

The complaint

Mr and Mrs D are unhappy with how Topaz Finance Limited (trading as Morag Finance) have dealt with their mortgage as they do not believe they have been treated fairly. Mr and Mrs D said they have been unable to switch their mortgage interest rate and believe that Morag Finance have been charging an unfair amount of interest. They have said they are mortgage prisoners.

What happened

Mr and Mrs D's mortgage was originally taken out with another lender (lender A). This mortgage was transferred by lender A to another lender (lender B) in 2010. In 2017, the mortgage was transferred to Topaz Finance Limited. Morag Finance appointed Topaz to administer the mortgage on their behalf.

Mr and Mrs D have said they have been charged an unfair rate of interest on their mortgage and they are mortgage prisoners as Morag Finance are unable to offer them a new mortgage interest rate. And because of Mr and Mrs D's personal circumstances, they are unable to remortgage to another lender.

Mr and Mrs D have complained various times about this to Morag Finance but have been unhappy with their response, so they brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators.

Our investigator explained to Mr and Mrs D that we wouldn't be able to look at some of the points they complained about as some of those complaints had been brought outside of the relevant time limits. But he said we would be able to consider the interest rates which have been charged since 25 July 2022.

Our investigator gave his opinion on the merits of the case and didn't think that Morag Finance had done anything wrong. He said that the interest rate charged was in line with the mortgage offer and the terms and conditions of the mortgage. He also said that Morag Finance are a closed book lender so they were unable to offer any new products to Mr and Mrs D.

Mr and Mrs D didn't agree with this. They said their mortgage was with an active lender and then it got transferred to a non-active lender. They said this was done without their consent and believe their terms and conditions changed. Mr and Mrs D said they are mortgage prisoners and their mortgage payments have doubled and believe it is unfair.

As Mr and Mrs D disagreed with our investigator, they asked for the complaint to be reviewed by an ombudsman, so it's 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.

Mr and Mrs D had another complaint at the Financial Ombudsman Service that has had a final decision on it. This decision explained that Mr and Mrs D's mortgage can be transferred without their consent, and it was more likely that many mortgages were transferred as part of a book of lending and the agreement of why and how this happened was commercially sensitive between lender B and Topaz. I will therefore not be commenting on this aspect in this decision.

Access to interest rates

As already explained, our service can only consider Mr and Mrs D's complaint about their access to interest rates from 25 July 2022. In the event I recommend any redress, I would only be able to award for the period that is in scope of this complaint. That said, when considering this part of the complaint, I think it's necessary for me to set out the background as to what has happened.

Morag Finance is what's known as a closed book lender – which means they are unable to offer any new interest rates to any of their customers. So all of their customers were in the same position as Mr and Mrs D – and they were not treated any less fairly than any other customer.

It is generally expected that new interest rates are available when an old one expires – but there's no regulatory or contractual right to a new rate. So I can't say that Morag Finance have done anything wrong in not offering Mr and Mrs D a new interest rate.

As a closed book lender, Morag Finance should not stand in the way of customers moving to another lender. And I can see that they haven't place any barriers to Mr and Mrs D approaching another lender.

In October 2019, the FCA relaxed their affordability requirement when assessing a mortgage application, in the hope of allowing borrowers with an inactive lender, to move to an active lender. This didn't directly affect inactive lenders – who had no products for borrowers to apply for – but the FCA did require them to contact borrowers to inform them of this change. This was so that all borrowers could take steps in finding a new mortgage, hopefully on more favourable terms, with another lender.

Morag Finance did send Mr and Mrs D a letter – as they had to contact all eligible borrowers – to confirm they were classed as a mortgage prisoner. This letter directed Mr and Mrs D to where they could check the likelihood of being offered a lower rate of interest with another lender.

Mr and Mrs D have explained that their circumstances have changed, and they have not been able to remortgage to another lender and have also said that potential lenders told them there wasn't enough equity in their property for them to do so. Therefore Mr and Mrs D said they would like Morag Finance to offer them another interest rate. But as I've explained, Morag Finance cannot offer Mr and Mrs D another mortgage interest rate and it's unfortunate that Mr and Mrs D are unable to move to another lender. They may want to seek independent legal advice to see if there are any options available to them.

So based on the above and for the reasons given above, I don't uphold this part of the complaint.

The fairness of the interest charged on Mr and Mrs D's mortgage

I have looked at the mortgage offer from June 2007 which confirms that Mr and Mrs D's two year fixed rate was due to expire on 29 June 2009. It stated that after that period, the interest rate charged would be 2.24% above the Bank of England Base rate and explains the rate will not go below a 4% floor. Mr and Mrs D have complained that they have not seen the benefit of the interest rate reductions that the Bank of England have made and feel this is unfair.

Mr and Mrs D were sent a final response on this matter in October 2020 by Morag Finance who explained that the interest rate on their mortgage was charged in line with the terms and conditions of the mortgage. And from the period that I can consider, I cannot see that Mr and Mrs D have been charged unfairly based on the original mortgage offer and the terms and conditions of the mortgage.

Mr and Mrs D believe that when their mortgage was transferred to Morag Finance, their terms and conditions changed so they do not believe the interest being charged is in line with what was originally agreed.

The General Mortgage Conditions 2007 do explain that the terms apply no matter who owns the debt. I am not persuaded that Morag Finance operated the terms in an unfair manner when setting and varying the interest rate that applied on Mr and Mrs D's mortgage. I don't think there is any basis to say that they somehow contributed to Mr and Mrs D being charged an unfairly high rate of interest on their mortgage during the period I can consider, and I've seen no evidence to say the interest they were charging during that period was unfair for any other reason.

I understand that Mr and Mrs D will be disappointed with my decision, but I'm satisfied for the reasons I've given, that Morag Finance has not acted unfairly or unreasonably.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 4 March 2024.

Maria Drury
Ombudsman