

The complaint

Ms G complains that Topaz Finance Limited took too long to issue redemption statements for her buy to let mortgages, and as result she was unable to complete on the new mortgage she had arranged before it expired.

What happened

Ms G had five interest-only buy to let mortgages with GMAC-RFC Ltd, which were all transferred to Topaz. The terms of the mortgages ended in February 2020. Ms G had been unable to repay them by then – she had struggled to refinance or sell the flats the mortgages were secured on because they were in negative equity.

In late 2023 Topaz appointed receivers to manage the properties. At around the same time, through a broker Ms G was able to arrange a multi-property mortgage offer for the five flats with a new lender. The new mortgage wasn't enough to repay all five mortgages so she also arranged to refinance another property she owned in order to cover the shortfall.

By March 2024 Ms G was in a position to go ahead with the new multi-property mortgage. On 19 March 2024 the solicitors acting for her in the new mortgage asked Topaz for redemption statements ready for a completion date of 5 April 2024. They sent multiple chasers stressing the urgency of receiving the redemption statements over the following few weeks.

On 8 April 2024 Topaz issued redemption statements for two of the properties and on 11 April 2024 it issued redemption statements for another two. On 26 April 2024 it issued the redemption statement for the fifth property.

The new lender had extended Ms G's mortgage offer until 24 April 2024 but was not prepared to extend it beyond that. By that date Topaz had issued redemption statements for only four of the five properties. Ms G's mortgage offer expired and the new mortgage didn't go ahead.

In the meantime on 9 April 2024 Ms G had repaid two of the five Topaz mortgages in full, so three remained outstanding. I understand that the remaining mortgaged properties have since been sold in possession leaving shortfalls.

Ms G instructed solicitors to make a complaint on her behalf about what had happened. Topaz said it accepted it had caused avoidable delay in issuing a redemption statement for one of the properties. It offered Ms G £200 compensation and said it would consider compensating her for her costs if she provided satisfactory evidence of them.

Topaz wrote again to the solicitors acting for Ms G in July 2024 with more information about what it needed to assess Ms G's losses, and again in August 2024 saying that it couldn't consider the matter further without a better understanding of what losses were attributable to its delay with the redemption statement.

Ms G referred her complaint to us. Our Investigator concluded that Topaz had caused some

avoidable delay, but he didn't think it should pay the losses Ms G is claiming. He recommended that it increase its offer for distress and inconvenience to £500.

Topaz accepted the Investigator's recommendation but Ms G did not. She said £500 doesn't reflect the financial impact on her of what happened and pointed to the fees amounting to more than £20,000 which she had paid to the solicitors who had represented her in this complaint.

The complaint was referred to me. I reached a different conclusion to our Investigator, so I issued a provisional decision.

My first provisional decision

I said:

"I don't think it was unreasonable for Topaz to have needed a bit longer than might usually be expected to issue redemption statements for Ms G's mortgages, given that the properties were being managed by receivers and the resulting costs needed to be accounted for before statements could be issued. However, Topaz took longer than it reasonably should have done. It caused some avoidable delay and it has accepted that. Its records show that the delay arose because it sent some emails to the wrong place and, had this not happened, it should have issued the final redemption statement on or shortly after 15 April 2024.

On 16 April 2024 the proposed new lender had extended its mortgage offer until 24 April 2024. I've seen a copy of the email it sent to Ms G's solicitors confirming that, and also saying: "Please note that if the offer does not complete by this date a new offer will be required, which will be subject to our lending policy and product availability at that time and may be subject to payment of further fees".

I've also seen copies of multiple emails from the conveyancing solicitors chasing up the outstanding redemption statement from Topaz. They said that Ms G would not be able to repay the Topaz mortgages if the redemption statement didn't arrive before her mortgage offer expired. I'm satisfied that they made the urgency of the situation clear. Further emails with the new lender on 30 April 2024 show that the lender was not prepared to extend the offer any further and Ms G would need to re-apply.

I see no reason why the multi-property mortgage might not have gone ahead had Topaz provided redemption statements for all five mortgages more quickly, as it should have done. Its records show that it should have been able to issue all five redemption statements before Ms G's mortgage offer expired on 24 April 2024. Emails between the conveyancing solicitors and the new lender confirm that all the new lender's requirements had been met and the lender was happy to proceed. It follows that I find Ms G lost out on the opportunity to take the new mortgage she had arranged as a result of Topaz's avoidable delay.

