

The complaint

This complaint is brought by Mr and Mrs Z against Topaz Finance Limited, trading as Hessonite Mortgages.

Mr and Mrs Z say that they were never told that their buy-to-let (BTL) mortgages were held on an 'all monies charge' (AMC). They therefore believe Topaz acted unfairly when it required them to pay off arrears on one mortgage account before agreeing to release the charge it held over another property on redemption of the mortgage on that property.

Mr and Mrs Z are also unhappy at Topaz's customer service, and that it miscalculated the amount required on redemption and had to refund £332.71 to Mr and Mrs Z.

What happened

At the relevant time (from April 2023 to January 2024), Mr and Mrs Z had three interest-only BTL mortgages, originally taken out with another lender in 2005. Two of the mortgages were secured on properties I will refer to as 316 and 346. The third mortgage doesn't form part of this complaint. The mortgages were transferred to Topaz on 23 October 2023.

The mortgage on 316 had expired and the previous lender had granted a grace period to allow the property to be sold. In late 2023 a sale had been agreed, with completion fixed for mid-January 2024.

On 10 January 2024 a member of staff at Topaz, G, emailed Mrs Z. I will quote the email in full, as it forms the basis of Mrs Z's complaint that she didn't like its tone and found it threatening.

"Good morning Mrs [Z]

I write further to letters dated 22 August 2023 and 23 October 2023, and wish to introduce myself as your point of contact.

We require an update and request that this be provided within the next 7 days.

Should you wish to discuss, or have any queries, please do not hesitate to contact me on [number].

Kind regards

[G]"

Mrs Z replied the same day. She was unhappy about the tone of the email, and said she'd previously dealt with someone called B, who was *"always so pleasant"*. Mrs Z provided an update confirming the sale of 316 was progressing, but that 346 remained vacant and had been damaged by tenants. Mrs Z said that there should be a note on the system that she must be treated as vulnerable. *"I take it from the tone of your email that the note may not be visible."*

Mrs Z followed this up with another email on 15 January 2024 confirming contracts had been exchanged with completion “on Friday” (19 January 2024).

However, in December 2023 the mortgage on 346 had fallen into arrears. As a result, when the redemption statement was issued for 316 on 15 January 2024 this included payment of the arrears of about £450 on 346. Topaz followed this up with a letter to the solicitors dated 17 January 2024, explaining that it would not require full repayment of the mortgage on 346 if the arrears of £450 were paid. Topaz included its AMC leaflet.

There was a further exchange between Topaz and Mrs Z about this, with Mrs Z disputing Topaz had any legal basis for requesting the arrears on 346 be paid as part of the redemption of the mortgage on 316. She said that there was no formal demand, and referred to the mortgage terms and conditions that related to any surplus mortgage funds on redemption being applied to any other mortgage. Mrs Z said that didn’t apply because there was no surplus – the property had been sold at a loss with Mr and Mrs Z having to borrow £11,000 from elsewhere to redeem the mortgage. In addition, Mrs Z said that G’s “threatening behaviour” towards her had caused her distress.

Mr and Mrs Z made a formal complaint to Topaz, saying they’d never at any point been made aware that this was an AMC mortgage. They also said that Mrs Z was vulnerable and that Topaz had failed to take this into account, preferring a softer tone in its emails. They were also unhappy about the tone of the email dated 10 January 2024. In addition, after the mortgage had been redeemed, they received a refund of about £300, and queried why this had happened.

In its final response letter, Topaz didn’t agree that the email dated 10 January 2024 was insensitive (mistakenly referring to the date as 10 February 2024). Topaz didn’t really address the other issues.

The complaint was referred to our service. Initially the Investigator didn’t think it should be upheld. She was satisfied it was reasonable, with an AMC, for Topaz to request arrears be cleared on one account before allowing the redemption of another. Mr and Mrs Z disagreed, saying “we were never made aware of an all monies charge ever”. They reiterated they’d been threatened by Topaz.

Following this, another Investigator looked at the complaint. He was satisfied that, these being BTL mortgage accounts, the onus was on the borrower to be aware of the terms and conditions. But he didn’t think the AMC had been drawn to Mr and Mrs Z’s notice during previous discussions about the mortgage in 2023, or that Mrs Z’s circumstances had been taken into account.

The Investigator noted these were joint mortgages, and so Mr Z or a third party could also have dealt with them. But as Mrs Z had decided to deal with Topaz, and as she’d explained that dealing with finances caused her considerable distress, the Investigator thought there should have been more tact shown in relation to this.

In relation to the refund that was made after the redemption, the Investigator noted this was for an interest credit, but thought that Topaz should have used more tact when explaining this to Mr and Mrs Z.

