

## **The complaint**

Miss J complains that Topaz Finance Limited (trading as Siberite Mortgages) hasn't given her the option over the years to move onto a fixed interest rate. She feels she has been overcharged interest on her mortgage as a result, making her monthly payments excessive. And, she says she is, therefore, a 'mortgage prisoner'.

## **What happened**

Miss J took out a buy-to-let mortgage with a lender I'll refer to as "Lender G" in or around August 2006. She borrowed £93,450 over a term of 25 years on an interest only basis. The initial interest rate was fixed at a rate of 5.39% until 30 June 2008. From 1 July 2008 onwards the lender's standard variable rate ('SVR') has applied.

Shortly after the mortgage completed, it was transferred to another lender I'll refer to as "Lender M". The mortgage remained with Lender M for many years until it was transferred to Siberite Mortgages Limited in July 2019. At the same time, Topaz Finance Limited (trading as Siberite Mortgages) was appointed to administer the mortgage on Siberite Mortgage Limited's behalf. To avoid confusion, I will refer to Topaz Finance Limited (trading as Siberite Mortgages) as 'Topaz' throughout this decision.

Topaz wrote to Miss J in March 2023, after she had sent it an online message enquiring about a new interest rate. Topaz said that Siberite Mortgages Limited wasn't offering new interest rate products or further lending.

Miss J complained to Topaz in August 2024 because she's unhappy with the interest rate on her mortgage account. In its response, Topaz said that Siberite Mortgages Limited isn't an active lender and so it doesn't offer new interest rate products. It also said that changes to the SVR were made in line with the mortgage terms and conditions.

Because Miss J disagreed, she referred her complaint to the Financial Ombudsman Service. Our Investigator said that we could only consider Miss J's complaint in relation to events that took place from 1 August 2018 onwards. He looked into what had happened from that date and didn't think Miss J's complaint should be upheld. He said, in summary, that Topaz had changed the SVR in line with the mortgage terms and conditions. He also said that Siberite Mortgages Limited is a closed book lender and, therefore, it doesn't offer new interest rate products to its customers.

The Investigator later said that s.140A of the Consumer Credit Act 1974 applied to Miss J's complaint. And that this means we could consider if there had been an unfair relationship from inception of the mortgage. However, he said this didn't change his overall view of what had happened, and he maintained his position that the complaint shouldn't be upheld.

Miss J didn't agree with the Investigator's conclusions and asked for an Ombudsman to review her complaint. I reached the same overall outcome as the Investigator but for different reasons. So, I issued a provisional decision.

## **My provisional decision**

In my provisional decision I found we could only consider some parts of Miss J's complaint and I have issued a separate decision to confirm that my findings about that haven't changed.

In relation to the parts of the complaint I can consider, I said (in my provisional decision):

"The crux of Miss J's complaint is that she feels she is a 'mortgage prisoner'. She has provided several reasons as to why she feels this is the case, including citing various rules and legislation.

I think an important point to begin with is that Miss J's mortgage is an unregulated buy-to-let mortgage. So, it is not subject to the same rules, legislation, or protection that would apply to a regulated residential mortgage. I have, however, considered everything she has said, when deciding what is fair and reasonable in all the circumstances.

Although my decision is restricted to considering whether Topaz has acted fairly since July 2019, I have taken into account the background of Miss J's mortgage for context. After the initial fixed interest rate ended in July 2008, I can see her mortgage reverted to the lender's standard variable rate ('SVR'). Since then, the SVR has changed many times, both increasing and decreasing the interest charged and the contractual monthly payments.

Part of Miss J's concerns is that her mortgage was transferred to Siberite Mortgages Limited without her consent. The terms and conditions of Miss J's mortgage allow for it to be transferred to a new lender. There was no requirement for her to be consulted about the transfer or for her to consent to it.

Since July 2019, I can see the SVR has changed at around the same time and by the same amount as the Bank of England Base Rate. Topaz wrote to Miss J at the time of each interest rate change, to notify her of the change to her contractual monthly payment. And I'm satisfied these changes were allowed for within the terms and conditions of Miss J's mortgage, which say:

"3.1 If the interest rate is the standard variable rate we may vary it for any of the following reasons:

(a) To reflect a change which has occurred, or which we reasonably expect to occur, in the Bank of England base rate or interest rates generally..."

So, while I appreciate the most recent and more significant increases to the SVR – and in turn the monthly payments – would have been unwelcome for Miss J, I do not consider Topaz has acted unfairly. It has administered the interest rate in line with the mortgage contract and accompanying terms and conditions.