I think it's likely that Ms G incurred losses because of what happened. Topaz asked the solicitors who were acting for her in her complaint for details of the costs and losses she had incurred as a result of the late redemption statement three times in 2024. Ms G has since provided:

- Two invoices from the conveyancing solicitors:
 - one dated 10 April 2024, for £36, for returning the mortgage advance money to the proposed new lender;

- another dated 16 May 2024, for £5,100, for legal services in connection with the redemption of the mortgages on two of the flats mortgaged to Topaz and the abortive remortgage of the other three flats.
- Invoices from a different firm of solicitors who were acting for her in this complaint, and details of various payments she has made to them, amounting to more than £20,000.

Ms G has also told us that she was left owing shortfalls on the properties which were sold, and she had to continue paying the mortgages and other costs of the properties pending sale.

I'll deal with each of the claims for loss set out above in turn.

It's usual practice for solicitors to request mortgage money in time for redemption of any existing mortgages. Given the various chasers the conveyancing solicitors had sent Topaz and the calls they had made, emphasising the urgency of the situation, I don't think it was unreasonable for them to have requested the money in time for the expected completion date. I therefore consider that Topaz should refund the £36 fee for which Ms G was invoiced on 10 April 2024.

The second invoice from the conveyancing solicitors doesn't include a breakdown of the charges. It says only that it's for a total of £5,100 "For legal services in connection with [t]he redemption of mortgage on Flats [two flat numbers] And abortive remortgage of [three flat numbers]".

Had the new mortgage completed as it should then Ms G would have had to pay at least part of this second invoice. But the new mortgage didn't complete. It didn't complete because of Topaz's failure to issue a redemption statement in time. Topaz's delay was between 15 and 26 April 2024. Ms G redeemed two of the mortgages before that, on 9 April 2024. So I don't think I can fairly hold Topaz responsible for the legal costs she incurred in redeeming the two mortgages. I do think however that it should pay the legal costs in the abortive remortgage, plus interest on those costs, since it is responsible for the fact that the remortgage didn't go ahead.

I can't be sure about how much of the £5,100 was payable in connection with the redemptions and how much was in connection with the abortive remortgage. Topaz asked Ms G, through her solicitors, for details of her costs and losses several times but no further information was provided. It's not clear why that was. I would expect a firm of solicitors to be able to provide a breakdown of the fees they charged Ms G, so Ms G should now try to obtain that and provide details in response to this provisional decision. I will consider that information before I finalise my award of compensation.

I turn now to the invoices from the second firm of solicitors. They represented Ms G in her complaint rather than in the proposed remortgage. I don't think I can reasonably require Topaz to pay the fees Ms G has paid this firm of solicitors. Ms G hasn't made us aware of any particular reason why she needed professional representation to make a complaint, she has recently been managing her complaint without legal help, and the Financial Ombudsman Service doesn't require complainants to be represented or generally make awards for the cost of representation. In the circumstances, I don't think I can fairly require Topaz to pay the legal costs Ms G incurred in complaining.

Ms G says she had to pay the ongoing costs of the properties before they were sold, such as ground rent, service charges and council tax. She would however have had to

cover those costs in any case had the proposed new mortgage gone ahead. So I make no award for those.

I understand that shortfalls remain outstanding on the mortgages following the sale of the properties. Ms G has indicated that she's unhappy about the amounts the properties were sold for, and I think that's a matter for her to complain about to Topaz in the first instance if she hasn't done so already. Topaz should have the opportunity to consider it before the Financial Ombudsman Service can investigate. The same applies to Ms G's complaint about Topaz's treatment of her in the years leading up to the problem with the redemption statements and her complaint about how the receivers treated her. These aren't the complaints Ms G brought to us, but she can take them up separately with Topaz if she wishes. If she's unhappy with Topaz's response, she'll be able to bring that complaint to us at the time.

