

## **The complaint**

Mr and Mrs S complain that Topaz Finance Limited trading as Rosinca Mortgages incorrectly registered its charge against two properties they own.

## **What happened**

In 2006, Mr and Mrs S took out a number of buy-to-let mortgages that were subsequently transferred to Rosinca. Their complaint is about two of those mortgages. They said that Rosinca incorrectly recorded a charge against the freehold rather than the leasehold – and this only came to light when they were trying to remortgage to a different lender.

Mr and Mrs S also complain that Rosinca had been charging interest on a mortgage balance that was too high and that Rosinca had added its solicitor's fees to the mortgage.

Mr and Mrs S want Rosinca to:

- Compensate them for the stress and hardship caused by everything that happened.
- Refund Rosinca's legal fees of around £5,000 that have been added to the mortgage with interest.
- Compensate them for having to stay on Rosinca's standard variable rate (SVR) on all of their mortgages because they were unable to remortgage to another lender.
- Refund their costs to create a new lease.
- Refund their representative's costs.
- Refund the interest charged on the difference between what they believe was the correct balance – and the actual balance of the mortgage.

The investigator said we couldn't look at the complaint about the charges as the complaint was referred to us more than six months after Rosinca issued its final response to that complaint.

Mr and Mrs S's representative said that they would like us to consider the complaints about the increase to the mortgage balance and the solicitor's costs that have been added to the mortgage.

When the investigator looked at those points, he did not think the complaint should be upheld. He said that Rosinca's offer to cover £1,000 of legal fees was fair.

Mr and Mrs S's representative did not accept what the investigator said. They said that the complaint about the solicitor's fees and the increase in balance were separate – the investigator had not dealt with the increase in balance at all. They also said that the solicitors act on behalf of the lenders, not the borrowers. It is for the lender to check the conveyancer's paperwork before they advance the mortgage amount.

## 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.

### Jurisdiction

On 17 May 2022, Rosinca issued a final response to the complaint that the charge was registered against the freehold of two of Mr and Mrs S's properties. They had six months to refer the complaint to our service. They did not do so until 24 February 2023. That is more than six months after the final response was sent. Rosinca has not consented to us considering the complaint and I don't consider there were exceptional circumstances that prevented Mr and Mrs S complying with our time limits. So I don't have the power to consider a complaint about the charges.

I accept that Mr and Mrs S complained to Rosinca in December 2021. And they contacted us about the complaint between 3 December 2021 and 24 March 2022. But I can't see that any of the contact could reasonably be interpreted as a referral of the complaint to us, rather than updates about what was happening.

The first referral of the complaint to us was on 24 February 2023. As I've explained that was too late for us to consider the complaint.

### Mortgage balance and solicitor's costs

Mr and Mrs S said that they borrowed around £170,000 – but their balance had increased to around £180,000. They understood that was made up of around £5,000 of solicitor's fees that were shown on the redemption statement dated 28 February 2023. But they did not understand how the balance had increased by around £5,000 before that.

Looking at the information I have, the reason the mortgage balance increased, was also solicitor's fees. Here are all the solicitor's costs added to the mortgage:

26 February 2020	£1,521.60
20 May 2020	£1,231.80
8 September 2020	£604.80
3 February 2021	£583.00
3 February 2021	£464.40
2 September 2022	£1,885.80
13 September 2022	£571.20
23 March 2023	£775.20
14 June 2023	£1,069.20
21 July 2023	£1,069.20
Total	£9,776.20

I am satisfied that the increase in balance from then the mortgage was taken out was due to

Rosinca adding solicitor's costs to the balance.

The terms and conditions of the mortgage say:

*You must pay any costs arising in connection with the agreement and any fees we charge.*

*You agree to pay our costs and fees in full unless you show that:*

- *we acted unreasonably and as a result, costs or fees were charged; or*
- *the amount of the costs or fees is unreasonable.*

"Costs" are defined in the agreement:

*all our costs and expenses arising in connection with the agreement. Our costs include*

*(but are not limited to) all costs and expenses we have to pay:*

- *in any legal proceedings concerning the agreement (whether or not you are involved in the proceedings);*
- *to protect our rights under the agreement;*

The difficulty I have is that I can't consider whether there was a mistake in the first place by Rosinca's solicitors or whether the steps taken by Rosinca in respect of that dispute up to May 2022 were reasonable – that is out of jurisdiction for the reasons set out above – so I am not making any decision on the merits of that complaint. It would be unusual though for the solicitors to be acting solely for Rosinca in any purchase and not also Mr and Mrs S.

Rosinca's solicitor explained that the fees were incurred in responding to Mr and Mrs S's application to remove the charge against the freehold title and in rectifying the issues with the security. There were also costs incurred in engaging with Mr and Mrs S's representative and solicitors in dealing with associated matters. I consider it was reasonable for Rosinca to pass on such costs. It was clearly protecting its rights under the agreement by making sure its security was protected.

Rosinca has provided evidence that it has passed on the costs it was charged by its solicitor for dealing with matters relating to the mortgage and protecting its security. They are not out of line with what I would expect in the circumstances. I don't consider Rosinca has acted unreasonably and it has passed on its legal costs as it was entitled to do so under the agreement Mr and Mrs S had with it. It follows, that it is entitled to charge interest on the increased balance.

Rosinca had previously offered Mr and Mrs S £1,000 towards their legal costs. But that was in respect of the previous complaint, which I've explained is out of time. I don't consider Rosinca needs to do anything further.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 11 March 2024.

Ken Rose  
**Ombudsman**