

The complaint

Mrs D complains that the interest rate on her interest only mortgage with Topaz Finance Limited, trading as Hyalite Mortgages ("Topaz") has never gone down. She feels she has been treated unfairly.

What happened

In early 2008, Mrs D was offered a mortgage with GMAC-RFC Limited ("GMAC"). The mortgage was taken out on an interest only basis over a 20-year term. Mrs D agreed the mortgage on a fixed interest rate for two years at 6.09% from the completion date. After which the mortgage would revert to GMAC's Standard Variable Rate ("SVR") for the remainder of the term of the mortgage – which at the time was 7.49%.

In early 2009 Mrs D's mortgage was transferred to Mortgage Express ("ME") – a wholly-owned subsidiary of Bradford and Bingley ("B&B"). Following the global financial crisis in 2008/2009, B&B was nationalised and along with its subsidiaries, they stopped offering new mortgage products. So, from this point Mrs D was unable to apply for a new fixed rate product with ME as they had no alternative interest rate products to offer her. Mrs D's mortgage remained on ME's SVR for many years.

In 2023 ownership of Mrs D's mortgage was transferred to Topaz. That means that Topaz is responsible for this complaint now.

Mrs D complains that the interest rate on her mortgage over the years hasn't decreased in line with the Bank of England ("BoE") base rate changes. She says she expected the interest rate on a variable rate mortgage to go down as well as up. But it hasn't. She says that during the covid-19 pandemic, when the BoE base rate went down to 0.1% her interest rate didn't go down in line with that. She doesn't think that's fair. She says that she feels that ME was free to charge her whatever it feels like and not offer her another interest rate product.

When Mrs D complained to ME in mid-2022 she also complained that she was kept waiting on the phone for around 20 minutes when she phoned it in June 2022. ME offered her £10 compensation for that, but it didn't think it had done anything wrong in relation to the interest rate on Mrs D's mortgage. It said it hadn't acted in breach of the mortgage terms and conditions and there was no expectation that the SVR would track the base rate. It said its SVR had decreased during the covid-19 pandemic.

Mrs D remained unhappy about the way her interest rate had been managed so she complained to the Financial Ombudsman Service.

Our investigator considered the matter. He said Mrs D had complained to the Financial Ombudsman Service about the interest rate on her mortgage before. Another investigator issued his view on Mrs D's previous complaint in October 2020 and didn't uphold that complaint. As a result, the investigator of this complaint said he could only consider the interest rate charged on Mrs D's mortgage since October 2020. Mrs D accepted that. That means this complaint will only consider the period from October 2020 to August 2022 – when ME sent its final response on Mrs D's complaint.

Our investigator also said that he thought that the £10 compensation Topaz had offered Mrs D for keeping her waiting on the phone was for and reasonable. In relation to the interest rate changes on Mrs D's mortgage he said:

- ME was entitled to charge its own SVR. He thought its SVR was broadly in line with those offered by other lenders.
- ME varied its SVR in line with the terms and conditions of the mortgage, for reasons those terms allowed. There was no requirement for ME to track or follow the BoE base rate.
- He didn't think ME managed its SVR unfairly or that Mrs D had been overcharged interest.

Mrs D has said she couldn't move lenders because she was in negative equity. Our investigator empathised with her, but he didn't think that meant that ME had treated her unfairly.

Mrs D asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

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.

Having done that, I think the only part of this complaint that should be upheld is about the £10 compensation offered for keeping Mrs D waiting on the phone in mid-2022. I realise this will be disappointing for Mrs D. But I hope the reasons I have set out below will help her to understand why I have come to this conclusion.

The interest charged on Mrs D's mortgage

As already explained, our service can only consider Mrs D's complaint about the interest rates on her mortgage from October 2020 to August 2022.

I've considered whether Mrs D paid an unfairly high rate of interest on her mortgage in this period of time. I don't think she did. I'll explain why.

I'll begin by saying that I can see that the mortgage offer issued to Mrs D in September 2008 set out what the interest rate on the mortgage would be.

The mortgage terms and conditions set out the powers Mortgage Express had to vary the SVR. They state the following:

"3.1 If the interest rate is the standard variable rate we may vary it for any of the following reasons:

(a) to reflect a change which has occurred, or which we reasonably expect to occur, in the BoE base rate of interest rates generally.

(b) to reflect a change which has occurred, or which we reasonably expect to occur, in the cost of the funds we use in our mortgage lending business.

(c) to reflect a change which has occurred, or which we reasonably expect to occur, in the

interest rates charged by other mortgage lenders.

(d) to reflect a change in the law or decision by a court; or

(e) to reflect a decision or recommendation by an ombudsman, regulator or similar body”.