Ms G says she has incurred losses as a result of the sale of the properties but she hasn't quantified them or provided any further information. And, unfortunately, the properties have now been sold; those sales can't be unwound. I will consider any further evidence Ms G wishes to provide about her losses before I make a final decision, but I must bear in mind that any loss of rental income would need to be offset against the ongoing costs of the properties including mortgage interest. If Ms G wants me to consider any loss under this heading, therefore, she'll need to evidence both the income and the full costs of the properties in the period leading up to the remortgage, and based on that her projected level of return afterwards, factoring in the costs of the proposed new mortgage.

I must also consider the wider circumstances, including what steps Ms G took to mitigate her losses. It's unclear what alternative arrangements Ms G sought to repay the remaining mortgages when the proposed multi-property mortgage didn't complete, including for example by re-applying to the new lender which had already made an offer. If she did re-apply but the new lender refused a new application, she should provide evidence of this. And if she chose not to apply, she should explain why not. While her situation wasn't straightforward, she had chosen to repay two of the mortgages in full. This meant the cash she had available to reduce all five mortgage balances and remove the properties from negative equity had been spent – which is likely to have affected her ability to arrange another remortgage after her mortgage offer expired in April 2024. I will consider any further evidence and arguments Ms G wishes to provide about this. I will also consider details she provides of any fees she paid the proposed new lender and her broker and which were not refundable if the new mortgage didn't complete.

Putting things right

For the reasons I've explained, I propose to require Topaz Finance Limited to pay Ms G £36, representing the solicitors fee she was invoiced for on 10 April 2024, plus 8% annual simple interest on that sum from the date of payment to the date of settlement. Ms G should let me know when she paid this fee in response to this provisional decision.

Subject to further evidence and information from Ms G, I may also decide that Topaz should refund further legal fees for the abortive remortgage, fees she paid the proposed new lender and her broker and which were not refundable, and other reasonably foreseeable losses which she can evidence and which arose as a result of Topaz's delay. I will share any further evidence of these with Topaz before finalising compensation.

Finally, I can see that Ms G has found this matter very upsetting. She had been trying for some time to find a way to repay the Topaz mortgages and by early 2024 it appeared

that she had found a solution, but unfortunately it didn't work out. She has explained that this matter has had a significant impact on her, causing a huge amount of stress and anxiety and affecting her health. I've thought carefully about everything she has said, as well as about the extent of the delay Topaz caused, and in all the circumstances I think the £500 our Investigator recommended for non-financial loss is fair and reasonable."

Responses to my first provisional decision

Topaz accepted my first provisional decision. Ms G didn't say whether or not she accepted it. She provided the following further documents:

- E-mail correspondence she had with a mortgage broker in June and July 2024 in which she enquired about a buy to let mortgage on the three remaining flats. The broker told Ms G that she would probably only be able to borrow a maximum of around £213,000 – much less than the £350,000 she wanted. Ms G decided not to go ahead. The broker confirmed that there was no fee for this advice.
- Undated e-mail correspondence with another mortgage broker in which the broker said Ms G wouldn't be able to arrange a new mortgage on two of the flats because Topaz had already taken the properties into possession.
- Correspondence from the solicitors acting in the abortive multi-property mortgage with more details about how their £5,100 fee was made up.

I issued a second provisional decision to set out my conclusions about compensation in more detail.

My second provisional decision

I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've also looked carefully at the further documents Ms G has provided. Having done so, I see no reason to change the conclusions I set out in my first provisional decision about how this complaint should fairly be resolved, and I can now provisionally set out how I consider compensation should be calculated.

The conveyancing solicitors have provided more detail about how their £5,100 fee on the 16 May 2024 invoice is made up. They have explained their hourly rate and the substantive work they did on the abortive remortgage and the redemption of the two mortgages. They haven't however set out how much of their fee was for work on the redemptions and how much was for work on the remortgage. I will arrange for our Investigator to share the breakdown the solicitors have provided with Topaz.

On the basis of the available information I think the fairest approach is for Topaz to pay three fifths of the £5,100 solicitors fee. I take that view because three of the five mortgages remained outstanding as a result of Topaz's mistake, but I can't fairly hold Topaz responsible for the legal costs Ms G incurred in redeeming the other two mortgages. Three fifths of £5,100 comes to £3,060, so I consider that Topaz should pay Ms G that sum, plus interest.

