

The complaint

This complaint is about a mortgage Mr and Mrs R hold with Topaz Finance Limited trading as Hyalite Mortgages (and referred to here as Topaz).

The complaint is brought on Mr and Mrs R's behalf by a family member, Mr S. He is unhappy about the following matters:

- Topaz has failed to show sufficient forbearance now the mortgage term has expired.
- The monthly repayments have increased, putting Mr and Mrs R into financial hardship.
- No support package has been put in place to deal with Mr and Mrs R's vulnerabilities.
- Topaz has sent letters threatening legal action, which has caused Mr and Mrs R considerable distress.
- Topaz has failed to direct all its contact to Mr S.
- When Mr S has tried to speak to Topaz, he's been kept on hold for long periods of time causing considerable inconvenience.

To settle the complaint, Mr S wants Topaz to reduce or freeze interest on the mortgage, put in place special provisions to take account of Mr and Mrs R's vulnerabilities, have all dealings with Topaz to be through a "*professional*" with the correct training and authority to deal with hardship cases, and to communicate with Mr S by email.

What happened

Mr and Mrs R have an interest-only mortgage, originally taken out with another lender in 2007 but which is now owned by Topaz. The mortgage term expired on 30 May 2023, leaving a capital balance owed on the mortgage of about £250,000 at that time.

A redemption statement was requested in June 2023. Topaz was told on 20 July 2023 that Mr and Mrs R were arranging a re-mortgage. In July 2023 Topaz granted a grace period until 9 August 2023 in order to receive details of the new mortgage. A further grace period was granted until 30 November 2023 to allow time for the re-mortgage to complete.

In January 2024 Mr S sent in a third party authority (TPA) for the account, which allowed him to request information about the mortgage, but not make payments towards the mortgage. This was followed by a complaint raised by Mr S on 8 February 2024.

Mr S said that his understanding of the TPA was that all contact would be directed to him, but letters had still been sent to Mr and Mrs R. Mr S also asked for details of Topaz's regulatory obligations in relation to dealing with hardship cases, and its responsibility under its own "*code of conduct*".

Mr S said Topaz had failed to acknowledge this was a hardship case. Mr S also said that Topaz had been quick to increase the interest rate, but hadn't decreased it as "*the market standard interest rates*" have dropped.

In its final response letter Topaz explained that the TPA only allowed Mr S to request information about the mortgage; it didn't mean that all correspondence would be sent to him. Topaz acknowledged it should have sent confirmation it had received the TPA.

Topaz noted that it had been told a re-mortgage was in place, but had then received no update about this. Topaz acknowledged that it had overlooked treating this as a hardship case, and said it would pass this information on to the relevant department in relation to Mr and Mrs R's vulnerabilities.

In relation to the variable interest rate on the mortgage, Topaz explained that this had previously been linked to the London Interbank Offered Rate (LIBOR), but when LIBOR had been phased out, the rate was then linked to the Bank of England Base Rate (BOEBR). Topaz explained that, as BOEBR had changed, the mortgage interest rate also varied, and that fluctuations in BOEBR were outside Topaz's control.

Topaz explained that as the account was in arrears, and no payment proposals had been made or agreed, it had sent arrears letters about the missed interest payments.

Dissatisfied with Topaz's response, Mr S raised the complaint with our service on behalf of Mr and Mrs R. An investigator looked at what had happened.

Initially he recommended Topaz should pay compensation of £200 for customer service failings. Topaz didn't think this was fair. The Investigator reconsidered, and recommended an award of compensation of £100, which Topaz agreed to pay. Mr S didn't accept this. He's made some further points, which I summarise below.

- Topaz had made an agreement with him on 23 August 2023 but then rescinded this.
- He didn't want to give details of Mr and Mrs R's health in writing. He'd have expected Topaz to enter into "*more private communication*".
- He would usually be held in a queue when he called, which he found unacceptable.
- He doesn't think it's fair that Mr and Mrs R are disadvantaged because he can't take calls when he's at work.

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 note that in September 2024 Mr S asked for more time to submit further documentation, but nothing further has been received. I also asked the Investigator to obtain further information from Mr and Mrs R about what their intended repayment strategy had been when they took out the mortgage in 2007, but no response has been provided.

I will begin by explaining the scope of our rules. Under our rules, Mr and Mrs R are consumers, and so meet the definition of an "eligible complainant" set out in our rules. The rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant. In this case, Mr and Mrs R have authorised Mr S to bring the complaint on their behalf.

But I must explain that, although Mr S is representing Mr and Mrs R, it is Mr and Mrs R who are Topaz's customers. Mr S's role is to bring Mr and Mrs R's complaint on their behalf, in the same way that other consumers might instruct a solicitor or accountant to represent them in a complaint. But this does not entitle Mr S to air his own grievances about Topaz, because he is not its customer; Mr S's role is limited to putting forward Mr and Mrs R's complaint only, not his own issues with Topaz.

I note from the detailed correspondence that Mr S has expressed many of his own concerns about what he perceives to be Topaz's failings – and I do not doubt his strength of feeling about this. But because Mr S is not Topaz's customer, this final decision is limited to consideration of Mr and Mrs R's complaint that they've not been treated fairly by Topaz.

