

## **The complaint**

Mrs K and Mr K are unhappy with letters Topaz Finance Limited sent them about their mortgage arrears and about the amount Topaz said was outstanding.

## **What happened**

Mrs K and Mr K took out a mortgage in 2008 that was transferred to Topaz in 2019. They are in arrears with their mortgage payments. In January 2023 they agreed an arrangement to pay (ATP) for six months under which they would make their usual contractual monthly payment (CMP) and pay an additional amount of around £50 to reduce their arrears. The total payment under the ATP was £935.

Topaz wrote two letters to Mrs K and Mr K on 23 February. The first confirmed the ATP. The second told them they'd need to ring and discuss an arrangement to make sure the payments they were making didn't fall below the CMP. Topaz wrote to Mrs K and Mr K again on 24 February asking them to contact them to discuss their arrears and repayment.

Mrs K and Mr K complained Topaz were sending too many letters when they'd already reached an ATP. And they disputed the arrears Topaz said they owed at the beginning of March as they felt there was a discrepancy between that figure and the information in Topaz's 24 February letter.

Topaz upheld their complaint in part. They thought their letters of 23 February were fair to confirm the ATP and make sure the payments didn't fall below the CMP. But they agreed, broadly, the contents of the 24 February letter weren't relevant to Mrs K and Mr K's situation in view of the ATP that was in place and since they'd already asked them to get in contact.

Topaz apologised for any inconvenience or distress they'd caused. They said, however, the arrears they'd mentioned in correspondence reflected the arrears on Mrs K and Mr K's mortgage account. And they explained how the transactions worked.

Mrs K and Mr K didn't accept what Topaz said and brought their complaint to the Financial Ombudsman Service. They were unhappy with further chasers Topaz had been sending before our investigator looked into things. But they said their main concern was about the arrears Topaz said they owed.

Our investigator didn't think Topaz had made a mistake in the arrears figures in the correspondence they'd sent to Mrs K and Mr K. He explained the CMP would appear on their mortgage account as arrears until it was paid. And he thought Topaz had done enough to put things right. Mrs K and Mr K didn't accept our investigator's view. And since the complaint hadn't been resolved, it was passed to me to decide. I recently issued a provisional decision, an extract of which follows:

### **“What I've provisionally 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'm sorry to hear of Mrs K's ill-health and the difficulties she and Mr K have been having with their mortgage. Based on what I've seen so far, however, I've come to the same outcome on their complaint as our investigator, as I'll explain. Since my reasons are partly different, I'm issuing a provisional decision to give the parties the chance to make further comments before I come to a final decision.

To be clear, my decision only addresses Mrs K and Mr K's concerns about the letters Topaz sent them in February 2023 and about the discrepancy they feel exists in the arrears information Topaz have given them. I will address the issues Topaz responded to in their responses dated 26 April and 18 October 2023, and the issues Mrs K and Mr K have mentioned in relation to their November/December payments, since they are connected.

I'm aware Mrs K and Mr K have also raised concerns about the interest rate on their account and believe Topaz have changed the due date for their CMP since taking over the mortgage. I'm not considering those issues here. They are new concerns to which Topaz have responded separately and which will need to be looked at by us separately too.

The Financial Conduct Authority (FCA) expects firms to treat their customers fairly in line with the principles set out in their handbook. And the FCA rules relating to mortgages set out in the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) say lenders must treat customers who are in arrears with their mortgage fairly.

MCOB requires the lender to update customers who are in arrears and incurring charges on their account with a regular written statement of the payments due, the amount of the arrears, the charges incurred and the debt. The lender must not put pressure on a customer through excessive phone calls or correspondence. I'm not aware Mrs K and Mr K were incurring fees on their mortgage account. But I've borne in mind the overall requirement for Topaz to treat them fairly and to help them get their mortgage back on track.

Under the January 2023 ATP Mrs K and Mr K agreed to pay their CMP plus an amount that would go towards reducing their arrears. Mrs K and Mr K were unhappy when they received the two letters dated 23 February. One letter confirmed what had been agreed in January. The other noted the possibility the ATP wouldn't be enough to cover the CMP going forward and asked Mrs K and Mr K to contact Topaz to discuss things further.