There was never any guarantee that Miss J's original lender (Lender G) would continue to offer new interest rate products, even if the mortgage hadn't been transferred to another lender. Nothing in the mortgage offer or the terms and conditions said that Lender G or its successors had to offer Miss J new interest rate products. As above, this mortgage isn't regulated but, even if it was, there isn't anything in mortgage regulation that requires a lender to offer new interest rate products to its customers either.

Topaz (on behalf of Siberite Mortgages Limited) doesn't offer new interest rates to any customers, and there is no obligation – in the mortgage contract or otherwise –

on it to do so.

I appreciate Miss J has been unable to move this buy-to-let mortgage to another provider, despite trying to do so in 2024 – and despite being able to re-mortgage another property she owns. But I do not consider Topaz has put any barriers, such as an early repayment charge, in the way of Miss J re-mortgaging elsewhere at any time since 2019. I appreciate another lender wasn't willing to lend to her, in relation to this property, when she attempted to re-mortgage. But I cannot hold Topaz responsible for decisions made by the lenders she has approached.

In conclusion, I do not consider Miss J has been overcharged interest on her mortgage as a result of Topaz's actions because, for the reasons I've explained above, I'm satisfied it has acted fairly and in line with the mortgage contract.

I am sorry to hear that Miss J has found it difficult to maintain this mortgage. She may wish to speak to Topaz so it can consider what forbearance options it may be able to offer to her. Miss J may also wish to seek some independent financial advice to see what other options might be available to her.”

I invited Miss J and Topaz to let me have any further comments or evidence they wanted me to consider before I make my final decision.

Topaz didn't comment further. Miss J disagreed and raised several points in response to my provisional decision, including, in summary:

- She feels I am reluctant to fully engage with her concerns that she is a “mortgage prisoner” and that this has resulted in financial detriment.
- She says she wasn't privy to information such as the mortgage offer and its terms and conditions.
- She says my decision highlights reliance on undisclosed contractual terms and a fundamental lack of fairness – in relation to Topaz not offering new interest rates. She feels this is something that should be rigorously challenged.
- She feels I have implied that the issue is her difficulty in maintaining monthly payments rather than unfairness of being trapped on an uncompetitive rate. And she feels this lacks a meaningful recommendation from this Service.
- She considers there is overwhelming evidence to show her lender has acted unfairly.

### **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 appreciate Miss J is disappointed with the outcome of this complaint and that she thinks Topaz should have acted differently. And I'm sorry she feels I have not fully engaged with her concerns that she is a “mortgage prisoner”. I'd like to reassure her that I have thought very carefully about her complaint taking into account all the evidence, including what she has said and provided to us, before making my decision.

Ultimately though, I'm satisfied Topaz has administered Miss J's interest rate in line with the mortgage contract and it is under no obligation – within the mortgage contract or otherwise – to offer her a new interest rate product. I appreciate the unwelcome effect increasing interest

rates have had on Miss J's monthly payments and that this has caused her some difficulty. I also appreciate Miss J feels strongly that this is unfair and that it should be rigorously challenged. But I do not consider Topaz has acted unfairly, for the reasons I explained in my provisional decision. And so, it wouldn't be fair for me to require Topaz to do anything differently.

The mortgage offer and associated terms would have been provided to Miss J when she took out the mortgage and to the broker and solicitor she used at the time. This is part of the process which needs to take place before the mortgage completes and she has held this mortgage for almost 20 years since then. So, I am not persuaded she wasn't privy to this information at the time.

I accept that Miss J may not have had a copy of her mortgage offer to hand when she referred this complaint to this Service many years later, but that does not change the terms of the agreement in place. I am also not persuaded Topaz is relying on undisclosed terms – as I have explained, there are no terms and conditions or anything else that requires Topaz to offer Miss J a new interest rate. And, as I set out in my provisional decision, the terms and conditions of Miss J's mortgage allow for it to be transferred to a new lender. This is set out within the applicable terms and conditions and, therefore, was disclosed. So, I do not agree that an undisclosed term has been relied on. I note that the Investigator has sent a copy of the mortgage offer and terms and conditions to Miss J for her records.

Overall, having considered again the conclusions I reached in my provisional decision, and the additional evidence Miss J has provided, I see no reason to depart from it. I appreciate this will come as a disappointment to Miss J, but I do not consider Topaz has acted unfairly or that it has overcharged her interest by not offering her a new interest rate.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 14 July 2025.

Keith Barnes  
**Ombudsman**