

The complaint

Mr and Mrs H complain about a default Topaz Finance Limited trading as Heliodor Mortgages has reported in connection with an unsecured loan originally taken out in connection with a mortgage.

What happened

In 2006 Mr and Mrs H took a “Together” mortgage with the then Northern Rock bank. A Together mortgage consists of a standard mortgage, together with an unsecured loan linked to it. This enabled borrowers to borrow more than the property’s value.

The unsecured loan is linked to the mortgage and is repaid over the same term and at the same interest rate, with one combined monthly payment. However, if the mortgage is ever repaid without also repaying the unsecured loan, they become de-linked and the unsecured loan continues on a standalone basis, at a higher interest rate.

Following Northern Rock’s collapse, Mr and Mrs H’s mortgage was moved to the nationalised successor lender, NRAM. They repaid the mortgage in 2018 but didn’t repay the unsecured loan at that time. NRAM wrote to them to confirm that the unsecured loan, with a then balance of around £11,500, remained in place. Around this time Mr and Mrs H also changed address.

In 2019, the loan was transferred to Heliodor. Heliodor says that in September 2019 Mr and Mrs H cancelled the direct debit being used to make the repayments. At any rate, no further payments were made from then on.

In March 2020, Heliodor defaulted the loan. In April 2021, Mr H complained about the default. It sent separate copies of its final response to both Mr H and Mrs H in July 2021.

The final response letter said that no payment had been received since September 2019. It said that Heliodor had written to Mr and Mrs H about the arrears at their new address and had tried to call them without success. Heliodor said that it should also have sent them a notice of default before registering the default, but as it had not done so it would remove the default. But it said that the account remained in arrears, that the arrears were being reported to the credit reference agencies, and it would need to speak to Mr and Mrs H about their proposals for making payment – or it might need to take further action.

Following that complaint, Mr and Mrs H did not make any payments to the loan. Mr H requested a redemption statement and made a further complaint that the balance was higher than they had expected. Heliodor responded to that complaint in November 2021, accepting that an incorrect statement had been sent. It said it would send a correct redemption statement and paid £100 compensation.

The loan was not repaid, and Mr and Mrs H continued not to make any payments. Heliodor took no further action until October 2023, when it resumed adding interest to the loan balance. As payments were still not being made, Heliodor defaulted the loan in April 2024.

Mrs H discovered the default when undergoing background checks for her work. She initially disputed it with one of the credit reference agencies, which removed the default, but Heliodor reinstated it. So Mrs H brought this complaint. She said she had had no knowledge of a loan with Heliodor and had never had any dealings with it. She said she thought this was a case of mistaken identity, and that it had put her at risk of losing her job.

Our investigator said that there was an outstanding debt arising from the unsecured loan taken with the mortgage. He said that although Heliodor had removed the previous default in 2021, as no payments were then made a new default should have been applied at that time rather than waiting until 2024. And that no interest should have been charged since the backdated default.

Heliodor agreed with that. It said it would amend the default date from April 2024 to January 2022, and it would remove £1,202.58 of interest from the outstanding balance of the loan – being interest charged since January 2022.

Mr and Mrs H didn't agree. They said they believed the loan had been settled. Mrs H said they had paid it off in around 2019. Mr H said that he had been called by Heliodor in 2019 to be told he owed £23,000 – he asked for details in writing but didn't receive anything. In 2021, he discovered a default on his credit file and complained to Heliodor about it and asked for a breakdown of what was outstanding. He was given different amounts in different phone calls, then sent a redemption statement for £23,000 in August 2021. He said the complaint was closed in November 2021, but he still hadn't been told what he owed, what the term of the loan was or what the interest rate was, and he considered the matter settled.

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.

First of all, I've considered whether it's fair and reasonable to consider that there is still an outstanding debt. If so, I then need to think about whether Heliodor has acted fairly in the action it has taken.

This loan was taken out alongside Mr and Mrs H's mortgage in 2006. They repaid the main mortgage in 2018, but not the Together loan. NRAM wrote to them at the time the mortgage was repaid to confirm that the unsecured loan remained in place, and that the balance was around £11,500.

Mrs H told our investigator that she believed the loan was then repaid shortly after, by February 2019 at the latest, using funds borrowed from friends and family. But I'm not persuaded that Mr and Mrs H did repay it around then. There's no evidence in Heliodor's records of the loan being paid off at that point, and Mr and Mrs H haven't provided evidence – such as bank statements – of having made full repayment either.

Mr and Mrs H continued to make monthly payments by direct debit, with the last payment being made on 2 September 2019. At that time the balance of the loan was £11,080.18. But the balance began to go up after this, as monthly interest of around £120 was added to the loan but no payments were made.

Heliodor says that Mr and Mrs H cancelled their direct debit after the September payment. But whether they did or not, no payments were being made from then on.

In November 2019, the loan was transferred to Heliodor. Heliodor wrote to them – at their new, current, address – confirming that it had taken over the loan. Mr and Mrs H have given

us a copy of this letter, so they clearly received it.

Heliodor tried to contact Mr and Mrs H in late 2019 and early 2020, without success. It called Mr H's mobile phone – using his current number – and left messages. As it was unable to contact Mr and Mrs H and still no payments were being made, it defaulted the loan in March 2020. No further interest was added to the loan from this point (until Heliodor resumed adding interest in 2023).

