

The complaint

Ms L complains that Topaz Finance Limited trading as Heliodor Mortgages has reported to the credit reference agencies that she has missed payments on her mortgage.

What happened

Ms L has a mortgage which is now with Topaz. It was originally with Northern Rock, and when Northern Rock collapsed it moved to the successor firm, and then more recently was sold on to Topaz in 2019.

In 2005, Ms L took a fifteen year fixed interest rate, which expired in 2020. At the expiry of her rate, she asked Topaz for another, but it doesn't offer new interest rates to its customers. So Ms L decided to move her mortgage to another lender.

It was then that she discovered that Topaz had been recording to her credit file that she had been making her monthly payments late. This meant that she wasn't able to move her mortgage as new lenders were unwilling to consider lending to her.

Ms L asked Topaz to remove the markers from her credit file. She said she had never been in arrears or missed a payment. But she said that the date her mortgage payment was due – the end of each month – was the same date she was paid by her employer. She said she manually paid her mortgage that day, though sometimes in the late afternoon or evening if she didn't receive her wages until late on in the day.

Topaz said that it was Ms L's responsibility to pay her mortgage on time. Where it did not receive payment on the due date, the mortgage would be in arrears and it had an obligation to record that to the credit reference agencies.

Ms L complained. She said she didn't choose for her mortgage to be moved to Topaz, a lender that did not offer its customers new rates. She wanted to be able to move her mortgage to a new lender that did offer new fixed rates and wanted Topaz to help her move.

Topaz said it couldn't send a "mortgage prisoner" letter – which would enable a new lender to apply a modified affordability assessment to Ms L's application – because she was not eligible. This was because she had not been arrears free for the last twelve months.

I issued a provisional decision setting out my view of the complaint.

My provisional decision

In my provisional decision, I said:

Ms L complains that her mortgage was moved to Topaz, and that she was not consulted about this, and wouldn't have agreed to it. She would have wanted her mortgage to be moved to a lender that offers new interest rates.

I can't uphold this part of her complaint. It's in the terms and conditions of her mortgage that her existing lender can transfer the mortgage on to a new lender – this happened in 2008 when Northern Rock collapsed, and again in 2019 when the loan was part of a group sold on to Topaz. There's no requirement for customers to be consulted about this, and there's no breach of contract. Nor is it unfair for her mortgage to have operated in this way.

Topaz does not offer new interest rates to any of its customers, and isn't obliged to do so. Ms L has not been treated less fairly than other Topaz customers in this respect.

However, as a closed book lender, Topaz should not stand in the way of customers moving to another lender. And it should issue Ms L a "mortgage prisoner" letter, if she's eligible for one, to help her do so.

Ms L says that Topaz should do more. It should find her a new lender itself. She says it wrote to her committing to do "everything in its power" to help her find a new lender.

But I don't think this means that Topaz has to find her a new lender, or try to find another firm to transfer the mortgage to. What it means is that Topaz should not put barriers – such as additional charges – in her way. It should direct her to sources of mortgage advice. And it should issue the letter the regulator has required if Ms L is eligible. This is the "mortgage prisoner" letter – if she has one of these, a new lender may apply a lower affordability standard, making it easier for Ms L to pass a new lender's assessment.

But Topaz cannot find a lender for Ms L, or advise her about who to apply to. She will have to do that for herself, or consult a mortgage broker to assist her in finding a new lender. A list of mortgage brokers committed to helping "mortgage prisoners" move to new lenders if possible may be found at <https://www.moneyhelper.org.uk/content/dam/maps/en/homes/moneyhelper-intermediariesfor-mortgage-prisoners.pdf> and Ms L may want to consult a broker on this list.

However, while Ms L's credit file shows a history of arrears it's much harder for her to move her mortgage. Topaz can't give her a "mortgage prisoner" letter, and new lenders are much less likely to be willing to offer her a mortgage. So I've thought about whether it was fair for Topaz to record the mortgage as being in arrears.

Topaz has explained that it requires mortgage payments to be made before the contractual due date. And where payment is not made by the due date, and also not received before 4pm on the last working day of the month, it considers the mortgage to be in arrears and reports it to the credit reference agencies as such.

That means that, in theory, it's possible for a mortgage payment to be made up to around 30 days late before Topaz records it as being in arrears – if a borrower's due date is the first of the month but no payment is made until the 30th, that would not be treated as being in arrears because it was received before the end of the month.

But in Ms L's case, because her due date is at the end of the month, she doesn't get the same leeway. Her due date is the 31st of each month (or the last day if there are not 31 days in the month).

Ms L says she doesn't want to have direct debits on her bank account; she prefers to make manual payments so she is in control of her spending. She says she always pays on the due date, but Topaz had never made her aware of the cut off time of 4pm, so wasn't aware that sometimes it wouldn't receive her payment until the following day.

The previous lender allowed borrowers until the fifth of the following month before considering there to be arrears. Topaz changed this to the end of the current month when it took over the mortgage in 2019.

Topaz has shown us the welcome letter it sent Ms L in 2019, saying the letter explains this change. And it does.

But as Ms L points out, the letter does not say that there is a 4pm cut off. It simply says it will notify the credit reference agencies if Ms L doesn't make her payment until the beginning of the following month.

As far as Ms L is concerned, she was not in arrears, because she *made* her payment on the last working day of each month. But as far as Topaz is concerned she was – because it often did not *receive* the payment until the first working day of the next month.

