

The complaint

Ms R complains about the way that Topaz Finance Limited has administered her mortgage.

What happened

In March 2007, Ms R took out an interest only mortgage with Money Partners. The mortgage offer said the mortgage had a fixed rate of 5.62% for 36 months following the month of completion. Then, at the end of the fixed rate period, interest would be charged at a variable rate (5.7% at the time) plus a “fixed margin of 1.65%”.

The mortgage was later taken over by Topaz.

Ms R complains:

1. She was charged more than one month's interest before her first payment.
2. She was on a fixed rate, but Topaz charged interest on a daily rate each month. That meant some months the interest charged was higher than the payments she made.
3. On 12 December 2008, Topaz charged a £30 insurance fee, then a £30 fee for an unpaid direct debit even though the payment was made seven days later. It added an arrears fee even though the payment was made in the same month and also additional interest and two more insurance fees. That meant between 2008 and 2009 her balance went up by £560.
4. From 2009 to 2010, Topaz charged £150 in arrears fees. She made £500 in extra payments but her balance only went down by £300.
5. From 2010 to 2011, she paid an extra £182.58 in payment, but her balance went up by £12.15.
6. In February 2022, Topaz said her payments would go up on 1 April 2022, but it increased the interest rate in March 2022. This has been the same throughout the mortgage – Topaz increases the interest rate before it increases the monthly payment.
7. Topaz said it had applied a margin of 1.8% above its variable rate – that was 0.15% more than what the offer said.
8. In the 2018 to 2019 statement, her balance is lower than the mortgage starting balance, but the interest was not reduced accordingly. The expected payments were also lower than the interest charged. She made a payment on Sunday 30 September 2018 – but it was not credited until Monday 1 October. The following month she had to pay an additional 44 pence because she had been penalised for paying at the weekend.
9. In 2022 to 2023, her actual balance was below the starting balance of the mortgage – she said Topaz told her she was in credit by £1,372.13. She paid in a further £2,100 – she understood that she was therefore ahead by a total amount of £3,472.13. It was

agreed that she would not have to make any payments in January, February, March or April 2022. But Topaz charged interest of £3,685, which meant she exceeded her starting balance by around £200. But Topaz said she was actually £690.82 over the starting balance. She considered she was charged additional interest because she did not make any payments.

10. On numerous occasions interest was applied before her payments, even though they were processed on the same day.

Ms R also complained:

- There were missing payments in 2013 to 2014, 2016 to 2017 and 2020 to 2021.
- Her credit file showed a payment arrangement in respect of the agreement reached in point 9 above – she was not told her credit file would be affected.
- Topaz won't refund the overpayments she made.
- The interest rate is unfairly high.
- Her monthly payment has been unfairly increased.

I issued a jurisdiction decision explaining that we could not look at some of the complaints Ms R had referred to us. I said that any complaint about events before 13 March 2017 had been referred to us outside the time limit in our rules.

I went on to issue a provisional decision proposing to uphold the complaint in part. My provisional findings, which form part of this decision, were:

Topaz increases the interest before it increases the monthly payment

I understand that Ms R is paying the interest that has accrued the previous month. So when the interest rate goes up, the payment will increase the following month to cover the increase that has accrued. That is not unusual and I can't see any error by Topaz. I understand Ms R pays by bank transfer or standing order – so it is for her to adjust the payment.

Interest rate margin

When Ms R took out this mortgage, the mortgage offer said she would be charged interest at "the Variable Rate, currently 5.70%, plus a fixed margin of 1.65%".

The terms and conditions of the mortgage said the Variable Rate was linked to LIBOR – the London Interbank Offered Rate. The terms and conditions said:

"We may change the Variable Rate at our discretion whenever we want, so long as the variable rate is never more than 2% above the LIBOR rate."

So effectively the Variable Rate was always calculated on Ms R's mortgage as LIBOR plus a margin plus the margin of 1.65%. When Ms R took out the mortgage LIBOR was 5.5%. So a margin of 0.15% was added to achieve the Variable Rate of 5.7% and a further margin of 1.65% was applied.