The starting point here is that this is an expired interest-only mortgage. Mr and Mrs R knew when they took out the mortgage in 2007 that at the end of the term in 2023 they would need to repay the capital balance of about £250,000. It was their responsibility to ensure that they had made plans to do this. If they'd not put any repayment strategy in place, this wasn't Topaz's fault; every annual statement sent out since 2007 had a clear notification of the need to have a repayment plan in place.

Because this is an expired mortgage, the provisions of the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) that relate to borrowers in a payment shortfall (also referred to as arrears) don't apply. This is because the mortgage term has come to an end, so the steps available to Topaz in MCOB 13 to help borrowers pay off arrears over the remaining term of a mortgage are no longer applicable to this particular mortgage. But Topaz is still required to treat Mr and Mrs R fairly, sympathetically and reasonably.

In relation to the TPA requested by Mr S, this shows that Mr S was entitled to request information from Topaz about the mortgage. It doesn't substitute him as correspondent on the account, and so Topaz was still entitled to write directly to Mr and Mrs R about the outstanding mortgage balance. I appreciate that receiving letters about the expired mortgage were upsetting for Mr and Mrs R. However, Topaz is under a regulatory obligation to send these, and so I'm satisfied Topaz hasn't done anything wrong in this regard.

Topaz doesn't correspond by email, as this isn't considered to be a secure medium. This is in line with mortgage industry standards. I don't have any power to tell Topaz how to run its business. If Topaz considers email to be an unsuitable method of communication, that's a decision it's entitled to reach. Only Mr and Mrs R can change the address for correspondence on their mortgage account. As I said above, the TPA doesn't provide for this.

However, I'm glad to note that Topaz acknowledged it should have identified Mr and Mrs R's vulnerabilities – relating to their age, health, and financial circumstances – sooner and referred them to a specialist team. But I'm not persuaded that this would result in a different outcome in relation to what needs to happen with this mortgage.

Once an interest-only mortgage term has expired, the borrower is still required to pay the monthly interest accruing on the outstanding balance until full repayment is made. I am aware that the interest rate on the mortgage has increased, but I'm satisfied with Topaz's explanation in the final response letter of why this has happened. The interest rate is being applied in accordance with the mortgage terms and conditions. Although I note Mr S made payment initially in the summer of 2023, no payments have been made for about a year and the unpaid interest has accrued against the outstanding balance.

There is no obligation on Topaz to freeze interest on the mortgage, so it is in Mr and Mrs R's best interests to arrange repayment of the mortgage as soon as they are able to. As I said above, the provisions in MCOB about what lenders can do to help borrowers in a payment shortfall to get their mortgage back on track don't apply to an expired interest-only mortgage. Topaz is currently taking no action to enforce possession, which is what I would expect in the current situation.

I can see that Mr and Mrs R were optimistic about being able to arrange a new mortgage fairly soon after the mortgage term expired. As that hasn't happened, they've placed the property on the market, and I see it is currently listed on the leading online property portals.

It's not unreasonable for Topaz to expect the capital balance to be repaid within a reasonable period after the mortgage term has expired. Initially Mr and Mrs R were hoping to re-mortgage. I don't know if this was intended to be a conventional mortgage or an equity release mortgage (designed for borrowers over 60). But those plans didn't come to fruition, and we are now 18 months on from when the capital balance became due, and there is still no clear payment proposal.

Given Mr and Mrs R's age and infirmity, I think it would be reasonable for Topaz to allow a little more time for Mr and Mrs R to sell the property before considering any further action. I think that it would be fair to allow Mr and Mrs R until 31 March 2025 to repay the mortgage. They will need to keep Topaz updated with their payment proposals, either by providing a copy of a mortgage offer, or confirmation from their solicitors (not estate agents) of how the sale of the property is progressing.

It would be remiss of me if I didn't emphasise the seriousness of the position Mr and Mrs R are in. If Topaz was, as a last resort, to take this matter to court, there is no provision for the court to suspend possession. That's because this is an expired mortgage, and the failure to repay the capital balance is a breach of contract, and so the court has no power to suspend possession. I don't wish to alarm Mr and Mrs R, but it is crucial that steps are taken sooner rather than later to repay this mortgage.

I appreciate Mr and Mrs R have said they don't want to leave the property. If that's the case, Mr and Mrs R might want to take advice about equity release or home reversion mortgages, which are sold by specialist mortgage brokers. I don't know if they'd qualify for either of these types of mortgage, but if their desire is to remain in their home, Mr and Mrs R might find it helpful to speak to a broker about this. They can find details of brokers specialising in equity release or home reversion mortgages through the Equity Release Council.

Putting things right

I note Topaz has agreed to pay £100 compensation to Mr and Mrs R for its failure to recognise their vulnerabilities. I think this is fair in all the circumstances. As I've explained above, I'm not persuaded the outcome would have been any different if this had been noted earlier, because Mr and Mrs R's options in relation to this mortgage are extremely limited. But overall, I think £100 is fair, reasonable, and proportionate in all the circumstances.

My final decision

My final decision is that Topaz Finance Limited trading as Hyalite Mortgages must pay £100 compensation to Mr and Mrs R. I make no other order or award.

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 R to accept or reject my decision before 20 December 2024.

Jan O'Leary
Ombudsman