for Mr U's decision to remortgage. It did however agree to pay £300 for non-financial loss. The complaint was referred to me. I reached a different conclusion to our Investigator, so I issued a provisional decision.

My provisional decision

I said:

"I was sorry to read about the difficult situation Mr U has found himself in. I understand that he hasn't been able to repay the bridging loan he took out in 2023. As a result it's costing him more than he expected, and I recognise that he has been under significant stress. I know this isn't the outcome he was hoping for to this complaint, but I find I can't fairly require Rosinca to compensate him for any of the costs of taking the bridging loan.

There's no dispute that Rosinca made a mistake when Mr U called it in July 2023. It wrongly told him that its policy was not to consent to second charge loans on buy-to-let properties. This was not its policy at the time of Mr U's call. Rosinca's mistake doesn't, however, mean that it would necessarily have consented to a second charge. Rosinca has said that it should have reviewed Mr U's request and then confirmed whether or not it consented. It has also said that because of Mr U's mortgage arrears in July 2023, it would not have consented to a second charge had it assessed his request as it should have done.

I've looked carefully at Rosinca's policy for consenting to second charges and at Mr U's mortgage account. Having done so, on balance, I accept that Rosinca wouldn't have consented to a second charge loan being secured on the mortgaged property had it dealt properly with Mr U's request.

Rosinca received Mr U's request for consent on 18 July 2023. The mortgage was in arrears at that point because the previous month's direct debit payment had been returned unpaid. Mr U paid the mortgage arrears later the same day, on 18 July 2023. Rosinca's records show that in June 2023 it had discussed with Mr U the difficulties he was having affording the mortgage payments and Mr U had asked for a payment holiday which it had declined.

It's clear that Mr U was struggling to afford the monthly mortgage payments in July 2023. He told Rosinca that at the time and that he needed to borrow more money urgently in order to cover the monthly mortgage payments, as well as to renovate the property. I think it's also relevant that he had applied for a second charge bridging loan rather than a longer term secured loan with lower up-front and ongoing costs. The short term of the loan and the higher costs made it a riskier proposition than a second charge loan on more standard terms might have been.

In these circumstances, I'm satisfied that it's reasonable for Rosinca to have wanted to assess Mr U's request for consent rather than simply to have consented without reviewing the matter, in line with its policy at the time, and I can see that there were good reasons for it not to have consented had it carried out an assessment.

Besides that, I think it's difficult to see that Mr U's only option was to take a bridging loan to repay the Rosinca mortgage and to borrow the extra money he needed. He has said that the renovations on the property were urgent, but they don't appear to have gone ahead soon after the remortgage in August 2023, he hasn't been able to provide any invoices or quotes for them, and the work was incomplete in August 2024 when he had the property re-valued. I've noted that Mr U was ill at around that time, but it was nevertheless his decision to take a bridging loan instead of another buy-to-let mortgage, and I don't find I can fairly conclude that that was because of the wrong information Rosinca gave him about its policy on second charges or because of anything else it did wrong.

For these reasons, I don't find that Mr U has lost out financially because of Rosinca's mistake, and I don't intend to require Rosinca to compensate him for having refinanced his mortgage on the terms he did. I consider that Mr U should fairly receive some compensation for the upset and inconvenience he was caused because Rosinca gave

him the wrong information in July 2023, and I consider that £300 is a reasonable award to reflect that.”

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

Rosinca accepted my provisional decision, but Mr U did not. He was very disappointed with my conclusions and considered them unfair. He said that he wouldn't have had to borrow the amount he did on bridging finance if Rosinca hadn't made a mistake, and this has had disastrous repercussions. He also pointed to the time and stress this matter has cost him, and the impact it has had on his health.

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 understand that Mr U was disappointed with my provisional decision and I've noted what he has said about the far-reaching impact of this matter on his finances and his health. I'm sorry to have to disappoint him again. I have, however, reached the same conclusions I set out in my provisional decision, for the same reasons.

There's no dispute that Rosinca made a mistake. But I remain of the view that it wouldn't have consented to a second charge loan being secured on the mortgaged property if it had dealt with Mr U's request as it should have done and in line with its policy at the time. It follows that I can't fairly require it to compensate Mr U for the losses he considers to have arisen because of the amount and terms of the bridging finance he took.

I think that Mr U should fairly receive compensation for non-financial loss. I don't however think the situation he is in is a result of Rosinca's mistake, and I still consider that £300 is fair and reasonable in all the circumstances. I confirm my provisional decision.

My final decision

My final decision is that Topaz Finance Limited, trading as Rosinca Mortgages, should pay Mr U £300 in settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 16 April 2025.

Janet Millington
Ombudsman