

The complaint

Mr P is unhappy with how Topaz Finance Limited trading as Rosolite Mortgages (Rosolite) dealt with the repossession of his property.

The main issue that Mr P has is that Rosolite, marketed the property as a three-bedroom maisonette when it was in fact a five-bedroom property. Mr P is also unhappy that information was held at His Majesty's Land Registry (HMLR) which was incorrect and he feels this negatively impacted offers which were received on the property. He was also unhappy that interest continued to accrue on the mortgage while he was making attempts to sort out the marketing information.

Mr P was also unhappy that Rosolite would only communicate with him by letter as he would have preferred communication by telephone or email.

What happened

Mr P took out a residential mortgage in 2003 but from what we were told, it looks like the property was rented out. The mortgage account has been in arrears on and off since 2014 and Mr P was engaging with Rosolite about this.

Sadly, Mr P was involved in a serious car accident in 2018 and as a result of the injuries he sustained, he was unable to manage his financial affairs. Mr P said he spent several years in a 'waking coma'.

Mr P explained that there was another incident that happened in 2022 which further impacted his ability to manage his day-to-day life and this also set him back. But he hasn't shared any information with us about the specifics of this – just that something happened. Mr P said that his medical team managed to find a suitable treatment for him and he is feeling a little better.

Mr P has been honest to acknowledge that the payments towards his mortgage were sporadic and at times, payments were not made at all which has impacted the arrears on the account.

In September 2021, a field agent visited the property, and they determined that the property was unoccupied. They said that there wasn't any sign of any furniture in the property and the neighbours confirmed that Mr P didn't live there.

On 24 January 2022, Rosolite commenced legal proceedings because they hadn't had any contact from Mr P for a number of years. Rosolite obtained a possession order on 23 August 2022 and the property was repossessed on 3 December 2023.

A valuation was carried out on the property and based on what the valuer said, Rosolite marketed the property as a three-bedroom property and it was sold on 9 August 2024.

Mr P wasn't happy that the property was marketed as a three-bedroom as he said it had five-bedrooms. He also said he wasn't happy about how his personal possessions were dealt with when Rosolite took ownership of the property.

Mr P brought his complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. She wasn't persuaded that Rosolite made an error as they relied on the information that was given to them by the surveyor in terms of how they marketed the

property. She also explained that Rosolite gave Mr P adequate time to remove his possessions from the property, but Mr P didn't do this.

Mr P didn't agree that the property should have been marketed as a three-bedroom. He did however accept what we told him about his possessions and the other issues he raised. He made it clear to the investigator that the only thing he wanted the Ombudsman to consider, was how his property was marketed.

In summary, he made the following comments in relation to this:

- The land registry held incorrect information about the property and showed that the flat was sold for £114,000 previously – and Mr P believes this is why the offers were low.
- The property was incorrectly marketed as a less appealing three-bedroom property.
- Interested parties were being told by the estate agents that the bedrooms upstairs could not be used as bedrooms.
- Rosolite didn't provide the correct documentation (building certificate) to the surveyor so believes Rosolite are to blame.
- Rosolite told Mr P that the property would get more 'clicks' if it was described as a five-bedroom property. They sold a five-bedroom flat as a three bedroom.
- The property was never re-listed as a five-bedroom property at a price of £160,000 – which is what the surveyor said. It had already sold as a three bedroom for £142,000.
- Mr P said it took months for Rosolite to find the building certificate. He said he called and spoke to a surveyor who told him that the existence of a building certificate overrules any modern-day requirement for loft rooms to be classed as a bedroom.
- Mr P argued against this point that the investigator put in her opinion: '*once in possession of the building regs certificate, the surveyor confirmed that the property could be marketed as a five-bedroom property, but this would have no material impact on the value*'. Mr P said this statement would only be a defense if the property was immediately re-listed at this description. But the price was advertised at £152,000.
- He agrees with the valuer. The property was incorrectly described as a three-bedroom, and it was sold as a three-bedroom. This issue is with the wrong description from the lack of certificates. He said all of the comments from the surveyor became invalid once they received the building certificates. He said the comments that the surveyor made were on the basis that the value was as it was because he described the loft conversion on the basis that it was not signed off with a valid building certificate.
- He bought the property when it was five-bedrooms and all documentation shows it was five-bedrooms. Mr P said that the fact that Rosolite took the property off the market confirms they did something wrong.
- Once the regulations came to light, the correct valuation should have been £165,000 for a five-bedroom flat. But this was never marketed in that way.

