

## **The complaint**

Mr and Mrs C complain that Topaz Finance Limited trading as Melanite Mortgages had incurred excessive solicitors' costs in its dispute with them over unfinished work on their home, then added these costs to their mortgage.

## **What happened**

Mr and Mrs C asked our service to look into a number of concerns they had, as part of a long running dispute with their mortgage provider (now Melanite) about building work on their property. Our service has written to Mr and Mrs C separately to say that we are only able to look at their complaint that excessive costs have been applied to their mortgage, in respect of work done by solicitors acting for Melanite, after 2 November 2022. I understand Mr and Mrs C remain unhappy with our service's decision not to look at other concerns they have raised with us, and in particular not to look further back in time at concerns they raised prior to this, but I won't reopen our service's jurisdiction decision here.

This decision looks only at whether excessive costs have been applied to Mr and Mrs C's mortgage, in respect of work done by solicitors acting for Melanite, after 2 November 2022.

Mr and Mrs C said the cost of Melanite's solicitors was being added to their mortgage. They said Melanite had been piling on fees without needing to. Mr and Mrs C said they tried to avoid dealing with the solicitors, but were unable to stop these charges being incurred. They didn't think these costs should be added to their mortgage.

In July 2023, Mr and Mrs C's representative wrote to Melanite to say that they had received a letter dated 12 July 2023 from Melanite's solicitors, which demonstrated that Melanite was not keeping its lawyers up to date with Mr and Mrs C's correspondence sent to Melanite. They asked for the costs of this correspondence to be taken off their mortgage.

In its most recent complaint response letter, Melanite simply said it was satisfied its solicitors remained correctly appointed, and it would consider standing the solicitors down on receipt of evidence that the works were completed. It didn't touch on costs since 2 November 2022.

Our investigator didn't think any solicitors' costs had been added to this mortgage since November 2022, so she didn't think Mr and Mrs C's complaint about this should be upheld.

Mr and Mrs C didn't agree. They thought it was important that Melanite was referring, in all its correspondence, to terms and conditions which dated from 2005. But they said their building work had started in 2004, so those terms couldn't be relevant to them.

In her reply, our investigator noted that Mr and Mrs C's mortgage didn't start until 2007. She referenced the 2005 terms, and said she still couldn't see that Melanite had acted unfairly since November 2022. Because no agreement was reached, this case was then passed to me for a final decision. And I then reached my provisional decision on this case.

## **My provisional decision**

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

The starting point in this case is that Melanite and Mr and Mrs C were in dispute about the mortgage on their home. That dispute needs to be assessed against the relevant mortgage terms.

Although Mr and Mrs C said they took out this mortgage in 2003, Melanite has shown us an offer document which dates from 2007. It has also said that the first lender (in what I understand was a chain of lenders) completed Mr and Mrs C's mortgage in 2007. So I think the terms and conditions that Melanite has provided, which date from 2005, are likely to be the relevant terms in this case.

I can see that under those terms, Mr and Mrs C are obliged to *".. have our permission to start any building work, and then carry it out and complete it to a high standard and without delay"*. I know that Mr and Mrs C say this building work was started in 2004, apparently before this mortgage was taken out, but I think it is clear that this work was not completed *"without delay"*. So I think it was reasonable for Melanite to continue to query this, until either the mortgage was redeemed or the work was completed.

I also note that the terms of the mortgage allow Melanite to pass on to Mr and Mrs C, the legal costs it incurs in enforcing the mortgage terms. The terms say-

*"You must fully indemnify us in respect of:  
All costs and expenses that we have to pay or bear, as well as our reasonable administrative expenses in connection with anything we do:  
- To protect or perfect our security;  
- To remedy or secure the performance or observance of any of the terms of your mortgage;*

I have also set out the limitations of what our service can consider here, being costs incurred by Melanite after 2 November 2022.

I asked Melanite for some more information in this case, and it has now confirmed that it added sums in respect of the costs for its solicitors to Mr and Mrs C's mortgage on two occasions since November 2022.

Melanite added £230.40 on 10 January 2024. This item is noted as *"Agent costs"* however I've seen a solicitors' invoice that refers to this sum, so I am satisfied this is in respect of solicitors' costs.

Melanite then added £142.80 on 25 April 2024. This item is noted as solicitors' costs.

I have considered the breakdown of costs on the invoices I've seen, and also compared this to the detailed account notes that Melanite has sent our service.

I can see that on 26 August 2022, Melanite noted it was planning to agree to its solicitors contacting Mr and Mrs C to obtain photos of the work completed. On 14 November 2022, the solicitors chased Melanite to see if it would agree to these costs. There was no direct billing for this work. Melanite doesn't appear to have responded to its solicitors at this time.

On 15 February 2023, Melanite received a further email from its solicitors, chasing up the instructions which it had requested the year before, but Melanite doesn't appear to have provided. There is a charge of £17 plus vat for a file review, and what appears to

be this email to Melanite, noted on the invoice a few days before this. So it appears that this cost was incurred because Melanite hadn't already responded to its own solicitors' repeated requests for instructions. I don't think it's fair and reasonable for Mr and Mrs C to be charged for this, so I think this charge should be removed from their mortgage.

On 6 April 2023, the invoice shows a file review cost of £18 plus vat, and on 14 April 2023, the invoice shows a cost of £9 plus vat, when solicitors again asked Melanite how it wanted to proceed, and if it wanted the solicitors to remain involved. I think this review and correspondence were simply a further attempt to obtain instructions, and again, I don't think it's fair and reasonable for Mr and Mrs C to be charged for this, so I think these charges should be removed from their mortgage.