As a result, although the Investigator was satisfied Topaz had correctly administered the account, he thought Topaz should pay Mr and Mrs Z £450 to reflect the personal impact on Mrs Z of what had happened in relation to the redemption. He said this was a higher award than normal, because Mrs Z was more susceptible to distress as a result of having to deal with financial matters.

Mr and Mrs Z accepted this but Topaz did not and asked for an Ombudsman to review the case.

Topaz said that it was only in December 2023 that the mortgage on 346 had gone into arrears, so there had been no need to mention the AMC prior to this as it wasn't applicable until then. Topaz also said that if Mrs Z was struggling, it was reasonable that the joint account holder or an appointed third party should have helped. Topaz therefore didn't think it was fair, given that these events took place over such a short period of time, that it should pay compensation when the Investigator had acknowledged that the account had been correctly administered.

Provisional decision of 13 February 2025

I issued a provisional decision, in which I made the following findings.

These are unregulated mortgages, and so the regulatory obligations that apply to residential mortgages aren't relevant here. However, Topaz is still required to treat Mr and Mrs Z fairly when handling their account.

AMC: Mr and Mrs Z say they were never at any time told that these were AMC mortgages. However, I'm satisfied that this is set out in the mortgage terms and conditions. Topaz didn't sell this mortgage, and so isn't responsible for the terms and conditions Mr and Mrs Z agreed to in 2005. As these are BTL mortgages, it's reasonable to conclude they were arranged by Mr and Mrs Z's own mortgage broker, who was responsible for explaining the terms and conditions of the mortgage to them.

I will also explain that where borrowers have multiple BTL mortgages with the same lender, it's common across the industry for these to be treated as a portfolio, and so arrears on one account will be treated as a risk across all accounts. It's therefore industry standard to expect arrears on one mortgage in a portfolio to be cleared before a lender agrees to release a charge on another property in the mortgage portfolio. This is because, removing a property increases the lender's exposure to debt, and so it's reasonable for lenders to manage risk in this way.

The account on 346 didn't fall into arrears until December 2023, so I'm satisfied that the AMC wouldn't have needed to form part of any discussions with Mr and Mrs Z earlier that year about sale of 316. It only became relevant when the redemption statement was called for, in mid-January 2024.

Given this, I can't find Topaz to be at fault for not mentioning it in discussions earlier in 2023. Topaz was reasonably entitled to assume that Mr and Mrs Z, as commercial borrowers, were aware of the terms and conditions of the mortgage, including that it was an AMC, in any event. I'm therefore not persuaded Topaz has done anything wrong here.

Refund of interest: Interest is debited to the mortgage account monthly on the first of the month. Therefore, because the mortgage was redeemed in the middle of January 2024, a refund of interest was due. I've looked at the account transactions, which show the interest for January 2024 debited on 1 January 2024 in the amount of £1,135. The redemption funds were received on 23 January 2024. As a result, the excess interest was refunded.

I appreciate it was frustrating to Mr and Mrs Z, particularly as they had to pay the additional £450 for the arrears on 346 on redemption of the mortgage on 316. But Topaz hasn't done anything wrong here. Topaz isn't to know when a mortgage is going to be redeemed, as this isn't something it has any control over. The refund was correctly processed, as the redemption figure had taken account of the full month's interest charged on 1 January 2024, but the account was redeemed on 23 January 2024, giving rise to a refund of interest. Having reviewed what happened, I'm unable to find Topaz to be at fault here.

Customer service: I've read the email from G dated 10 January 2024 (quoted above in full), which gave rise to Mrs Z's complaint about the tone and content of the email. However, I'm satisfied the email is professional and polite. I've found nothing in its tone that could be considered "*threatening*". Nor have I found anything in the subsequent correspondence that could be construed as a threat or which is intended deliberately to cause Mrs Z distress or upset. So whilst I note Topaz didn't have details on file of Mrs Z's specific vulnerabilities, only a general note, I'm unable to identify any correspondence from Topaz from 10 January 2024 onwards that could be taken as a threat. So whilst I note this is how Mrs Z perceived the correspondence, looking at it impartially, I'm unable to find this to be the case.

I've noted what Mrs Z has said about her vulnerabilities, and that dealing with financial matters is extremely distressing for her. I have considerable sympathy for her personal circumstances, details of which I will not provide in order to preserve her privacy. But I have to put aside my natural feelings of empathy, and decide the case without being swayed by emotion.

At the time of the events, Mr and Mrs Z had several BTL mortgages, which are considered to be commercial ventures taken out for investment purposes. I can't tell Mr and Mrs Z how to run their BTL business, but Mrs Z appeared to take the lead, notwithstanding that she finds handling these matters extremely difficult and stressful. I can see that the BTLs hadn't provided Mr and Mrs Z with the income or capital growth they had probably expected when they'd taken out the mortgages in 2005, due to events outside their control (the financial crash in 2008, and, from what I've read in the file, issues with tenants). I acknowledge that managing their BTL portfolio was stressful for Mrs Z.

