

The complaint

Mrs R's complaint is about a mortgage she has with Topaz Finance Limited trading as Hyalite Mortgages. She has complained that she has been charged the wrong interest rate on her mortgage and further advance throughout the term. She believes this means that the legal action taken to repossess her property should not have happened as the arrears balances would have been wrong. In addition, Mrs R complained that the interest rate on the mortgage had increased considerably and often without her being provided with notice. She also questioned the change in the mortgage account number that happened in 2020.

Mrs R's mortgage was originally taken out with Lender M. However, the mortgage was subsequently transferred to Topaz in the autumn of 2023. It has confirmed that although the issues subject to this complaint occurred before Topaz owned the mortgage, it is responsible for this complaint.

Mrs R has also complained about Topaz's decision to continue the legal action that Lender M had stated before the transfer, rather than considering what she had said about the matter or discussing the mortgage with her. That complaint has been set up under another complaint reference and Mrs R will receive a separate decision.

What happened

In 2007 Mrs R sought assistance from an independent mortgage broker to arrange a mortgage to allow her to purchase what was at that time to be her home. The application was made on a self-certification basis for just over £383,000 (including fees) and over a term of 28 years on an interest-only basis. She applied for a fixed interest rate product of 6.29%. However, the broker later told Lender M that Mrs R wanted to change to a lifetime discounted product. This meant that the mortgage would be charged interest at 0.76% below the self-certification 'product variable rate' (PVR) of interest, which at that time meant a rate of 6.49%. Mrs R's mortgage with Lender M started in May 2007.

The following year Mrs R applied for a further advance on the mortgage without taking any advice. Mrs R originally wanted to borrow a further £82,000 and applied for a discounted (by 0.75%) variable rate of interest. However, when her home was valued, Lender M decided it was only willing to offer her £60,000 plus fees on the PVR without a discount. Mrs R accepted the offer and the further advance was arranged on an interest-only basis and over a term to match the existing mortgage. The offer Mrs R accepted detailed that interest would be charged on the PVR for further advances, which at that time was 7%.

In the autumn of 2008 Mrs R started to have intermittent payment difficulties, which resulted in arrears. In 2009 Lender M took legal action to repossess Mrs R's property. A suspended possession order was issued by the Court on 29 September 2009. It allowed Mrs R to keep the property as long as she made payments of £200 per month towards the arrears on top of the normal monthly contractual payments. The arrears at that time were approximately £11,000.

In 2012 Lender M obtained a warrant of possession due to payments not being made, but subsequently cancelled the eviction. However, in 2013 Lender M again decided to move forward with the legal action to repossess Mrs R's property as she had not been making the payments she should have been. The Court again suspended the possession order on the basis of Mrs R making the contractual payments going forward and paying around £450 toward the arrears each month.

In January 2013 Lender M became aware that Mrs R was renting the property out without its permission. It was at this point Mrs R gave Lender M her new address.

Lender M obtained a warrant of eviction at the end of 2016. It informed Mrs R's tenants of the eviction in December 2016. Mrs R complained in January 2017 about the warrant being obtained, Lender M not telling her and it being unwilling to reach an agreement to pay with her. In the meantime, Mrs R made payments to clear the arrears and so the warrant was cancelled.

In April 2020 Mrs R complained about an arrears management fee and a field agent fee that had been added to the mortgage balance. This was because she said she had been unaware they had been added. Mrs R also asked for some information about the interest rates that had been attached to the mortgage and further advance originally.

In May 2020 Lender M informed Mrs R that it was altering its systems and so her mortgage account number would change. Following the alterations, Lender M wrote to Mrs R again and informed her of her new mortgage account number.

Mrs R complained in February 2021 that Lender M was charging her interest on an incorrect basis. She said the mortgage had been arranged with variously a 0.2% or 0.25% above Bank of England base rate lifetime tracker product. As such, Mrs R believed that she had been overcharged and the previous legal action should not have taken place. Lender M responded to the complaint in a final response letter of 12 February 2021. It confirmed the mortgage had not been set up with the product she believed it had been. Lender M provided Mrs R with a copy of the 2007 and 2008 offers and confirmed that the accounts had been charged the correct interest rates as per those offers.

Periodic missed payments continued, and Mrs R stopped making any payments after November 2022. She didn't respond to the numerous requests from Lender M for her to contact it to discuss the situation, so it decided in early 2023 to start legal action again to repossess the property.

In January 2023 Mrs R wrote to Topaz questioning the administration of her mortgage and further advance. She referenced the securitisation condition in the terms and conditions and that these confirmed that Lender M would remain the administrator of the borrowing if it was securitised. It doesn't appear that Lender M received this letter and so no response was provided.

