

The complaint

Mr W complains about a loan with Topaz Finance Limited, trading as Heliodor Mortgages, for which he thinks he should no longer be liable. He's unhappy with how the loan has been administered since the linked mortgage was repaid and that Heliodor still considers him responsible for it. He's also unhappy with the service he has received.

What happened

In 2007, Mr W and his now ex-wife took out a 'Together' mortgage with Northern Rock. They borrowed £103,500 plus fees on the mortgage, and alongside it they took a linked unsecured loan of £15,500. Both loans were to be paid on a capital and interest repayment basis over a term of 35 years.

Both the secured and unsecured loans were on an initial fixed interest rate until December 2011, then a variable rate for the remainder of the term, as long as Mr W and his ex-wife kept their mortgage and loan with Northern Rock or its successors. The interest rate on the unsecured loan would rise to 8% above the lender's standard variable rate if the mortgage were repaid and the unsecured loan remained outstanding.

In 2008, Northern Rock collapsed and was later nationalised. Mr W's and his ex-wife's mortgage and loan were transferred to NRAM.

At around the same time, Mr W and his ex-wife separated. Mr W stayed in the mortgaged property and made the mortgage and loan payments. In 2014, he sold the property. The mortgage was repaid in full, leaving Mr W and his ex-wife with just under £9,000 equity in the property. At the time, the unsecured loan had a balance of around £11,500.

Mr W and his ex-wife agreed that Mr W would pay £4,000 to settle his part of the unsecured loan, and his ex-wife would be responsible for the remainder. In July 2014, Mr W paid NRAM £4,000. He says he understood that his liability for the loan ended there, and he received no further communication about it until 2018.

Mr W later found that his ex-wife hadn't paid the loan. The loan balance had increased from around £7,500 to just over £12,000, and in July 2018 the lender had recorded a default on his credit file. He complained.

In November 2019, the unsecured loan was sold to Heliodor. Heliodor, as the current loan owner, has responded to this complaint. It said Mr W is still responsible for the loan, and NRAM had told him that in August 2014 following his request to remove his name from the loan. It also said it wasn't party to Mr W's agreement with his ex-wife, and it hadn't agreed no longer to hold him liable for the debt. In July 2018, NRAM had stopped applying interest and begun debt recovery action, and sent letters to Mr W at the address of the mortgaged property because it had no other address details for him.

Mr W got in touch with us. Our Investigator concluded that Heliodor is entitled to consider Mr W liable for the loan, and that it hadn't done anything wrong in its administration of the loan.

Mr W didn't accept that conclusion and asked for it to be reviewed. He said Heliodor hadn't sent him everything it should have done in response to multiple SARs: contact notes and correspondence it had sent to us were missing. He also said that making overpayments and then no monthly payments until the overpayments are used up was a 'flexible feature' of this loan. Those flexible features ended once the loan was delinked from the mortgage – and so Heliodor shouldn't have permitted no payments to be made, and should have defaulted the loan much earlier, in 2015. It had used his overpayment in a way he hadn't agreed, without telling him, and despite knowing about his and his ex-wife's marital dispute.

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 recognise that Mr W feels very strongly about this matter and that he is angry and upset to be asked to repay this loan. He has been clear that he understood his liability ended when he made the lump sum payment in 2014, in line with his agreement with his ex-wife.

However, Heliodor (and NRAM as the predecessor lender) wasn't party to Mr W's and his ex-wife's agreement. The loan was taken out on the basis that Mr W and his ex-wife would be jointly and severally liable for it – so the lender can ask both of them, or each of them individually, to pay it. That remains the case regardless of the agreement Mr W and his ex-wife reached between them, and I find nothing to indicate that either Heliodor or the predecessor lender accepted Mr W's and his ex-wife's agreement about repayment. I'm therefore satisfied that Heliodor is entitled to seek payment from Mr W. If his ex-wife hasn't complied with their agreement, that's a matter between the two of them.

Mr W says the loan should have been defaulted much earlier than it was and interest should have stopped being added. Payments to the loan stopped in October 2014, but NRAM didn't record a default or stop applying interest until mid-2018.

Heliodor says the monthly loan payments due between late 2014 and late 2017 were taken from the £4,000 payment Mr W had made in 2014. This meant that the loan wasn't considered to be in arrears until the end of 2017, when the £4,000 effectively ran out. The loan was then defaulted in mid-2018, after six months of arrears. The information reported on Mr W's credit file reflects all of this.

I note Mr W's point about the flexible features of the loan – which included overpayments, underpayments, and payment holidays – coming to an end when the loan and mortgage delinked. I nevertheless find that the way the lender treated his lump sum payment was neither unusual nor unreasonable. The loan was in credit by a significant amount following that payment. The alternative would have been to treat the loan as in arrears much earlier and, while I can see with the benefit of hindsight that doing so would work in Mr W's favour now, it may well not have done in 2014 – and what happened since couldn't have been known at the time. I can only consider whether the lender acted fairly based on what it could have known then.

I must also bear in mind the wider circumstances in this case. Those include records from the lender showing that it told Mr W in 2014 it wouldn't take his name off the loan, the fact that Mr W never received any confirmation from the lender that it had accepted his payment in settlement of his liability, and there being nothing to indicate that Mr W checked with the lender at the time how it would treat his lump sum payment.

Mr W also didn't give the lender his new address details following the sale of the mortgaged property. The records Heliodor has provided show that letters and statements sent to Mr W at the security address in 2014 and in subsequent years were returned to it marked 'gone away'. It wasn't until 2018 that the lender initiated a trace and found Mr W's current address. It could, of course, have taken that step sooner, but did not while it considered the loan not to be in arrears.

It's generally for borrowers to keep lenders up-to-date with their contact details, and in the circumstances I don't consider I can fairly uphold this complaint on the basis that the lender could have traced Mr W earlier. Mr W was still responsible for the loan.

Finally, Mr W complains about Heliodor's handling of his subject access requests. He says he had to make multiple requests and that Heliodor provided our Investigator with information which it should also have sent him. Heliodor should, of course, comply with data protection laws, and shouldn't have withheld information to which Mr W was entitled. It's not clear why it didn't send him copies of correspondence and records which it later sent to us. However, those documents haven't led me to conclude that this complaint should be upheld, and it's not for me to fine or punish Heliodor for any shortcomings. If Mr W is concerned about Heliodor's general approach to subject access requests then he may wish to contact the Information Commissioner's Office as the relevant regulator.

In all the circumstances of this case and while I realise Mr W will be very disappointed, I don't find it appropriate to make any order or award. Mr W can ask the credit reference agencies to record a notice of correction explaining the situation leading to the defaulted loan if he wishes, so that other financial businesses may take it into consideration.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 February 2023.

Janet Millington
Ombudsman