The remainder of the costs on that invoice do seem to me to relate to work which is likely to have been reasonably undertaken in respect of the dispute between Mr and Mrs C and Melanite. The last item on this invoice is in respect of a letter sent to Mr and Mrs C on 30 May 2023.

There is then another invoice covering costs between 7 July 2023 and 2 February 2024.

Mr and Mrs C have told us they wrote to Melanite on 15 June 2023. This letter was received by Melanite, and it refers to this letter in its complaint response letter of 14 August 2023. But Melanite apparently did not let its solicitors know that it had received a response. So in July 2023, Melanite's solicitors wrote again to Mr and Mrs C, apparently to request a response to a letter which they had already responded to.

There are a number of items on this second solicitors' invoice, but it is difficult to see that any substantive work was done by Melanite's solicitors during this time, aside from repeated attempts by those solicitors to ask Melanite if it wanted them to take any action, or if it would prefer to stand them down. It seems to have taken a considerable amount of time for Melanite to make that decision. Its internal notes suggest that it was considering asking Mr and Mrs C to consent to a survey on their property, in order to decide whether its solicitors needed to continue to be engaged. I note that Melanite finally appears to have written to Mr and Mrs C about this on 31 July 2024.

I've noted that this second invoice covers work from July 2023 to February 2024. During this time, costs for file reviews and contact with Melanite were incurred, and billed to Mr and Mrs C. This seems to me to be again further attempts by those solicitors to obtain instructions, and again, I don't think it's fair and reasonable for Mr and Mrs C to be charged for this, so I think all the charges on this invoice (£119 plus vat, totalling £142.80) should be removed from their mortgage.

My provisional conclusion is therefore that Melanite should now rework Mr and Mrs C's mortgage as follows –

- to remove £52.80 (made up of £17+ £18 + £9, plus vat) of the £230.40 that it added to Mr and Mrs C's mortgage on 10 January 2024, and
- to remove £142.80 that it added to Mr and Mrs C's mortgage on 25 April 2024.

Melanite should refund any overpaid interest on this sum to Mr and Mrs C. And, because I do think that Melanite has added to Mr and Mrs C's distress in this case by failing to appropriately manage its own relationship with its solicitors, meaning they received conflicting communications as well as inflated costs, I think Melanite should also pay Mr and Mrs C £200 in compensation.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

### **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.

Melanite replied to agree. Mr and Mrs C replied to ask for more compensation.

Mr and Mrs C said they were happy I had uncovered Melanite's poor practices, but said £200 felt tiny and unfair for everything I had found. They said it just didn't cover what they had had to deal with since 2018 when their mortgage was transferred to Melanite. They said they had spent at least £200 in recorded delivery postage, and around £4,000 had been added to their mortgage. Mr and Mrs C said that they understood Melanite's negligence and wrongdoing had now been proven, and they could have paid much less if Melanite had responded to its solicitors, including outside of the time our service was allowed to consider.

Mr and Mrs C said they would never know how much of the previous fees they'd been charged, may not have been necessary. And they said having no correspondence from Melanite or its solicitors for months and months was just not acceptable, and had really taken its toll on the family. They said they had been living under the threat of Melanite calling in receivers.

Mr and Mrs C said their counsel had also commented that £200 didn't seem fair taking into account the serious breaches here, and he thought compensation should be higher so that Melanite would refrain from such conduct again.

I've noted previously that our service is only able to consider a small part of the complaint that Mr and Mrs C wanted us to look at. I have explained that I will not reopen that decision here.

So, although I understand why Mr and Mrs C would think that £200 isn't sufficient to make up for all that they have been through while they've been in dispute with Melanite, it isn't intended to. This compensation is paid solely in respect of the part of their complaint which our service is able to consider, and which has been upheld.

I should also say that I would not sum up the findings in this decision quite as broadly as Mr and Mrs C have done. The finding in this case is quite specific, and is to do with the impact of Melanite's failure to liaise effectively with its own solicitors.

Mr and Mrs C said that leaving them with no correspondence for some months was cruel, and ought to involve a higher level of compensation. They also said they were living with the continued threat of further action from Melanite.

I do appreciate that there were pauses in the correspondence from Melanite or its representatives. However, having read the correspondence that was exchanged between the parties, I'm not able to say that it's most likely a faster response from either Melanite or its solicitors would have resolved the complaint during this time, and lifted the cloud that Mr and Mrs C said they were living under.

Mr and Mrs C's counsel also said that he thought the compensation should be higher, to deter Melanite from acting in this way again. I'm not able to add any sum to my awards to provide a deterrent in future cases, I can only look at the impact of Melanite's actions in this particular case.

And here, I do think that a refund of the solicitors' charges which I've set out, plus any interest added to the mortgage because of those charges, as well as a payment of £200 in compensation, provides a fair and reasonable outcome to this part of Mr and Mrs C's complaint.

Mr and Mrs C have stressed that their mortgage has been repaid, and any refund would therefore need to be paid to them rather than taken off their mortgage. Given their concerns, I have amended my decision slightly to avoid any possible doubt that both overpaid interest and capital must be returned to them. But I'm sorry to have to tell them that haven't changed my mind on the appropriate resolution here. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that Topaz Finance Limited trading as Melanite Mortgages must do the following –

- rework Mr and Mrs C's mortgage to remove £52.80 of the £230.40 that it added to Mr and Mrs C's mortgage on 10 January 2024, and to remove £142.80 that it added to Mr and Mrs C's mortgage on 25 April 2024, refunding any overpaid capital or interest on this sum to Mr and Mrs C.
- pay Mr and Mrs C £200 in compensation.

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

Esther Absalom-Gough

**Ombudsman**