

The complaint

Ms O's complaint is about two buy-to-let mortgages she has with Topaz Finance Limited trading as Rosinca Mortgages. She does not believe that it has provided her with appropriate support when her personal circumstances were very difficult and in relation to subsequent financial difficulties. Ms O has said that she doesn't think Topaz has taken into account the impact of the distressing life events she's experienced when it decided to appoint Law of Property Act Receivers in 2024.

In settlement of the complaint Ms O would like Topaz to rescind its instruction for the Law of Property Act Receivers and refund all charges and interest that have been incurred. In addition, Ms O would like her credit file repaired and for Topaz to apologise.

What happened

Ms O took out two interest-only buy-to-let (BTL) mortgages with another lender, which have subsequently been transferred to Topaz. The first mortgage was taken out in 2003 and the second in 2006.

The terms and conditions of both mortgages state that the mortgage has to be repaid immediately in certain circumstances, which include if the mortgage is two months in arrears. They also allow the lender to put in place Law of Property Act Receivers ("Receivers") to manage the property where payments are not being made.

Ms O had made overpayments to both accounts, and they were both in credit in 2020, when she's told us she first started having financial difficulties with her property portfolio due to losing tenants because of the Covid-19 pandemic. From that time onwards, Ms O overpaid in some months, underpaid in others, or made no payments at all. The credit balance on the first mortgage was used to cover the under- and missed payments and ran out at the end of 2022. The account went into arrears in January 2023 and remained that way thereafter. The second mortgage went into arrears between April and June 2022, following which it dipped in and out of arrears until March 2023, from which time it has been constantly in arrears.

In June 2023 Ms O told Topaz that she was in the process of increasing the rents on the properties which would improve the financial situation, and that she anticipated the arrears reducing significantly over the following few months. She confirmed that she would be making additional payments that month to clear the arrears.

A couple of months later Ms O again told Topaz that she was going to clear the arrears, but she didn't have any further funds to pay that month. She said she'd make a payment to each mortgage in the middle of the following month.

In October 2023 Ms O told Topaz that she could pay £1,000 toward the mortgages each month, which would include paying some of the arrears. She said that some of her rental contracts were coming to an end, and she was looking to put new contracts in place. However, as one of the properties needed work done, and she had another property empty at the time, she hadn't made the payment that was due.

In December 2023 Topaz informed Ms O that she needed to speak to it to make a formal arrangement to clear the arrears on the mortgages. She was warned that if no such arrangement was in place, it might put in place Receivers to manage the properties.

On 27 December 2023 Ms O said to Topaz that she was aware that the balances on the mortgages had increased. She explained that the rental income from the two properties was not sufficient to pay the mortgages, given the interest rate rises that had occurred. However, she had given notice to the current tenants and arranged new ones, who would be paying higher rents, which would be sufficient to cover the mortgage and allow the arrears to be addressed. She anticipated the arrears being cleared by August 2024. Topaz asked Ms O to give it copies of the eviction notices served to the tenants and the new contracts, so that a hold could be put on the accounts.

Ms O didn't provide the requested documentation. She emailed Topaz on 7 February 2024 to tell it that the tenants had left the property the previous week and she was in the process of sorting out the new tenants moving in. She promised an update by the end of the week.

On 10 February 2024 Topaz thanked Ms O for the update on the situation, but it explained that it was issuing a formal demand for payment of the full outstanding balances. It was explained that in order to stop any further action, Ms O needed to provide it with various documents and a repayment plan needed to be put in place by 19 February 2024. The formal demand was sent on the same day, requiring Ms O to repay the mortgages by 19 February 2024. Ms O did not contact Topaz to discuss a payment arrangement.

Topaz assessed the situation at the beginning of March 2024. At that time Ms O owed approximately £110,000 and £157,000 respectively. The arrears on the two accounts totalled over £10,000, and the payments being made were less than the contractual monthly payment. As Ms O was not providing regular updates and the situation had not improved, Topaz decided to appoint Receivers.

On 1 March 2024 Topaz wrote to Ms O to inform her that it as she had not repaid the mortgage as required by the final demand, it had appointed Receivers. It explained the role of the Receivers and the fees that would be charged. A further letter was sent to Ms O on 19 March 2024. The instruction was sent to the Receivers on 22 March 2024.

