

## **The complaint**

This complaint is about a mortgage Mr and Mrs F used to hold with Topaz Finance Limited trading as Heliodor Mortgages (Heliodor). The essence of the complaint is that they believe the interest rate they were charged historically, up to the point at which the mortgage was repaid, was too high.

## **What happened**

Mr and Mrs F's mortgage started in 2003 with a lender I'll call N, and was on a succession of fixed interest rate products, the most recent of which expired on 30 June 2010. At that point, the mortgage reverted to N's standard variable rate (SVR).

Since the fixed rate expired in 2010, no interest rate product has been attached (N had become a closed lender and stopped offering new rate products in 2008). That means that since October 2010, the mortgage has been charged interest at SVR.

Subsequently, a tranche of N's mortgage accounts (including Mr and Mrs F's) was transferred to Heliodor.

Mr and Mrs F started this complaint in 2024; the gist of it being that the changes in SVR over time had been excessive, in that they widened the margin between SVR and Bank of England Base Rate (BoEBr). Heliodor rejected the complaint, and it was passed to our service.

Our Investigator didn't think we could consider all of the complaint; she thought our remit was confined to looking into movements in the interest rate between May 2018 (six years back from the start of the complaint in May 2024) and October 2018, when the mortgage account was closed

When the Investigator then looked into the interest rates Heliodor had charged during the relevant period, he wasn't persuaded that Mr and Mrs F had been treated unfairly.

Mr and Mrs F asked for the complaint to be reviewed by an ombudsman. By way of a decision dated xx February 2025, I confirmed that my power to consider this complaint is confined to the fairness or otherwise of the interest rate Heliodor charged between May and October 2018.

## **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference

from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, these are my conclusions, and the reasons for them.

The starting point here is the agreement Mr and Mrs F entered into for the mortgage. The rate Heliodor (or N before it) was permitted to charge during the period under consideration in the absence of a separate interest rate product was its SVR.

Meanwhile, N had stopped offering new interest rate deals before the mortgage reverted to SVR in 2010. That being the case, I'm satisfied that the interest rates that Heliodor was permitted to charge under the terms of the mortgage during the period I can consider was SVR.

One of the considerations that I am required to take into account is relevant law. I consider that the application of the Unfair Terms in Consumer Contracts Regulations (UTCCRs) to the relevant terms in this case falls into that category of relevant law. The way the UTCCRs apply to the relevant terms of Mr and Mrs F's mortgage contract is ultimately a matter for the courts. But they are a relevant consideration I must take into account when determining what is fair and reasonable in all of the circumstances of this case.

The crux of this is whether any of the terms, contrary to the requirements of good faith, cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. As part of this, relevant considerations are:

- the extent to which the terms are sufficiently clear and transparent;
- the extent to which there are any significant barriers imposed by Heliodor (or N before it) to Mr and Mrs F being able to exit the contract.

As regards clarity and transparency, I accept that it's possible a court may find the terms to be unfair under UTCCR but this in itself is not determinative of this complaint. I also need to consider whether the application of these terms has led to Mr and Mrs F being treated unfairly. And for the reasons set out above, I don't think this is the case.

At a general level, interest variation clauses such as those that applied to Mr and Mrs F's mortgage have a legitimate purpose and are common in financial services consumer contracts, particularly those of long or indeterminate duration, such as mortgage agreements.

A fair variation term can benefit both consumers and lenders, by providing flexibility and a wider choice to consumers and enabling firms to provide competitively priced products, knowing they can vary the interest rates they charge to reflect changes in circumstances, particularly in their own cost of funding. A reversionary rate also permits lenders to provide for future changes that justify increases in the rate, and a lender's own costs of funds are by nature difficult to foresee.

The time period I'm looking at (May to October 2018) followed on from a time of significant change in the wider market as a result of the financial crisis in 2008/09. Whilst seemingly distant, the effects of this event were still being felt many years later. It had a long-term impact on the funding costs of businesses and was reflected in changes to a number of

lenders' interest rates charged across the market at the time and subsequently. It's also what led to N becoming a closed lender in the first place.

I'm also mindful that the FCA has noted the adverse impact the financial crisis had on lenders' costs during that period, and that it hasn't seen that SVR variation terms have generally been relied on unfairly to cause widespread detriment to consumers (see for example the May 2018 Guidance Consultation GC18/2 Fairness of Variation terms in financial services consumer contracts under the Consumer Rights Act 2015 paragraphs 2.8 to 2.10).

We have received detailed information about the reasons why Heliodor's SVR varied in the way that it did during the period under consideration. The information we've received is commercially sensitive, so can be treated as confidential. The information has been reviewed in line with the mortgage documentation, relevant law and regulations.

I've considered whether Heliodor (and N before it) acted fairly overall. Having done so, I'm satisfied the SVR was varied in line with the mortgage terms and conditions and that Heliodor (and N before it) exercised those terms fairly. This means that I'm satisfied neither Heliodor nor N before it overcharged interest on Mr and Mrs F's mortgage account between May and October 2018.

Whilst BoEBR had reduced significantly leading up to this period, the costs to lenders of funding their businesses changed, as did their prudential requirements. These are made up of several factors that are not directly linked to BoEBR. There was a substantial increase in risk to all lenders before and during that period, and that led to them having to mitigate that risk in different ways. So, with none of Mr and Mrs F's mortgage accounts being on an interest rate product that tracks BoEBR movement directly, there are objectively justifiable reasons why Heliodor would not necessarily have always reduced the applicable rate at the same level as the reduction in BoEBR.

Overall I am not persuaded there is any basis to say that the variations Heliodor (or N before it) made to its SVR after 2010 resulted in Mr and Mrs F being charged an unfairly high rate of interest on their mortgage during the period I can consider. Nor does the evidence lead me to conclude that the interest rate applied during that period was unfair for any other reason.

That leaves the question of whether Heliodor (or N before it) placed any barriers in the way of Mr and Mrs F being able to exit the contract. Being on SVR meant that Mr and Mrs F's mortgage wasn't subject to an early repayment charge in the event they repaid the mortgage, whether that was the result of selling the mortgaged property or re-financing it with another lender.

I accept there may have been difficulties for Mr and Mrs F to do that as a result of their wider financial circumstances, and if that was the case, then I can understand their frustration. But it's not something I could fairly hold Heliodor (or N before it) responsible for.

### **My final decision**

My final decision is that I don't uphold this complaint or make any order or award against Topaz Finance Limited trading as Heliodor Mortgages

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 17 March 2025.

Jeff Parrington  
**Ombudsman**