I don't think Topaz acted unreasonably in writing to Mrs K and Mr K twice. That's because the interest rate for their mortgage had gone up by then and the CMP had increased. Of the amount they'd agreed to pay, more was going towards the CMP and less towards reducing the arrears. If interest rates had continued to go up, the amount they'd agreed to pay might not even have covered the CMP. And if that had happened, the arrears would have gone up further.

In fact, Topaz let Mrs K and Mr K know in mid-April that their interest rate had gone up and their CMP would be £946.33 from the beginning of May. So, the amount they were paying under the ATP wouldn't have been enough to pay the CMP by then. Bearing everything in mind, it was reasonable for Topaz to have asked Mrs K and Mr K in February to get in touch again to discuss their payments.

I think the 24 February letter could have been clearer, referred back to the ATP and the earlier letters, and explained why Topaz were asking Mrs K and Mr K to contact them. But Topaz acknowledged the letter wasn't appropriate and apologised. I think that was enough to put things right there.

I note Topaz have told Mrs K and Mr K they will write to them each month setting out the state of their account and the arrears they owe. From the information I've seen, that's what they've been doing. Mrs K and Mr K could discuss alternative arrangements with Topaz if they find the level of contact too much.

I note Mrs K and Mr K's concerns about discrepancies in the information Topaz have been providing about the amount they owe. They've said the amount showing when they looked at their account on-line on 2 March and the figure in Topaz's letter dated 24 February were different. And they've said the August and November figures also didn't agree.

I think Topaz have explained in a way that is clear, fair and not misleading - as I'd expect - how Mrs K and Mr K's mortgage account operates. As I understand it, the CMP is debited to the account at the beginning of each month. It is added to the overall amount Mrs K and Mr K owe. So, it increases the arrears. When they make their payment at the end of the month, the amount they owe goes down by the amount they've paid. Since they are in arrears, the amount of the arrears reduces. And the reduced amount shows on their account as the balance until the next payment falls due at the beginning of the following month. Then, once again, the amount due is added to the amount owing on the account. And the process repeats.

Based on Topaz's records, the explanation they provided in relation to the January/February figures seems clear and accurate. They said:

- At the end of January Mrs K and Mr K had arrears of £3,859.76.
- On 1 February the CMP, which by then was £909.77, fell due and increased the arrears to £4,769.53.
- On 28 February Mrs K and Mr K paid the agreed ATP amount of £935 reducing the balance to arrears of £3,834.53.
- On 1 March the CMP, then £933.72 due to a further rise in the interest rate, fell due and the arrears increased to £4,768.25.
- On 30 March Mrs K and Mr K paid the £935 reducing the balance to £3,833.25.

Mrs K and Mr K say Topaz told them their arrears balance was £4,779.53 at the end of August; the figure they could see on-line was £2,735.71; so, there is a discrepancy of £2,043.82. And they say Topaz haven't explained the arrears figure of £4,779.53.

The extract Mrs K and Mr K have provided of figures they saw on-line show the arrears following payments made – and amounts falling due – in August, September and October. So, I wouldn't expect the arrears there to be the amount owing at the end of August if that is what Mrs K and Mr K understand it to show.

Topaz wrote to Mrs K and Mr K on 1 September setting out an arrears balance of £3,779.53. The breakdown attached to that letter, which Mrs K and Mr K query, shows the position following the CMP of £983.59 falling due and the payment of £1,000 they made at the end of August. Although the balance of £4,779.53 doesn't appear, that's because the £1,000 payment has been deducted from that figure to show the balance of £3,779.53 set out in the letter. The arrears balance of £3,795.94 owing at the end of July 2023 plus the CMP of £983.59 totalled £4,779.53 before the payment of £1,000 was made.