As Mr P disagreed with the investigator, he asked for an Ombudsman to review the case, so it's been passed to me to decide.

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'd firstly like to say how sorry I am to hear about the difficult time that Mr P has had and about his circumstances. I understand it's been a challenging time for him.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome. Having considered everything provided by both parties, I agree with the outcome that has been reached by the investigator. I'll explain why.

Mr P has raised various issues that he hasn't been happy about but he has made it clear that he accepts everything the investigator has said, but he is not prepared to accept the issue about the bedrooms and how the property was marketed. I've listened to the telephone call that the investigator had with Mr P and I'm happy that this is the case. Therefore I will only be dealing with the issue surrounding how the property was marketed, in the fact that it was marketed as a three-bedroom property instead of five.

On 23 August 2022, Rosolite obtained a possession order over Mr P's property due to the arrears that were accruing on the mortgage. The property was then taken into possession on 3 December 2023.

A valuation was carried out on 2 January 2024. It had a recommended asking price of £160,000, a market value of £150,000 and a projected market value at £135,000. Under the general comments, it says the following:

'Work has been carried out involving conversion of the roof void to provide two storage rooms which may require Building Regulation approval or a Compliance Certificate from a registered installer. Legal advisers should confirm that all necessary notices have been served and Regulations complied with.'

I can't see that this valuation report specifically said it was a three-bedroom property, but it does mention the two 'storage rooms' in the loft conversion which is what the issue is. Mr P isn't happy that this property was marketed as a three-bedroom instead of a five-bedroom.

He said that had Rosolite provided the surveyor with the building regulations certificate from 2002, they would have valued this higher based on the fact that it was a five-bedroom property, which would attract higher offers. But as the surveyor wanted confirmation of a building regulation certificate to confirm the loft conversion was carried out to the required standards, he lost the opportunity to sell it at a higher price. Mr P blames Rosolite for this as he says they had this documentation all along.

I have seen a copy of Mr P's original valuation report from 2003 which confirms there are five bedrooms. The property value was £128,000.

I've seen a copy of the certificate of completion building regulations report dated 26 November 2002. This details that the loft conversion was carried out on 16 April 1999, prior to when Mr P purchased the property. It says the following:

'It is hereby certified that the building works described above have been inspected and so far as the Authority has been able to ascertain the requirements of the Building Regulations are satisfied.'

I do understand the point that Mr P makes here. He feels that had the surveyor had the regulations certificate to start with, the property would have had a higher valuation – so it would have sold for more.

Mr P then raised this with Rosolite and there are a number of emails between various parties, the surveyors, the estate agent and Rosolite and it appears that things were put on hold until this got looked into.

I understand that Mr P believes that Rosolite are to blame for this because they didn't give the certificate to the surveyor – but I'm not persuaded it would have been their responsibility to do so until it was mentioned by the surveyor.

I've seen a note on 16 April 2024 where the surveyor said that he had reviewed the information provided to him and said due to the height restriction of both rooms in the loft, they would not be considered habitable, and he disregarded them for valuation purposes – so the property was valued as a three-bedroom. I think this shows how the surveyor had considered the property when he went round to value it. I do note at this point that he didn't have sight of the regulation certificate, but this doesn't take away the issue they had with the height of those rooms.

Mr P also said that the land registry showed the property as being sold in 2020 for £114,000 but this was for the downstairs flat. Mr P believes that this would have also impacted the offers that he would have had on his property.