Mrs D’s main concern appears to be that the interest rate on her mortgage didn’t track the BoE base rate. During the period that I can consider in this complaint (between October 2020 and November 2022) the BoE base rate rose from 0.1% to 3.00%. At the same time, ME’s SVR rose from 4.4% to 5.49%.

However, Mrs D’s mortgage was taken out with GMAC, on the terms agreed with GMAC. The terms make no mention of the SVR needing to track/act in line with the BoE base. And I haven’t seen any evidence that persuades me that GMAC or subsequently ME, were obligated, contractually or otherwise, to have Mrs D’s SVR track the BoE base rate.

ME is what’s known as a closed book lender. Its parent company B&B collapsed and was nationalised in 2008. Because B&B was government owned, it couldn’t offer new lower interest rates that would compete with other lenders. The same applies for ME as a wholly owned subsidiary of B&B. After this date and after any customers’ fixed term products ended, all B&B and ME customers were charged the same SVR rate. It was part of the terms of the nationalisation that B&B (and ME as its subsidiary) could only offer a SVR – which is comparable to the SVRs of other lenders.

I don’t think ME acted in breach of the terms of the mortgage agreement in not offering Mrs D a new rate or lower SVR either. Mrs D’s mortgage offer sets out that she would pay a discount rate initially, and thereafter the SVR. Nothing in the mortgage offer or the mortgage terms say that Mrs D would be entitled to another interest rate after that one expired.

I’m aware, of course, from my knowledge of the mortgage market that it’s common for borrowers to take a fixed or tracker rate product – and then, at or shortly before its expiry, take another rate rather than revert to the SVR. Sometimes that’s with their existing lender; sometimes it’s with another lender. But as I say, there was nothing in the mortgage agreement that said Mrs D was entitled to a new rate – and that’s also true of most other lenders’ mortgage agreements too.

The rules of mortgage regulation don’t say that a lender must offer new interest rates, either. They say lenders must treat their borrowers fairly. And where new rates are available, there are rules around whether it’s fair to restrict access to them. But there’s nothing in the rules that says new interest rates have to be made available.

There’s nothing in the regulator’s rules, and nothing in the mortgage contract, that required ME to offer new interest rates. And, the government says, it was under a legal obligation not to do so, and not to reduce its SVR below market level. ME’s SVR was comparable to the SVR charged by other lenders in the market.

It’s very unfortunate that, through no fault of her own and through a series of events entirely out of her control, Mrs D ended up with a closed book lender that doesn’t offer new rates. But ME was the lender, and legitimately so, it wasn’t able to offer new interest rates to any customers, including Mrs D, or reduce its SVR to equivalent levels.

I’m mindful that if ME offered new lower rates to some customers but not others, that could mean some customers were being treated less favourably than others with similar characteristics – which in turn could potentially cause unfairness. But that wasn’t the case here. All its other customers were in the same position as Mrs D was.

We would expect a lender to inform a borrower of changes to their existing interest rates, so the borrower can decide if the product they have is still suitable for their needs. I'm satisfied ME did this. If Mrs D was unhappy with her mortgage or the interest rate charged by ME, there was nothing in the terms and conditions (such as an early repayment charge) preventing her from re-mortgaging with another lender when her mortgage was on ME's SVR. I understand ME made its borrowers aware of where they can get regulated mortgage advice without any cost to them. It also said it sent letters that offer solutions to the issues she may be facing. So, I'm satisfied that ME tried to assist her with this.

Mrs D says she's in negative equity. She says she has tried to move the mortgage elsewhere to achieve a better rate, but due to the lack of equity that hasn't been possible. She has told us she lets out the mortgaged property and has increased the rent she charges, but that doesn't cover her costs and the situation is impossible for her.

I don't underestimate Mrs D's strength of feeling about the position she finds herself in. While I appreciate that she hasn't been able to move her mortgage elsewhere because of the negative equity situation, I don't think it's fair to say that Topaz is responsible for that or that it has treated her unfairly as a result of that.

I think it's also worth me saying here that Mrs D has told us that she lets out the mortgaged property and has made it clear that she is losing money on it. She might want to consider getting independent financial advice to consider the best way forward for her.

Customer service issues

When Mrs D complained to ME she said that she was kept waiting on the phone for around 20 minutes in June 2022. ME offered her £10 compensation for this. For completeness I will say here that I think the £10 she was offered is a fair and reasonable amount to reflect the inconvenience she was caused by this.

My final decision

For the reasons set out above, my decision is that Topaz Finance Limited, trading as Hyalite Mortgages should pay Mrs D the £10 compensation it has offered to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 7 March 2024.

Laura Forster
Ombudsman