

The complaint

Mr S complains about his mortgage with Topaz Finance Limited trading as Heliodor Mortgages. Mr S complains that Topaz:

- hasn't sent clear information about the position of his secured mortgage and because of the misleading information Mr S is now in arrears;

- can't offer new mortgages or interest rate products; and

- has been recording incorrect information about his Together mortgage to the credit reference agencies. Mr S says he believes Topaz has recorded a default on his Together loan and this is having an impact on his ability to move his mortgage to another lender.

Mr S wants Topaz to write off the unsecured loan so he can remortgage with another lender. He also feels compensation might be needed because the financial impact of being unable to move his mortgage has had on him.

What happened

In December 2007 Mr S refinanced his mortgage with Northern Rock. He borrowed around £124,000 on an interest only mortgage. Alongside this Mr S borrowed around £24,000 as an unsecured loan stapled to the mortgage. Mr S has also taken out two secured loans from Northern Rock between 2006 and 2008.

Following Northern Rock's collapse in 2008, Mr S's mortgage and loans were transferred to different successor firms. More recently, in 2019, they were transferred to Topaz. Topaz has responded to this complaint as the current owner of Mr S's mortgage and loans.

In 2009 Mr S's borrowing fell into arrears as he was experiencing financial difficulties. The mortgage and loans have remained in arrears since that time, with Mr S prioritising payment of the mortgage and secured loans. Respective lenders have accepted token payments towards the Together loan and have applied 'interest rate forgiveness' (not charged interest) at times.

In November 2020 Mr S complained to Topaz about the impact the unsecured arrears were having on his credit file and the fact that he thought Topaz's actions were preventing him from getting access to a lower interest rate product - either with it or by stopping him switch to another lender.

On 23 November 2020 Topaz gave its final response not upholding Mr S's complaint. It said that Mr S's Together loan was in arrears of nearly £23,000 and 133 months in arrears. It said, although Mr S was in a debt management plan, it had a duty to accurately record Mr S's loan as being in arrears on his credit file.

Topaz also said that it was unable to offer new products to residential mortgage customers at that time. And that it was not under a legal or regulatory obligation to do so.

It said other prospective lenders would need to make the commercial decision whether or not to offer Mr S a mortgage and that wasn't something it could influence.

On 21 December 2020 Topaz issued a second final response to a further concern Mr S had raised about conflicting information about his mortgage arrears. Topaz arranged for Mr S to be sent a statement of the arrears on the secured element of the mortgage. It didn't give any further information about issues covered in the final response it had shared with Mr S the previous month.

Mr S was unhappy with Topaz's final responses and referred his concerns to us. Our investigator looked into what had happened. Having done so, he didn't think Mr S's complaint should be upheld.

Our investigator thought Topaz had accurately recorded the conduct of Mr S's mortgage on his credit file and that it was able to decide whether or not it chose to make new interest rate products available to its customers. He also thought Topaz had provided reasonably clear information about the mortgage balance and Together loan and that it wasn't fair to hold it responsible for Mr S's arrears.

Mr S asked that an ombudsman look at his complaint again and reach a final decision on the matter.

My provisional decision

I issued a provisional decision on 1 August 2022. I explained why I thought Mr S's complaint should be upheld in part.

I could see that Mr S had experienced financial difficulties in the past and in 2010 he entered into a debt management plan. Historically the level of mortgage arrears had reached a point where Mr S's predecessor lender had planned to take the matter to court. Mr S was then given time to repay the arrears and get straight with the mortgage.

In recent years Mr S had nearly cleared the mortgage arrears. He had reached a position of being around one month behind with his mortgage repayments with a remaining arrears balance of around £250 to pay before he was up to date with the mortgage. This came about following years of Mr S gradually reducing his arrears month by month.

In January 2021, Mr S took out a three-month payment deferral under the FCA's special arrangements in response to the covid-19 pandemic. Topaz said at the end of this three month arrangement, Mr S didn't start making mortgage payments again. No payments were made in April or May 2021 and then a payment of £334.10 was made in June 2021. No further payments were made until April 2022.