Ms G hasn't provided details of when she paid either the £5,100 or the £36 fee, so for the purpose of calculating interest I will assume that she paid them a month after the

dates on the invoices – that is, 16 June 2024 for the £5,100 invoice dated 16 May 2024 and 10 May 2024 for the £36 invoice dated 10 April 2024.

Ms G hasn't provided any further evidence of loss. The broker she took advice from in June and July 2024 didn't charge her a fee, and the eventual repossession of the properties isn't a matter I can consider as part of this complaint. Some of the broker correspondence Ms G has now provided indicates that her decision to repay two of the Topaz mortgages in full and in doing so to spend the money she had available to reduce the balances on the remaining three mortgages meant she couldn't then obtain a mortgage to cover the balances on those remaining mortgages. I don't think I can fairly require Topaz to compensate her for that given that the two mortgages were redeemed before Topaz's delay with the redemption statements arose.

Putting things right

For the reasons I've explained, as well as those set out in more detail in my first provisional decision, I propose to require Topaz Finance Limited to pay Ms G:

- £36, for the solicitors fee she was invoiced for on 10 April 2024, plus 8% annual simple interest on that sum from 10 May 2024 to the date of settlement;
- £3,060, for part of the solicitors fee she was invoiced for on 16 May 2024, plus 8% annual simple interest on that sum from 16 June 2024 to the date of settlement;
- £500 compensation for non-financial loss.

If Topaz considers that it's required by HM Revenue & Customs to deduct income tax from the interest element of my proposed award, it should tell Ms G how much it has taken off. It should also give Ms G a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate."

Responses to my second provisional decision

Topaz confirmed receipt of my second provisional decision, but it didn't say whether or not it accepted it and it didn't provide any further comments or evidence before the deadline for its response.

Ms G provided a further email from the conveyancing solicitors with more details of their costs, along with confirmation of the date she made a payment to them.

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 G's conveyancing solicitors have now provided a breakdown of the costs of preparation work, emails and calls for redeeming the two Topaz mortgages which Ms G repaid on 9 April 2024. They have said that this came to just over £400, and any other legal work in connection with those two properties can't be separated from the work on the other three properties because the abortive mortgage was a multi-property facility.

I understand the point the solicitors have made. I am however surprised that if their costs for work in connection with the redeemed mortgages could be split off and set out in the way they have now done they could not have been itemised sooner, when asked by Topaz and later by Ms G after I issued my first provisional decision. I also note that in a previous

response to a request for a breakdown of their charges the solicitors had referred to costs involved in redeeming the two mortgages and updating the Land Registry, but those aren't specifically included in the most recent list of costs.

The proposed new mortgage didn't complete because of Topaz's failure to issue one of the redemption statements in time. But, as I said in my provisional decision, it appears that Ms G's decision to repay two of the mortgages – before Topaz caused delay – meant that she no longer had available capital to reduce the balances on the remaining mortgages and she couldn't then get a new mortgage elsewhere. But for that decision, I think some of the legal costs she paid are likely not to have been lost.

In all the circumstances, and having carefully considered the further documents Ms G has provided, I remain of the view that the fairest way to settle this complaint is for Topaz to pay three fifths of the £5,100 solicitors fee, given that three of the five mortgages remained outstanding as a result of Topaz's mistake.

Ms G has provided confirmation from her bank of a payment of £25,000 which she made from her current account to the conveyancing solicitors on 3 April 2024, along with confirmation of receipt from the solicitors on 4 April 2024. It's unclear why this payment was for so much more than the £5,100 for which Ms G was later invoiced, but it's common for solicitors' fees to be paid upfront. In the circumstances I consider it reasonable to take 3 April 2024 as the start date for the calculation of compensatory interest.

Putting things right

Topaz Finance Limited should pay Ms G:

- £3,096 for solicitors' fees, plus 8% annual simple interest on that sum from 3 April 2024 to the date of settlement;
- £500 compensation for non-financial loss.

If Topaz considers that it's required by HM Revenue & Customs to deduct income tax from the interest element of my award, it should tell Ms G how much it has taken off. It should also give Ms G a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 7 January 2026.

Janet Millington
Ombudsman