This was an error but this had nothing to do with Rosolite. I can see that once this had been flagged to the land registry, they made the necessary changes. I've seen a note from 13 June 2024 that suggests the land registry made the changes they needed to.

I've seen a note dated 19 June 2024 from the estate agent who reiterated what the valuer had said which was *'I can confirm that we are unable to market the property as a 5 bedroom house for the reasons stated below: no evidence has been provided that the loft conversion has been carried out to satisfy building regulations and planning consent and currently does not comply with building regulations'*

There is then a note that says this issue was discussed with the specialist valuation business within their group and they agreed with the valuer. They said:

'The upper floor is clearly a conversion. The timber blocking the velux window is an indication of a potential safety hazard. This would have required building regs at the very least when converted. In this instance for valuation purposes, we would only class these rooms as storage, not habitable accommodation as you say the valuer has done. If the customer can provide a building regs certificate, or retrospective certificate, the valuation could be reviewed accordingly.'

There again were a number of emails back and forth surrounding the information about the number of bedrooms – and what it should be. And then on 3 July 2024, I've seen an email from Rosolite to arrange for the property to be marketed as a five-bedroom which stated it should be done for a few days or at least over the weekend before it can be considered. This was due to them getting clarity from the surveyor once the building regulation certificate was passed over.

It's clear by this point, that there was already an offer on the table for the property of £144,000. The note suggests that the property could be advertised but it may not comply with current building regulations.

I've looked at the advert after this where the property was marketed as a five-bedroom property. But it's not entirely clear for how long this was for. And if I go by what was mentioned earlier, it may only have been for a few days.

But based on what I have seen, there appears to have been an offer already on the property for £144,000 – and Rosolite – from what I could see, checked to see if this offer could be increased, but it couldn't be. I do accept what Mr P has said in that this offer was based on a three-bedroom property, and he could have obtained more money for it if it was marketed correctly.

I do think that Rosolite could have advertised the property for longer once they were able to market it as a five-bedroom property but the issue here is that an offer was already in place, and arrears and interest were accruing on the mortgage. Rosolite could have advertised this property as five-bedrooms to see if they could get a higher offer, but there is no way of knowing now if this would have been the case. It's possible that they may have been able to obtain higher offers, or it's even possible that offers would have been at the same amount. This is something that we won't know now.

One of the key considerations for me is that after the surveyor had the building regulation certificate, he did make a comment to say that the property could be marketed as a five-bedroom property, but he said this would have no material impact on the value. This is important as from his professional opinion, he didn't think it would make a difference. And Rosolite are allowed to take that into consideration. They are not property experts, and they have the right to rely on that of a surveyor.

But the crux of the issue here is should the property have been marketed as a five-bedroom for longer, the answer is yes possibly. Would it have made a difference? That is a question we don't know the answer to.

It could have taken months to find a new buyer which would have impacted Mr P further as arrears would have continued to accrue along with interest which would not have helped. And from Rosolite's point of view, they already had an offer which they decided to accept.

The surveyor said the valuation figure was not impacted by the certificate so in essence that means that for a property value of £160,000, an offer was achieved of £144,000. This isn't low in comparison to what we see for properties that are repossessed and while I accept that Mr P would have liked to have obtained more, Rosolite's actions in this regard were not unreasonable. Even if the property was marketed at £165,000 like Mr P suggested, the offer that was achieved is still not unreasonable.

Rosolite had a property in their possession which they needed to sell in order to repay the mortgage as quickly as they could – and they did that – after putting things on hold for a while until the issue with the loft conversion was resolved.

I do have empathy for Mr P, and I understand the issue that he is raising. And like I said, I do think that Rosolite could have advertised the property for longer, but I'm not persuaded that the outcome would have been any different. I know that Mr P will be disappointed with my decision, but I find that Rosolite acted reasonably in the circumstances of this complaint.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 January 2025.

Maria Drury
Ombudsman