Ms O called Topaz on 27 March 2024 about the appointment of the Receivers. Topaz sent her forms that needed to be completed if she wanted Topaz to consider rescinding the instruction to the Receivers. Ms O returned the forms the following day and confirmed that her income would be increasing from the following week, and she would be able to pay £400 per month toward the arrears on each of the mortgages. She told Topaz she had been unable to manage her business due to illness.

Topaz considered the information Ms O had provided and responded on 2 April 2024. It explained that it wanted additional information and confirmed some actions she needed to take in order for it to further consider the request to remove the Receivers. Ms O responded the same day to reiterate what she had previously said about her illness and what she could afford to pay going forwards. It does not appear that she provided any further information.

A couple of weeks later Ms O complained about the appointment of the Receivers. She said she was not happy about this happening, given she'd kept Topaz up to date on what was happening with the properties and had shared information about her personal situation. Ms O said she considered Topaz's action had been aggressive and unnecessary.

Topaz responded to the complaint in a letter of 23 May 2024. It set out the events since the mortgages had gone into arrears. Topaz confirmed that it had taken Ms O's health situation

into account before appointing Receivers, and it considered it had acted appropriately when doing so in the circumstances. The complaint was not upheld.

Ms O responded to Topaz. She said that, as it had not referenced her personal and medical situation in its response to the complaint, she believed it had not applied appropriate care to her situation. Topaz responded to that concern in a letter of 8 July 2024 and confirmed that it had not changed its position on the complaint issues.

Ms O asked this Service to consider her complaint. One of our Investigators did, but she didn't recommend that it be upheld. Ms O didn't accept the Investigator's conclusions. She provided some additional background to the business and financial difficulties she had been in from 2020, the root of which she attributed to her health situation which had started the year before. She asked that the case be passed on for a second opinion. It was decided that the complaint should be referred to an Ombudsman.

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.

Ms O has been very open with us about everything that she's gone through, and I thank her for her frankness and honesty. She's clearly been through some very difficult times, and it can't have been easy recounting things to us as part of this complaint. I won't detail everything that she's told us here to protect her privacy, but I can reassure Ms O that I have read and considered everything.

I would highlight at this point that Ms O's complaint is about two BTL mortgages, taken out for investment purposes. They are unregulated, considered to be commercial mortgages and are not subject to the regulatory protections a residential mortgage would be. It is for Ms O to manage the mortgages, including ensuring that the monthly payments are made. That said, while the mortgages aren't subject to the regulatory protections available to residential mortgage customers, Topaz is still required to treat Ms O fairly and reasonably.

Ms O's mortgages went into arrears in the first half of 2023 and remained in that position. While she put forward proposals for resolving the situation on numerous occasions, she didn't fulfil those commitments. A lender is expected to provide a borrower with support and some forbearance when in financial difficulties. I have reviewed the communications and actions of Topaz, and I am satisfied that it did what I would expect it to have done. It listened to Ms O and it took no legal or other action for a significant period of time, despite the mortgage terms and conditions allowing it to take action when the mortgages were in just two months of arrears.

Topaz allowed Ms O time to fulfil the plans she put forward to resolve the arrears situation, and it was not until she had failed to fulfil the commitments she'd made several times and was not responding to its correspondence that it decided to move forward in another way. I also note that Topaz was clear about what might happen if Ms O didn't respond to it and commit to a formal arrangement to clear the arrears. Ms O didn't respond, and no such arrangement was put in place. Given the situation, including the deteriorating arrears position, I do not consider that it was inappropriate for Topaz to have appointed Receivers when it did.

Ms O has said that she doesn't believe that Topaz took her health situation into account when it made the decision to appoint Receivers. I have seen the documentation completed before that decision was made, which highlighted the circumstances and her status as a vulnerable individual. So I am satisfied that her situation was taken into account when the

decision was made. The fact that an individual is vulnerable, does not mean that a lender should not take action where there are longstanding problems. That is especially so when it has been assured that the problem is due to the business situation, rather than the customer's personal situation and vulnerability.

Ms O asked Topaz to rescind the instruction to the Receivers. It considered this request and told Ms O what she needed to do and provide in order to allow it to be satisfied that was the right thing to do. It doesn't appear that she complied with those requirements, and so I can't find that it was wrong for Topaz to leave the Receivers in place when she asked prior to making her complaint.

The situation is ongoing, and I would clarify that this decision only deals with the situation as at the time of the complaint. If the Receivers remain in place, and Ms O still wants the instruction made by Topaz rescinded, she will need to speak to Topaz about the matter.

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 Ms O to accept or reject my decision before 10 July 2025.

Derry Baxter
Ombudsman