The information Topaz gave Mrs K and Mr K in September fits with the explanation they provided in October. Topaz explained then that the arrears at the end of July were £3,795.94. Their letter dated 1 August had set that out. Topaz said that on 1 August the CMP, by then £983.59, became due and was added to the arrears bringing them to £4,779.53. Topaz said Mrs K and Mr K had told them that was the arrears figure they'd seen on their account through the on-line portal when they'd rung Topaz on 31 August 2023. And Topaz explained that when they'd made their payment of £1,000 the arrears balance had gone down to £3,779.53.

Bearing the above in mind, I think Topaz explained things clearly enough in relation to the August figures.

Mrs K and Mr K say the figures Topaz provided in November were also wrong. I don't think they were. Topaz's letter to them dated 1 November showed an arrears balance of £3,731.89 including the CMP of £996.18. They paid £1,021 on 26 November. This left an arrears balance of £2,710.89 according to the screen shot they've provided of their on-line balance following that payment. They say their arrears balance on 6 December including the CMP was £3,707.17. Bearing in mind Topaz's explanation, the figures Mrs K and Mr K have provided appear to be right. The arrears figure for 6 December will include the CMP that fell due at the beginning of December.

Whilst I understand Mrs K and Mr K are concerned about the arrears balance going up, the balance of their mortgage reduced in the year to 30 April 2023 according to their statement. I've considered that statement as part of the information Topaz provided about the state of their account. The arrears are set out in the summary. The statement shows the expected monthly payment (CMP), the amounts Mrs K and Mr K are paying each month (credits) and the interest that is being charged (debited) on the balance each month. And it shows how the balance reduced over the period following the payments they made.

Bearing all of the above in mind, I think Topaz have explained sufficiently clearly the figures on Mrs K and Mr K's mortgage and how the account works.

I understand Mrs K and Mr K will be disappointed. But, for the reasons I've explained, I don't think Topaz have treated them unfairly or acted unreasonably. So, I don't intend to uphold their complaint. I understand Topaz have recently mentioned the possibility of legal action. I'd encourage Mrs K and Mr K to discuss their situation with Topaz and to consider taking independent financial advice if they need support with their financial situation.

### **My provisional decision**

For the reasons I've explained, I don't intend to uphold this complaint."

### **Developments**

Topaz agreed with my provisional decision.

Mrs K and Mr K were unhappy Topaz and the Financial Ombudsman Service hadn't provided a report showing the transactions on their mortgage account. We asked Topaz to send a summary. In response Topaz provided three reports, one of which set out the arrears from time to time. I refer to this as "the arrears report". We gave all three reports to Mrs K and Mr K to consider.

Mrs K and Mr K felt the arrears report and other information Topaz had provided showed discrepancies. They said it made it impossible for them to agree a payment plan with Topaz

to clear the arrears. They were concerned Topaz was charging the CMP twice. And, they were unhappy with the time it had taken for Topaz to produce the information.

Mrs K and Mr K made the following specific points:

1. Topaz's letter dated 23 April 2023 had three discrepancies.
  - a. Topaz had said in January 2023 that there were arrears of £4,794.76 whereas the arrears report showed arrears of £3,859.76 – a discrepancy of £935.
  - b. In February they said the amount was £4,769.53 whereas the arrears report showed £3,834.53 – a discrepancy of £935
  - c. In March 2023 they said the amount was £4,768.25 whereas the arrears report showed £3,833.25 – a discrepancy of £935
2. The report and Topaz's letter dated 31 August 2023 show an arrears balance of £3,779.53. The figures appearing through the on-line portal at the time showed an arrears figure of £4,779.53. They queried how the arrears could be increasing when they were maintaining their CMP. And they didn't think Topaz's reports explained things.
3. Since 1 January 2024, the payment date has changed in line with Topaz's requirements, to the first of the month. That stops the account going into arrears. It means their arrears balance is £2,611.61, not £3,607.79, so there is a discrepancy of £996.18.

Mrs K and Mr K have also provided further documentation including screen prints of their arrears balance as it has appeared when they've accessed their account on-line.

As I understand it, to resolve things Mrs K and Mr K would accept £1,300 to compensate them for the 13 months it has taken for Topaz to provide the account information and the impact on Mrs K's health. And they want Topaz to capitalise the arrears.

