

The complaint

Ms M has complained about fees and charges applied to her mortgage account by Topaz Finance Limited trading as Heliodor Mortgages, and referred to here as Topaz. Ms M is also unhappy at the way Topaz has communicated with her.

On 13 February 2023 I issued a decision in which I explained that I would only be looking at the account in November and December 2019.

What happened

Ms M has a mortgage taken out in 2007, originally taken out with a lender I will call N, but which is now owned by Topaz. Although this is a regulated residential mortgage rather than a buy-to-let, it appears the property has been rented out since 2007.

Ms M has raised previous complaints about fees and charges on the account. Topaz has confirmed that fees and interest on the account applied prior to October 2019 had been removed and the account had been re-worked.

Ms M brought her complaint to our service. Our investigator noted that there had been two fees applied to the account – a field agent fee of £54 in November 2019, and a second field agent fee of £54 in December 2019.

The investigator thought the November 2019 fee had been fairly charged. However, there was nothing to indicate that a field agent had visited the property again, so she thought Topaz should refund the second fee charged in December 2019.

Topaz agreed to this, but Ms M did not think it was enough to resolve the complaint. The complaint has therefore been referred to me for a decision.

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.

As I said above, I have already decided that the only issues that are within the jurisdiction of this service are the charges from November and December 2019. I therefore won't comment on any other fees and charges that have been applied to the account.

I can see that a field agent visited the property in November 2019. I'm therefore satisfied that the fee of £54 charged for this has been properly applied. I can't see any other field agent visit, so I agreed with the investigator that the £54 field agent fee applied in December 2019 should be reimbursed.

Topaz has refunded a number of other fees on the account as a gesture of goodwill, due to Ms M's vulnerability. Fees charged to the account between 1 March 2020 and 30 September

2021 were refunded by Topaz. Given that this is a tenanted property, I think this is more than Topaz is required to do, and I'm not ordering Topaz to refund any more fees.

Other matters

The mortgage is substantially in arrears, and although Topaz has commenced legal action, this has been put on hold. Lenders will sometimes put recovery action on hold whilst we look at a complaint, but they don't have to, and we can't force them to; if the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint. It would also create the potential risk of consumers using our service to bring complaints with the intention of obstructing businesses that were trying to take legitimate action to recover money owed to them.

I would not want Ms M to be under any misunderstanding that if she was to bring another complaint to us about the mortgage, that we would tell Topaz to suspend any legal action. I do not intend to cause any distress to Ms M but I think it's important that she doesn't underestimate the seriousness of the situation she is in.

Furthermore, the tenant in the property told the field agent in November 2019 that the tenancy had begun 12 years earlier – so in 2007, when the mortgage was taken out – and provided details for the letting agent. This is a residential mortgage, not a buy-to-let, and so renting it out without consent is a breach of the mortgage conditions. There is nothing in Topaz's notes to show that Ms M has applied for, or been granted, consent to let. Online data shows that, as at November 2022, a new tenancy had been agreed.

It is reasonable to assume that Ms M has been receiving rent for the property throughout the mortgage term, so it is difficult to understand why she has not paid the mortgage from the rental income. Given the level of arrears and the unauthorised tenancy, Topaz would, in my opinion, be justified in pursuing its legal remedies through the courts.

I appreciate Ms M is vulnerable and that she finds Topaz's contact with her to be distressing. However, Ms M is not in danger of losing her home – because she doesn't live in the mortgaged property, and seemingly never has. So whilst Topaz needs to take account of Ms M's circumstances in the way it communicates with her, this doesn't mean that Topaz is prohibited from taking steps to recover the outstanding debt, particularly as her home isn't at risk.

Ms M does have the option of re-mortgaging with another lender onto a buy-to-let mortgage if she wants to continue to rent out the property. Ms M might want to speak to a specialist mortgage broker if this is something she would like to consider. Alternatively Ms M could move into the property and begin to occupy it as her main residence, in line with the mortgage terms and conditions. That might, however, involve legal costs in terminating the tenancy which began in November 2022. But there is no basis on which it is fair or reasonable for Ms M to continue to rent out the property with such large arrears on the account, but expect Topaz to take no action.

If Ms M is in financial difficulty she may want to speak to a free debt advisory service such as StepChange or Citizens Advice. We can provide contact details for those agencies if Ms M would like us to.

Putting things right

To settle this complaint, Topaz Finance Limited trading as Heliodor Mortgages should remove the £54 field agent fee charged in December 2019, along with interest applied to it.

My final decision

My final decision is that I partly uphold this complaint and direct Topaz Finance Limited trading as Heliodor Mortgages to settle it as detailed above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 20 March 2023.

Jan O'Leary
Ombudsman