Having looked at the contact between Mr S and Topaz over this time, including the notes of phone calls and the letters that Topaz has sent Mr S, I wasn't persuaded that Mr S's mortgage was in arrears due to a misunderstanding about the mortgage. Rather it seemed to me the mortgage had fallen back into arrears as Mr S appeared not to have resumed making repayments following the end of the covid payment deferral.

I thought Topaz had taken reasonable steps to let Mr S know the amount outstanding under his various loan accounts. I didn't think this part of the complaint should be upheld.

Interest rate products

Mr S had complained that Topaz wouldn't make new interest rate products available to him. I said I appreciated that it had been years since Mr S's last interest rate product expired and that he had been on his lender's standard variable rate ever since. I could understand why Mr S felt 'trapped' on this rate and why he wanted Topaz to help him to get access to lower, more competitive interest rate products.

Topaz told us that it had made the commercial decision not to offer interest rate products or further lending to any of its customers. It has chosen to operate as a 'closed book' or an inactive lender. I said this was a decision that Topaz was able to make and that there's no law or mortgage regulation that says a mortgage lender must offer new interest rate products to its customers. I also said Topaz was treating all of its customers in the same way, so I didn't think it had treated Mr S any less favourably than any other mortgage holders. I didn't plan to uphold this part of the complaint.

Recording Mr S's borrowing on his credit file

I considered the way that Mr S's mortgage is reported to the credit reference agencies. Mr S told us his Together loan had been defaulted in the past. Topaz confirmed that Mr S's loan had *not* been defaulted historically. As a result of this, the Together loan which was in arrears of over £22,000 was continuing to be recorded on his credit file.

Topaz had offered to do something different with Mr S's Together loan to resolve this part of the complaint since the matter had been passed for a final decision.

I explained that Topaz had said it would backdate the default on the Together loan to 2010, when Mr S entered into a debt management plan. I considered the result of the retrospective defaulting of the Together loan would benefit Mr S's current position. From 2016 onwards there would no longer be any record of the Together loan arrears on Mr S's credit history. And Topaz also confirmed that it will rework Mr S's Together loan so no interest was applied to this loan from 2010 onwards. I noted this should reduce the outstanding balance to be repaid.

I thought it is appropriate that Topaz had offered to change the way this borrowing has been reported on Mr S's credit file. I felt this would give Mr S the ability to prioritise getting his mortgage and other secured borrowing up to date without worrying about the impact of the Together loan on his credit file.

However, I made it clear, Mr S would still be liable to repay the Together loan balance. This loan was not being written off. Rather, the loan would be recorded as having been defaulted many years ago. And this would mean the Together loan would no longer attract any interest from 2010 or be recorded on Mr S's credit file from 2016.

I explained why I didn't think it was fair for me to ask Topaz to write off this loan balance to settle this complaint. I didn't think it would be reasonable for me to direct Topaz to do that in the specific circumstances of Mr S's complaint. Mr S had borrowed the money and had received the benefit of the funds. Mr S has struggled to repay the loan during most of its term. But I didn't think Topaz has acted unreasonably by not offering to write off this debt. I said that Mr S would need to work with Topaz to find an affordable way to repay the Together loan.

I thought Topaz's offer to retrospectively backdate the default on the Together loan, update the credit file and rework the loan as if no interest has been applied since 2010 was fair and reasonable to resolve this part of the complaint.

Responses to my provisional decision

Both Topaz and Mr S have responded to say they accept my provisional decision. Mr S has mentioned he has concerns about the term of his loans. As our investigator has explained, these are new issues that have not formed part of this complaint. I have not considered new concerns raised by Mr S in making my decision.

Topaz will need a chance to respond to Mr S's new concerns before we look into these issues about Mr S's Together mortgage.

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.

Both parties have accepted my provisional findings and so I see no reason to depart from my provisional findings.

Putting things right

Topaz has now offered to backdate the default on the Together loan to 2010, update Mr S's credit file to reflect this, and rework the loan as if no interest has been applied since the date of default. I think that is fair and reasonable to resolve this complaint.

My final decision

My final decision is that I uphold this complaint against Topaz Finance Limited trading as Heliodor Mortgages. I direct Topaz to retrospectively default Mr S's loan, as if it had been defaulted in 2010, and to update his credit file to reflect this. No interest should be added to the Together loan from the date Topaz applies the default.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 September 2022.

Emma Peters
Ombudsman