Mr H discovered the default in April 2021 and complained to Heliodor. Heliodor accepted that it hadn't sent Mr and Mrs H the correct notices required in advance of a default, so it removed the default. This meant that the loan was still outstanding and payments would need to be made, and that Mr and Mrs H's credit files would show arrears when payments were missed. Heliodor confirmed the action it had taken in a final response letter in July 2021 – it sent separate copies of this letter to both Mr H and Mrs H, using their correct new address.

On 2 August 2021, Mr H called Heliodor to request a redemption statement. Heliodor sent a redemption statement but it was incorrect – it said the balance was £23,000 not £11,500. Mr H complained about this and Heliodor sent him a final response – to the correct current address – in November 2021 accepting that the redemption statement was wrong and saying it would send a correct one.

Mr H did not suggest that the loan had already been paid off in either of the complaints he made in 2021. I'm satisfied that Mr and Mrs H knew the loan existed and was still outstanding. They had been reminded about it by NRAM when they repaid the mortgage in 2018; they had continued to make monthly payments until September 2019; Heliodor wrote to them to tell them it had taken the loan over in November 2019; and Mr H complained about the loan – but not that it had already been paid off – in 2021.

After the 2021 complaints, Mr and Mrs H did not resume making payments. Heliodor wrote to them both separately every month when payments were missed. It wrote to Mr H at the new correct address and to Mrs H at the old address associated with the mortgage. It's therefore likely that Mrs H didn't receive those letters – but it's also more likely than not that Mr H did, at the address where he and Mrs H were then living.

I'm therefore satisfied that Mr and Mrs H knew about the loan. They received regular reminders, in the form of the letters to Mr H, that the loan still existed and that monthly payments were due. But Mr and Mrs H continued not to make any payments.

Other than sending the monthly arrears letters, Heliodor took no further action until late 2023, when it also called Mr H several times – leaving messages, but not successfully speaking to Mr H. It used the same mobile number it had spoken to Mr H on in 2021. But Mr H wrote to Heliodor in March 2024 asking for copies of the loan documents and for information about the interest rate.

As no payments had been made, Heliodor sent the required default notices, and applied a default to Mr and Mrs H's credit files in April 2024. Again, when sending the notices it wrote to Mrs H at the old address, but to Mr H at the correct new address. So I'm satisfied Mr H received them.

I appreciate the difficulties a default on her credit file may cause Mrs H in her employment. But I can't fairly require Heliodor to remove it. I'm satisfied that this is Mr and Mrs H's debt and that they haven't made any payments to it since September 2019. I'm also satisfied that Mr and Mrs H were aware of the loan and were told about it on many occasions over the years – from the welcome letter from Heliodor in 2019 and the complaints in 2021, to the

monthly reminders of missed payments between 2021 and 2024 and the default notices in 2024. While Mrs H's copies of many (but not all) of those documents were sent to their old address, Mr H's were sent to the right address and it's more likely than not that they were received.

Given that no payments have been made for many years, though, I do think Heliodor left it too long to apply the default.

Mr H complained about the previous default in 2021, and Heliodor agreed to remove it and reinstate the loan, giving Mr and Mrs H the chance to resume making the payments. But they did not do so. I can't consider that complaint now, because Mr and Mrs H didn't refer it to us within six months of the final response issued in July 2021. I therefore can't consider whether or not it was fair that Heliodor applied a default in 2020, or whether or not it was fair that it reinstated the loan as an active loan in 2021 rather than applying an earlier default.

But I can consider the action that Heliodor has taken – or failed to take – since then. Mr and Mrs H had the option to resume making payments following the 2021 complaint, or to engage with Heliodor and ask for assistance if they were unable to pay. But they didn't do so, even though Heliodor sent Mr H monthly arrears letters to their correct address. I think it would have been reasonable for Heliodor to have re-applied a default to the account by January 2022, six months after, in the July 2021 final response, it had agreed to remove the earlier default and give Mr and Mrs H the chance to resume payments.

In failing to take action until late 2023, and not applying the default until 2024, Heliodor didn't act fairly – although it was entitled to do what it did, it should have done it sooner. Heliodor should therefore backdate the default to January 2022. Because a default brings the loan agreement to an end – crystallising the debt and making it repayable in full – Heliodor should also remove any interest added to the loan balance after January 2022.

This means that Mr and Mrs H's credit files will – if they accept this decision – not now show arrears until April 2024 followed by a default in April 2024. Instead, they will show arrears up to, and a default in, January 2022. There will be no record of arrears after January 2022, but the default will show as unsatisfied unless and until Mr and Mrs H repay the remaining balance.

To be clear, although the application of a default brings the loan to an end, it does not mean that the debt no longer exists. Instead of having to make monthly payments for the rest of the loan term, Mr and Mrs H now have to pay the full outstanding balance.

I'd therefore urge them to get in touch with Heliodor and discuss how that is to be done – Mr and Mrs H will need to share information about their current financial circumstances to see if an affordable repayment plan can be agreed. But they need to be aware that if they don't come to an agreement with Heliodor, it will be entitled to take further enforcement action, including seeking a County Court judgment (CCJ). I hope that won't be necessary.

Putting things right

To put things right, Heliodor should:

- backdate the default from April 2024 to January 2022;
- amend Mr and Mrs H's credit files to show the revised default date and revised arrears position; and
- re-work the loan balance to remove all interest added to the loan balance since

January 2022.

My final decision

My final decision is that I uphold this complaint and direct Topaz Finance Limited trading as Heliodor Mortgages to take the action I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 24 March 2025.

Simon Pugh
Ombudsman