I don't think this was fair. This was a change to the way her mortgage was managed that directly impacted Ms L. And the notification Topaz sent her was not sufficiently clear to let Ms L know that she had to make her payments not just by the end of the month, but before the end of business hours on the last working day of the month.

Topaz is required to communicate in a way that's clear fair and not misleading, having due regard to the information needs of its customers. In this particular case, I don't think Ms L was given enough information, clearly and fairly, to understand that the way she made her payments would not be acceptable in future. For that reason, I don't think Topaz treated her fairly.

Secondly, I bear in mind the purpose of the credit reference agencies and credit files. It's to accurately report the position of credit agreements so that other lenders can understand a potential applicant for credit's true financial position, including whether they are managing their existing commitments.

In other words, it would be fair – and accurate – to record that Ms L had missed her payments. Or that she was regularly paying late. But only if that was in fact the case.

But in this case, I don't think she was paying late. She was paying on time, as far as she was concerned and as far as she had been led to believe by Topaz. She didn't know, and couldn't have known from what Topaz had told her, that a payment *made* after close of business on the last day of the month would be *received* on the first working day of the next month. And she didn't know, and couldn't have known, that such a payment would be treated as being late.

In those circumstances, I don't think it's fair or accurate to record that Ms L was missing payments or paying late. She wasn't in financial difficulty; she wasn't wilfully or negligently mis-managing her commitments. She was doing what she had always done, and didn't know that Topaz had decided to treat that differently.

In the circumstances, I think a fair resolution to this complaint would be for Topaz to remove any late payment markers from Ms L's credit file where it has received her payment on the first working day of the month following the due date. If, having done that, Ms L is now eligible for a "mortgage prisoner" letter, it should issue her with one.

Topaz should also pay her £350 compensation for the upset and worry this situation has caused her.

But I don't think Topaz can fairly be required to offer her a new interest rate, since it doesn't offer them to any customers. Nor do I think I can fairly require it to pay Ms L the difference in the amount she's paid in interest to Topaz and the amount she would have had to pay to another lender. Topaz's mistake here has prevented Ms L from applying to another lender.

But there's no guarantee that if she been able to apply another lender would have granted her a mortgage – there are many hurdles that have to be crossed before that can happen.

Another lender would have to assess her affordability, whether her property is adequate security, and whether she has a suitable repayment strategy for her mortgage at the end of the interest only term, among other things. So I can't say that it's more likely than not that Ms L would have been able to move her mortgage any sooner had nothing gone wrong. But by putting things right, Topaz will put Ms L back in the position she should have been in – being able to look at the rest of the mortgage market without a credit file unfairly showing her as having missed payments.

The responses to my provisional decision

Neither party accepted my provisional decision.

Ms L didn't think £350 compensation was enough. She said her credit file had been impacted for two years, and this was preventing her re-mortgaging to a cheaper rate. She said £3,500 would be a more reasonable amount to take account of what she had overpaid. And she said that Topaz should be required to find her another lender – as it had offered to do.

Topaz said that it was Ms L's choice to pay other than by direct debit. And in doing so, it was her responsibility to make sure she understood the requirements and implications of that. It said it had made clear on its website that payments made on the last day of the month needed to be made by 4pm, and that if they were not that might lead to a credit file record – as had happened in this case. It said that on each occasion it had received a late payment it had written to Ms L and she had not taken further action.

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've considered what both parties said in response to my provisional decision, but I haven't changed my mind.

As I noted in my provisional decision, Topaz has an obligation to pay due regard to the information needs of its customers and communicate with them in a way that's clear, fair and not misleading.

I'm not persuaded it did that. The welcome letter when the loan moved to Topaz did not tell Ms L that things had changed or that she needed to make her payment earlier on the last day of the month. I don't think that by putting this information on its website but not drawing Ms L's attention to it Topaz did enough to communicate clearly and fairly with Ms L or paid sufficient regard to her information needs. The fact was that Ms L was doing what she had always done, and had always done without problems. In my view, Topaz should have made clear to her that it had changed the process and that what she had always done would no longer work – but it didn't do that. It wrote to her tell her she was in arrears, but it didn't tell her why, or that she needed to do something different. And by the time she received those letters, triggered automatically at the start of each month, her payment had been received

and she wasn't in arrears.

However, I'm not persuaded that £3,500 would be fair compensation. As I said in my provisional decision, I appreciate that the late payment markers on her credit file prevented Ms L from applying to another lender. But there's no certainty that had she made an application it would have been granted, or whether – or to what extent – she would have been able to lower her interest rate if so. I'm not therefore persuaded that there's clear evidence of financial loss. And I'm satisfied that £350 compensation is fair for the worry involved in finding the markers on her credit file, and the lost opportunity to at least apply.

I can't direct Topaz to find Ms L another lender. That's not how things work, and – while I know Ms L doesn't agree – I don't think that's what it offered either. I think doing everything in its power to help her move means not putting barriers in her way and ensuring she can apply to other lenders – not arranging a new mortgage for her. That's something Ms L will need to do herself. I can see she is in touch with a mortgage adviser who will be able to assist her.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Topaz Finance Limited trading as Heliodor Mortgages to:

- Remove any late payment markers recorded to Ms L's credit file where it has received payment on the first working day of the month following the payment due date;
- If having done so Ms L is eligible, issue her a "mortgage prisoner" letter;
- Pay Ms L £350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 25 April 2022.

Simon Pugh
Ombudsman