LIBOR ended in 2021. So Topaz had no choice other than to use a different reference rate to calculate the Variable Rate. Topaz has explained that it uses "synthetic LIBOR" – a replacement reference rate published by the Financial Conduct Authority – instead of

LIBOR. It then applies a margin of 0.15% to synthetic LIBOR to achieve the Variable Rate and then applies the margin of 1.65%.

I don't consider Topaz has acted unfairly. The rate it has applied was not out of line with the terms and conditions Ms R agreed to when she took out a mortgage. The lender has always applied a margin on top of LIBOR and that is what it is doing now – albeit on top of synthetic LIBOR instead of LIBOR.

In the 2018 to 2019 statement, the balance is lower than the mortgage starting balance, but the interest was not reduced accordingly. The expected payments were also lower than the interest charged.

The mortgage offer states that Ms R's original balance was £93,698. The balance on the 2019 statement is £92,732.72. I have not been presented with any evidence to show that interest has been applied on anything other than the outstanding balance.

I understand that Ms R pays her mortgage by bank transfer or standing order. So it was for her to make sure that she was paying enough to cover the interest due. We have evidence that Topaz notifies her when the contractual monthly payment changes.

Ms R made a payment on Sunday 30 September 2018 – but it was not credited until Monday 1 October. The following month she had to pay an additional 44 pence because she had been penalised for paying at the weekend.

I don't consider this was an error by Topaz. It is not unusual for financial businesses to only apply credits on working days.

Credit balance

Topaz was under no obligation to tell Ms R that there was a credit balance or refund overpayments to her. The statements it sent her reflected the true position of the mortgage.

I understand that Ms R spoke to Topaz on 5 January 2023. Topaz has not given us recordings of those phone calls. Ms R said she understood she'd agreed for the credit balance on her account to cover the interest due in January, February, March and April 2023.

Topaz said there was a credit balance on Ms R's mortgage. The credit balance reduced the mortgage balance. So when the interest was applied, the credit balance reduced and the mortgage balance went up accordingly. I don't consider this was an error by Topaz.

Topaz has already accepted that it gave Ms R incorrect information during the 5 January phone call. It did not tell Ms R that the arrangement would affect her credit file. It has agreed to remove that information from her credit file and pay her £75 for any trouble and upset caused.

I am not sufficiently persuaded that Topaz explained how the arrangement would work. Ms R is clearly still confused about what was agreed.

We do have recordings of the phone calls that Ms R had with Topaz on 10 January 2023. In the phone call Topaz told her it was cancelling the arrangement that was made on 5 January. It told her call back in February once she had considered her options and to keep in contact each month. But it also told her that the credit balance would cover the interest due (as long as her payments didn't change) for "three to four months" and that it gave her some breathing space.

I accept that Topaz did not unequivocally say that the credit balance would cover the payments due until April – but there was scope for avoidable confusion based on what it told Ms R. But it also told Ms R to keep in touch each month – and it also told her the payment went up on 1 April 2023. And it is not clear that Ms R could have paid the interest due if the correct position had been explained to her. So I am not going to tell Topaz to adjust the interest.

There has clearly been a failure in Topaz communicating in a clear, fair and not misleading way – and it was not a one off. It has caused Ms R a lot of worry and I think Topaz should pay her £200 to reflect that.

Missing payments

I can only look at events after March 2017. But Ms R has not given us any evidence that she made payments after that that were not credited to her mortgage. So I can't uphold this part of the complaint.

Interest rate and monthly payment

Ms R's payments have gone up because synthetic LIBOR – along with interest rates generally – have gone up since 2021. I can't see there has been any error by Topaz.

Topaz accepted my provisional findings. Ms R's representative said they had nothing further to add but reiterated that Ms R had not been treated fairly and she had been given conflicting information by Topaz.

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.

I accept that Topaz did not give Ms R clear, fair and not misleading information when it discussed the credit balance and whether payments were required in January 2023. But I still consider £200 is a fair amount to reflect the distress and inconvenience caused to Ms R by that. I am not persuaded that the overall position of the mortgage would have been different had Ms R been given clearer information.

I see no reason to reach a different outcome than I did in my provisional decision.

My final decision

My final decision is that Topaz Finance Limited should pay Ms R £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 29 October 2024.

Ken Rose
Ombudsman