

The complaint

Mr R and Mrs R complain that Topaz Finance Limited trading as Heliodor Mortgages:

- Should not have approved additional mortgage borrowing for debt consolidation.
- Had not administered the interest rate on the mortgage fairly – and had overcharged them.
- Should extend the term of the mortgage by 24 months.

What happened

In 2006, Mr R took out a mortgage with his now ex-wife with Northern Rock. The mortgage was on a repayment basis with a term of 28 years. There was also a further unsecured loan linked to the mortgage of around £20,000 taken out at the same time – but the evidence we have shows it was repaid in 2011.

In 2007, Mr R and his ex-wife, took out additional borrowing of £44,000 to repay unsecured debt.

In 2009, the repayment method was switched to interest only.

In 2011, Mr R's ex-wife was removed from the mortgage and his mother, Mrs R added. The term was reduced to end in 2022.

In November 2019, Topaz trading as Heliodor mortgages took over the mortgage.

Mr R and Mrs R complain:

- The 2007 lending was irresponsible. The loan-to-value was 100%.
- They have been charged an unfair rate of interest. Had they not been mortgage prisoners stuck on an extortionate rate of interest then they could have repaid more of the capital balance of the mortgage.
- If they'd been charged a fairer, lower interest rate from 2011 they could have paid off more of the mortgage. From 2008, the Bank of England base rate (the base rate) was 0.5% and they were charged ten times that and were stuck in negative equity.
- If they'd been charged a lower, fairer amount of interest between 2011 and 2015 they would have been able to pay off enough of the mortgage balance to have equity in the property to be able to sell in 2015. That would have meant they could have avoided the ongoing legal dispute with their neighbours that began afterwards.
- Heliodor should extend the term of the mortgage by 24 months to allow the court case to complete

The investigator said that we couldn't look at the sale of the mortgage or how the interest rate was managed before January 2017 as those complaints brought outside the time limits in our rules. He did not consider the interest rate applied was unfair and that based on the information available to Heliodor it was not unreasonable for it to say that it wouldn't extend the mortgage term.

Mr R and Mrs R did not accept what the investigator said. They made a number of points, including:

- Mr R had experienced some extremely challenging and difficult personal circumstances and that had not been taken into account .
- They'd paid off around £18,000 since 2020 and kept up to date with mortgage payments and Mr R had increased his credit score and worked more to increase his income. Their position has improved, the court case has now finished and they just need more time to apply for new mortgages. The term extension was a reasonable request – they need at least six months.
- They'd done all they could to tell Heliodor about their situation. It was not until 2023 when the legal process had finished and the property was structurally sound that they could take steps to either sell or remortgage.

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.

Jurisdiction

The investigator found that the irresponsible lending complaint and any complaint about the interest rate applied before January 2017 were out of time. I can't see it has been disputed that both events were brought more than six years ago and (if later) more than three years since Mr R and Mrs R became (or ought reasonably to become aware) they had cause for complaint. I can't see Mr R and Mrs R have disagreed with the investigator's findings on those points.

For completeness, I agree that the irresponsible lending complaint and any complaint about the interest rate applied before January 2017 have been brought outside the time limits in our rules. The events were clearly more than six years before the complaint was made. And I consider that Mr R and Mrs R had enough information to know there was a problem with the 2007 lending and the interest rate applied more than three years ago.

Mr R and Mrs R have not agreed with the investigator's findings about exceptional circumstances. Under our rules, I can consider a complaint that has been brought too late if the business consents or if I consider there were exceptional circumstances that prevented Mr R and Mrs R making their complaint in time. Heliodor has not consented to us considering parts of the complaint that are out of time.

I thank Mr R and Mrs R for their honesty about Mr R's circumstances. I accept everything they've said and was sorry to hear about the extremely difficult time Mr R has been through. The difficulty I have is that for me to consider the complaint, I don't only have to find that there were exceptional circumstances – but also that they prevented Mr R and Mrs R complying with the time limits.

We have the contact notes between Mr R and Mrs R and the lender from 2011. They show

that during the relevant time Mr R was in direct contact with the lender every year (often a number of times) to discuss his mortgage. I also note Mr R also had extensive building works, another lengthy complaint and ongoing legal action. I appreciate that is a lot to cope with – but I also note those events did not arise until 2017.

The evidence we have shows that despite any exceptional circumstances, Mr R was still able to manage his day-to-day affairs during the time in question. It follows that I could not reasonably find that Mr R's circumstances *prevented* him from complying with our time limits in respect of this complaint. That is not to doubt or downplay what Mr R has been through. But rather that the evidence we have does not support that his circumstances prevented him making a complaint about events before 2017 in time.

I would add that Mrs R was a joint borrower and I have not been given any evidence that there were any exceptional circumstances that applied to her.

I can take into account interest rate variations before January 2017 in determining whether the interest rate was set fairly from that date onwards.

Interest rate

Heliodor has only managed this mortgage since November 2019. But I can consider how the interest rate was managed from January 2017.

In May 2009 Mr R and Mrs R's main mortgage and unsecured loan reverted to the standard variable rate (SVR) and I understand has remained on that rate since then. The additional borrowing was on SVR with a discount of 0.25% for life.

The original lender, Northern Rock, was nationalised following the financial crisis of 2007/8 – and Northern Rock (Asset Management) (NRAM) took responsibility for the mortgage. But it couldn't offer new interest rate products to any borrowers. Heliodor took over the mortgage in 2019.

Since 2017, the SVR has been varied in line with the terms and conditions of the mortgage for reasons set out in those terms. I don't consider the terms are unfair – and there is no evidence that they were applied unfairly. Looking at the circumstances of the changes – taking into account the lender's circumstances, the quality of its loan book and the wider financial environment following the financial crisis, particularly in regard to the lender's funding costs and balanced against the impact any changes would have on borrowers – I consider they were made fairly and reasonably.

Overall, I am not persuaded that Mr R and Mrs R have been overcharged or that the SVR was set too high. So I can't uphold Mr R and Mrs R's complaint that the interest rate has been set too high.

Term extension

I'm only looking at the position up to March 2023, when the complaint was referred to us.

Heliodor considered what Mr R and Mrs R's request for a formal term extension. It rejected it as it couldn't confirm how long legal action would take and that the property would be repaired and sold within the requested timescale. I don't consider that was unreasonable based on the information Heliodor had at that time.

Heliodor has said that it will work with Mr R and Mrs R to agree further grace periods as long as they maintain payments and keep it informed about their circumstances. I consider that is

fair. It isn't unusual in these circumstances for lenders to agree not to take action to allow borrowers time to sell or remortgage without agreeing a formal term extension. In the circumstances I think that is fair – it balances Heliodor's rights as a lender where the contractual term has ended with its obligations to treat Mr R and Mrs R fairly when they could not repay the mortgage at the end of term.

Mr R and Mrs R clearly had valid reasons for not being able to repay the mortgage while the legal action continued and until the property was repaired – and Heliodor has given them time to do that, albeit not by way of a formal term extension. I also agree they will need some time to arrange a remortgage or sale. Both sides should engage with each other and Heliodor should consider any further requests fairly.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 22 April 2024.

Ken Rose
Ombudsman