I don't doubt what Mrs Z has said about the impact of the events from 10 January 2024 onwards on her. I can see from what she's said that Mrs Z was upset to learn about the AMC, and that she perceived Topaz's correspondence as "*threatening*". But this is a joint account, and if, as she says, Mrs Z was being caused a huge amount of upset by having to deal with Topaz, I can find no reason why Mr Z could not have dealt with it instead. Alternatively Mrs Z could have authorised a third party, such as an accountant or their solicitor, to liaise with Topaz about the redemption of the mortgage.

In all the circumstances, therefore, I'm not persuaded it would be fair or reasonable to order Topaz to compensate Mrs Z for any distress or inconvenience in relation to her complaint about being threatened and caused distress, following the email of 10 January 2024 and in the events leading up to the redemption. As I've said above, I'm not persuaded Topaz's tone or content in its correspondence was threatening, unprofessional or improper in any way. And I'm also satisfied its handling of the redemption, including the requirement for the arrears on 346 to be paid and the refund of excess interest, was in order and in line with the mortgage terms and conditions. In the circumstances, therefore, I'm unable to find Topaz has done

anything wrong and so I cannot in all fairness expect it to pay compensation where I'm satisfied it hasn't made an error.

Responses to the provisional decision

Topaz accepted my provisional decision. Mr and Mrs Z did not. Mrs Z said she was astonished that anyone could believe Topaz had acted in a professional matter. She said that at no point did the previous lender mention the AMC, and it entered into an arrangement with her and Mr Z to sell the property. It was therefore unfair and unprofessional of Topaz to disclose its intention to impose the AMC so soon before completion.

Mrs Z also said that Mr Z's English is insufficient to enable him to deal with financial matters. In addition, if the redemption figure had been correctly calculated, they wouldn't have needed to find the extra money for the arrears.

Finally, Mrs Z said that it seems clear that the Financial Ombudsman Service tends to side with large businesses.

Because both parties have confirmed they have no further points to make, I am proceeding to issue my final decision.

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 so, and after giving consideration to the points Mrs Z has made, I am not minded to depart from the conclusions reached in my provisional decision.

I will clarify here that Topaz only took over this mortgage on 23 October 2023. I can't therefore comment on anything the previous lender did in relation to this mortgage.

As I said in my provisional decision, if Mr and Mrs Z believe they were never told their BTL mortgages were covered by an AMC, they will need to raise this with the party that arranged the mortgages for them. I reiterate that it is common for multiple BTL mortgages with the same lender to be held on a portfolio basis covered by an AMC. If Mr and Mrs Z weren't aware of the AMC that has applied to their mortgages since 2005, that's not something Topaz can be held responsible for.

When Topaz took over the mortgages on 23 October 2023 the mortgage on 346 wasn't in arrears. When the mortgage on 346 fell into arrears in December 2023, and Topaz knew Mr and Mrs Z were redeeming the mortgage on 316, Topaz was entitled to ask for those arrears to be paid prior to Topaz agreeing to remove the charge on 316.

The redemption statement was not calculated incorrectly, as Mrs Z alleges. It included interest for the whole of January 2024, in line with the mortgage terms and conditions. Because redemption of the mortgage was before the end of the month, a refund of overpaid interest was made after redemption had taken place. Therefore there was no error by Topaz.

In relation to dealing with the mortgage, I've noted what Mrs Z has said. But she and Mr Z are joint borrowers on several BTL mortgages. It's reasonable to conclude, given that these are commercial investments, that Mr Z is aware of, and understands, how these operate.

I've re-read the email from Topaz dated 10 January 2024 to which Mrs Z took offence. But I am satisfied that it is entirely polite and professional in tone. There is nothing in Topaz's other correspondence to suggest it was rude, threatening or harassing Mrs Z, or that Topaz was acting in anything other than a professional manner.

Mrs Z was told on 17 January 2024 that the arrears on 346 would need to be paid. Completion of the sale of 316 and redemption of the mortgage took place five days later. I appreciate Mrs Z was caused some upset in having to find the additional £450 for the arrears on 346 within five days. However, because I'm satisfied Topaz hasn't made an error, I'm not persuaded that a payment of compensation is appropriate.

I know this isn't the decision Mr and Mrs Z were hoping for. I can see why Mrs Z perceives an outcome that isn't in her favour as our service "*siding*" with large businesses. That's a natural, subjective reaction, and entirely understandable when you're as close to a situation as Mr and Mrs Z have been.

But I have a different remit; I have to be objective and impartial and decide the case on the basis of all the evidence, rather than be swayed by emotion. And here, the evidence doesn't persuade me that Topaz has done anything wrong.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs Z to accept or reject my decision before 18 March 2025.

Jan O'Leary
Ombudsman