In March 2023 Mrs R complained about the interest rate being charged again. This was because her monthly payment had increased dramatically and, she said, often without notice or justification. Mrs R again said that she had taken a Bank of England base rate tracker product on her mortgage and believed that she was being charged an incorrect interest rate. She also said she believed it had been agreed the further advance would be added to the mortgage account and charged at the same tracker rate as the main mortgage. As such, Mrs R believed the arrears balances Lender M had recorded on her accounts were wrong. She asked for various documents relating to her mortgage and further advance and asked why the mortgage number had changed.

Lender M responded to the complaint in a letter of 30 April 2023. It confirmed the interest rate that had been agreed when both the mortgage and further advance had been offered and that Mrs R didn't have two separate mortgage accounts. Lender M referred Mrs R back to its final response letter of 12 February 2021 in which it had dealt with the complaint about the interest rates being charged. As for Mrs R not being notified about changes to the interest rate, Lender M disagreed with Mrs R – it provided her with all of the notifications it had sent her over the previous six months and confirmed it had done so each time the rate had changed prior to that. The reason for the change in the mortgage account number was also confirmed and that it had told Mrs R this was going to happen before it did and confirmed that it had, along with the new number, afterwards.

Mrs R didn't consider the response was adequate and told Lender M that she was going to refer the complaint to this Service. She also made a subject access request.

In June 2023 Lender M responded to another complaint by Mrs R about a field agent visit in May 2023. It told her that the visit had been arranged because she had not communicated with it about the arrears. While she had called it the day before the visit to discuss a complaint, when it had tried transferring her to the relevant team to discuss dealing with the arrears, the call was cut off. Lender M confirmed it had tried to call her back, but it had been unable to get through to her.

In June 2023 Lender M again decided to pursue legal action to repossess Mrs R's property in light of arrears having built up on the mortgage again.

One of our Investigators looked into the complaint. She concluded that as the complaint about the interest rate that had been charged on the mortgage and further advance hadn't been referred to us within six months of Topaz's final response letter, it didn't fall within our jurisdiction. In relation to the remaining complaint points, the Investigator didn't recommend that they be upheld.

Mrs R didn't accept the Investigator's conclusions and asked that the complaint be reviewed by an Ombudsman. She provided documentation regarding the mortgage and further advance accounts, including legal action taken at various points, and all the complaints she had made since 2009. Mrs R also clarified how she had concluded that the rate being charged on the main mortgage account was wrong - that Lender M's standard tracker product had been 1% above Bank of England base rate, and her mortgage was meant to be charged at 0.76% below that standard tracker product, i.e. a tracker of 0.24% above Bank of England base rate.

The Investigator explained that the 0.76% discount on the main mortgage did not relate to a Lender M Bank of England base rate tracker, but rather it was a discount of the PVR. She also provided clarification on other points Mrs R had reiterated. It was also confirmed that if Mrs R was unhappy with the response to her subject access requests, the appropriate body to consider her concerns would be the Information Commissioner's Office (ICO).

Mrs R repeated her request that the complaint be referred to an Ombudsman.

I issued a decision on 20 May 2024 setting out the parameters of what we could and would be considering of the complaint points Mrs R raised with us. As such, this decision will only deal with the concerns regarding:

- Mrs R not being informed about interest rate changes and the associated increases to the monthly payment.
- The change to the mortgage account number and the reasons for it.

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.

Mrs R mentioned not receiving the documentation she had wanted at one point. Our Investigator confirmed that omission had been remedied. Mrs R didn't make any comment indicating she remained unhappy about that issue, and so I will not comment further on it.

In relation to Mrs R being informed about the interest rate changes, I am satisfied from the documentation both Topaz and Mrs R have provided that she was informed each time the interest rate on her mortgage and further advance changed. As such, I don't uphold this aspect of Mrs R's complaint.

Mrs R questioned the change in her mortgage account number and why this happened. The alteration was made in May 2020 when Lender M made changes to its computer systems. Mrs R was sent a letter before the event explaining what would happen and why, and a further letter afterwards confirming the exercise had been completed and giving her the new account number. As such, I am satisfied that Mrs R was kept fully informed about this issue at the time it was live and so I again don't uphold this aspect of the complaint.

I note Mrs R has questioned how the further advance was set up. While closely linked to the matter of the interest rate being charged, I think it would be appropriate for me to comment briefly on this matter. As the Investigator explained, it is quite normal for lenders to set up further borrowing as a separate sub-account. I can see no evidence that Mrs R was told the further advance would be set up in any other way and I consider this would have been clear from the outset as all of the correspondence made that clear.

I think it is also important to explain here that lenders will generally agree to put recovery action on hold whilst we look at a complaint, but they don't have to and we can't force them to. If the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint. It would also create the potential risk of consumers using our service to bring complaints with the intention of obstructing businesses that were trying to take legitimate action through the courts to recover money owed to them. I do not wish to alarm Mrs R, but I would not want her to be under any misunderstanding that we would tell Topaz that it must suspend any recovery action in the event of a new complaint being raised.

My final decision

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs R to accept or reject my decision before 21 June 2024.

Derry Baxter
Ombudsman