### **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 am sorry to hear Mrs K's health has been affected by the time it has taken for this complaint to be resolved. I appreciate Mrs K and Mr K have asked previously for a summary of their account. However, there was no obligation for Topaz to provide one. I still think Topaz provided enough information, before they sent the reports recently, for Mrs K and Mr K to have understood the amount they owed on their mortgage and how their account operated. I explained the reasons for that in my provisional decision and I haven't changed my mind.

Unfortunately, the reports Topaz have now provided show balances and arrears on different dates, so the figures don't necessarily match up between the reports. And it means it's not easy to compare them with information Mrs K and Mr K saw in letters they got from Topaz or on-line. Even so, they support the conclusions I've already reached. I'll explain why, using the same numbering I have used to note Mrs K and Mr K's points under "Developments" above and adding some additional points after that.

1. The difference between the figures in the arrears report and the amount Topaz said Mrs K and Mr K owed for the months of January, February and March 2023 are

explained by the way in which the account was operating. The amounts Mrs K and Mr K think are discrepancies are actually the amount they were due to pay - £935 – under the ATP they'd agreed with Topaz in January 2023. I said in my provisional decision I thought the explanation Topaz had provided was clear and the figures accurate, and I set that explanation out. I've set it out again, adding some additional points in bold to show how the arrears report fits in.

- At the end of January Mrs K and Mr K had arrears of £3,859.76. **This is the figure appearing in the arrears report.**
  - On 1 February the CMP, which by then was £909.77, fell due and increased the arrears to £4,769.53. **Whilst this figure doesn't appear in the arrears report, Topaz were right to say that was what they owed before they made the agreed payment of £935.**
  - On 28 February Mrs K and Mr K paid the agreed ATP amount of £935 reducing the arrears balance to £3,834.53. **This is the figure appearing in the arrears report.**
  - On 1 March the CMP, then £933.72 due to a further rise in the interest rate, fell due and the arrears increased to £4,768.25. **Whilst this figure doesn't appear in the arrears report, Topaz were once again right to say Mrs K and Mr K owed this amount before they made their agreed payment of £935.**
  - On 30 March Mrs K and Mr K paid the £935 reducing the arrears balance to £3,833.25. **This is the figure appearing in the arrears report.**
2. The arrears figures in the arrears report and Topaz's letter dated 31 August 2023 were the same at £3,779.53. I appreciate Mrs K and Mr K saw a different figure when they looked on-line. I explained in my provisional decision why I thought the figures they'd got from Topaz made sense. I see no reason to change my mind or to set that out again.
3. As I also explained in my provisional decision, I am only considering what happened on the account up to December 2023. So, I don't address Mrs K and Mr K's points in relation to what's happened since then.

I'd also note:

- Mrs K and Mr K's annual mortgage statement dated 30 April 2023 set out an arrears figure of £3,831.97, which is the same as the figure in the arrears report.
- I've looked at the screen print Mrs K and Mr K have provided of their on-line account showing the arrears balance following the payments they made of £1,000 on 31 August 2023, £1,020 on 28 September 2023 and £1,020 on 26 October 2023. The arrears figure is shown there as £2,735.71. Looking at the arrears report, the arrears figure as at 31 October is shown as £3,731.89. The difference is the amount that has fallen due for payment in November 2023 - £996.18.
- The letter Topaz sent Mrs K and Mr K on 1 November 2023 said their arrears at the time were £3,731.89 which corresponds to the figure in the arrears report as at 31 October 2023.

Bearing everything in mind, I think the information Topaz has provided about the amounts outstanding on Mrs K and Mr K's mortgage account for the periods I've considered is accurate. I think they've provided sufficient information to Mrs K and Mr K about the amounts they've owed from time to time and reasonably explained how their account operates. The

discrepancies Mrs K and Mr K are concerned about are explained by the arrears figures including CMPs they are due to pay but haven't yet paid.

In the circumstances, and for all the reasons I've set out, I don't uphold their complaint. If Mrs K and Mr K remain concerned, they may wish to discuss things further with Topaz and/or seek advice from an independent financial adviser.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 14 May 2024.

Julia Wilkinson  
**Ombudsman**