

## **The complaint**

Mr P complains that Topaz Finance Limited, trading as Heliodor Mortgages, bought his mortgage from a previous lender in 2019 and didn't tell him at the time that it's a closed book lender. As a result, he says that Heliodor is in breach of his mortgage contract and he's a 'mortgage prisoner'.

## **What happened**

Mr P re-mortgaged to Northern Rock in 2005. He borrowed around £115,000 on a capital and interest repayment basis over a term of 20 years, on an initial five-year interest rate product which tracked Bank of England base rate plus a margin. The interest rate was then Northern Rock's standard variable rate (SVR), and later a discounted SVR as long as the mortgage payments were up-to-date. Mr P took further advances on the mortgage in the years that followed.

In 2008, Northern Rock collapsed and was later nationalised. Mr P's mortgage was transferred to NRAM. In November 2019, the mortgage was sold to Heliodor.

In 2023, Mr P made a complaint to Heliodor. He said that he had seen a recent Parliamentary debate about 'mortgage prisoners' and discovered that Heliodor had failed to tell him when it bought his mortgage in 2019 that it's an unregulated lender and not a 'triple A' mainstream lender as Northern Rock had been. He said its failure to tell him this meant he had missed the opportunity to move to a mainstream lender while his mortgage payments were up-to-date. He also wanted to know how much Heliodor had paid to buy his mortgage.

Heliodor said it had done nothing wrong. It said it is regulated by the Financial Conduct Authority (FCA), the transfer of Mr P's mortgage to another lender was provided for in the mortgage conditions and the predecessor lender didn't need Mr P's consent to the transfer. Mr P's mortgage was part of a large portfolio and no specific value was attributed to it so it couldn't tell him how much was paid for it, and in any event that didn't affect the mortgage balance. It also explained how it had set its SVR and that the rate was aligned to other lenders' SVRs, and explained where Mr P could get more information about moving his mortgage to another lender.

Mr P referred his complaint to the Financial Ombudsman Service. Our Investigator didn't recommend that it should be upheld. He said Mr P's mortgage contract hadn't changed as a result of the transfer to Heliodor and the transfer was permitted under the mortgage terms.

Mr P didn't accept that conclusion and asked for an Ombudsman to make a decision. He accepted that NRAM was entitled to sell his mortgage, but he said the sale should have included all of the lender's contractual obligations set out in the mortgage agreement – which included the option of further lending. He also said that Heliodor's SVR isn't regulated, so he has lost valuable protection.

## **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.

The terms and conditions of Mr P's mortgage provided for it to be transferred to a new lender, as I understand Mr P has accepted. There was no requirement for customers to be consulted about the transfer or to consent to it.

In any event, I don't think that the transfer stopped Mr P from re-mortgaging to another lender as he has argued. He could have looked into doing that both before and after the transfer. No early repayment charges applied to the mortgage after the transfer in 2019, so Heliodor didn't stop Mr P from applying for better interest rates and/or further borrowing with other lenders.

Mr P considers Heliodor to be in breach of his mortgage contract, because it doesn't offer further borrowing. He has referred to section 12 of his 2005 mortgage offer, which says:

"You can apply for additional secured borrowing at any time. Approval will be subject to your circumstances and our lending criteria."

This isn't a contractual obligation for the lender to lend Mr P more money. It's clear that any further lending would be subject to the lender's lending criteria, as well as Mr P's circumstances.

There was never any guarantee that Mr P's original lender would agree to further lending or continue to offer new interest rate products. Nothing in the mortgage offer or the terms and conditions, or in mortgage regulation, said that Northern Rock or its successors had to offer Mr P either additional borrowing or new interest rate products.

Following Northern Rock's collapse in 2008 and its subsequent nationalisation, it couldn't offer new lending or new interest rate products to its existing customers. So it isn't the case that Mr P's mortgage has only been with a closed book lender since it was transferred to Heliodor in 2019 – that has in fact been the case for more than the previous ten years.

Heliodor doesn't offer further borrowing or new interest rates to any customers, and there is no obligation on it to do so. I'm satisfied that this is not a breach of Mr P's mortgage contract or of any rules or regulations.

Heliodor shouldn't put barriers, such as early repayment charges, in the way of Mr P re-mortgaging elsewhere. I don't think it has done so, as I said earlier. It has provided him with details of where he can find more information about re-mortgaging – although I recognise that the arrears on his mortgage and the challenging circumstances he has faced in recent years would make switching to another lender much more difficult.

Mr P has said that Heliodor's SVR isn't regulated, and so he has no regulatory protection from interest rate rises. Mortgage lenders' SVRs aren't subject to a blanket upper limit or cap imposed by the regulator or anyone else – and no such limits applied to the predecessor lenders of Mr P's mortgage either. So Mr P hasn't lost protection that he had before as a result of the transfer to Heliodor. This doesn't mean however that lenders can set their SVRs at any level, at random. The mortgage terms set out the reasons for which the SVR can be varied. Nothing has changed, in either contractual or regulatory terms, as a result of the transfer from NRAM to Heliodor.

Mr P has also pointed to what he considers to be Heliodor's and Topaz's compliance failings in terms of the names of individuals involved with the business recorded at Companies House and on the FCA register. I'm not the regulator, so this isn't a matter for me. Heliodor has told Mr P that he may take this up with the FCA if he wishes.

In all the circumstances, I can't fairly uphold this complaint.

**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 P to accept or reject my decision before 12 June 2024.

Janet Millington  
**Ombudsman**