

## The complaint

Mr L complains that Topaz Finance Limited incorrectly told him that he was not allowed to let his buy-to-let property as the term had ended.

## What happened

Mr L had a buy-to-let mortgage with Topaz. The term ended in 2022 and Mr L planned to sell the property to repay the mortgage.

Mr L said Topaz told him that he could not let the mortgaged property as the term of the mortgage had ended. But in August 2022, Topaz said that the initial advice was wrong – and he could in fact have let the property. Mr L said that if he had been given the correct information he could have let the property and he has lost out on rental income for around eight months. He wants Topaz to pay him that amount in addition to the £500 compensation it has already offered.

The investigator initially said that Topaz's offer of £500 was fair. On review, he thought that it was not until May 2023 that Topaz gave Mr L incorrect information about his ability to let the property. The investigator considered that if Mr L had been given the correct information he would have been able to arrange a short-term let between from 30 May to 23 June 2023 – so Topaz should pay the lost rental income of £2,128 – less the £500 it has already offered.

Mr L accepted what the investigator said. Topaz did not. So the complaint was referred to me for review.

After reviewing the file, I thought Topaz's offer of £500 was fair. I emailed Mr L and explained that while Topaz had incorrectly told him that it would not allow him to let the property. The correct position was that it would refer an application for him to do so to its underwriters. But Topaz had provided evidence that it was likely any such application would be declined.

Further, even if Topaz did agree the short term let, that decision would likely have taken five working days. There is no evidence the prospective tenant could have wait that long bearing in mind the short term nature of the let – and there was no evidence that the let would actually have gone ahead.

Mr L did not accept what I said. He made a number of points, including:

- There was interest from other tenants. If the first prospective tenants had fallen through he could have let the property to other tenants on a short term basis.
- The property market was buoyant at that time and he would not have struggled to let the property.
- There was no guarantee Topaz would have approved his request or any evidence to support the short-term rental income. But he was concerned that those factors are being used to dismiss his claim without fully acknowledging the impact of the incorrect information Topaz gave him.

## **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.

Mr L's mortgage term had ended in August 2022. He'd agreed to repay the balance in full by that date. But lenders should understand that sometimes things don't work out as planned and should consider whether to offer forbearance, such as giving a borrower more time. Overall Topaz acted reasonably by giving Mr L time to sell the mortgaged property.

I've looked at all of the evidence we have. I agree with the investigator that I can't see that Mr L was given incorrect information until 30 May 2023. While there were earlier conversations around letting the property, the requests were linked to the term also being extended. But on 30 May 2023, he was told it was not possible to let the property as the term of the mortgage had ended. The correct position was that Topaz would consider whether to allow the let on a case-by-case basis after a referral to an underwriter.

Where a business has given a customer incorrect information, I would usually look to put the affected party back in the position they would have been in had they been given the correct information in the first place. I consider if Topaz had told Mr L that it would consider a request to let the property, he would have made such a request.

Topaz has told us that it had considered an application to let the property it would probably have been declined. It said the mortgage had past its term end and it had agreed forbearance. Letting the property would affect its saleability and that was how Mr L planned to repay the mortgage. Those are all legitimate reasons for a lender to decline such a request. On balance, I am not persuaded that had Mr L requested that he could let his property that Topaz would have agreed to that.

I accept that it is difficult for Mr L to accept such a decision made in hindsight. But even if I think Topaz would have agreed to a short term let, I don't consider I have sufficient evidence of the financial loss that caused Mr L.

The offer Mr L received to let the property short term was made on 27 May 2023. But he did not speak to Topaz until 30 May 2023. I understand that was because 27 May 2023 was a Saturday and 29 May 2023 was a bank holiday.

Topaz has told us that it is likely to have taken a further five working days to make a decision. That means if Topaz had considered an application from Mr L, he may not have received an answer until Monday 5 June 2023. So even if Topaz had agreed the request - and that is far from clear - there is no evidence the tenant could have waited until 5 June, bearing in mind the offer says her daughter was due to give birth on 3 June and that was the reason for her visit to the UK.

I also have to take into account that even if Topaz had approved the request and was able to do make a decision quickly enough, there is no evidence that the let would have gone ahead.

I understand that Mr L considers that even if the short term let had gone ahead, he could have arranged others – and he has lost out on potential rental income. But we do not know if Topaz would have agreed to ongoing lets rather than one-off short term let. And we do not have any evidence to support that the property could have been let or what income it would have generated. There is no basis for me to make an award for financial loss.

That is not to downplay the significant error that Topaz made or the impact on Mr L. It should

have taken a great deal more care to give him clear and accurate information. But for the reason I've explained, it's not clear that Topaz would have approved the request had it been made. And even if that was not the case, I don't consider we have sufficient evidence to show that Mr L suffered a financial loss as a direct result of Topaz's mistake.

That leaves an award for the distress and inconvenience Topaz's error caused to Mr L. I accept it was a significant error and it has caused Mr L a lot of unnecessary worry and upset that his financial position could have been improved if Topaz had given him accurate information. But Topaz has offered him £500 in recognition of the impact of its mistake on Mr L. Looking at how we make such awards, I consider that is fair in all the circumstances.

### **My final decision**

My final decision is that Topaz Finance Limits should pay Mr L £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 October 2024.

Ken Rose  
**Ombudsman**