

The complaint

Mr N complains that Topaz Finance Limited trading as Melanite mortgages won't agree to remove him from a mortgage that he holds jointly with his former wife.

What happened

Mr N was married and jointly holds an interest only mortgage with his former wife. Topaz is the lender. Mr N stopped contributing to the mortgage payments in about 2011. In March 2022 the Family Court made an Order whereby by a certain date Mr N was to transfer his interest in the family home to his wife subject to the Topaz mortgage. Mr N complained that Topaz refused an application by his former wife for a transfer of equity ("TOE") which would have him removed from the mortgage. Mr N has other buy to let mortgages to pay, can't raise money to effect repairs on them and can't get a mortgage in his own name.

Topaz says that in order to remove Mr N it needs his former wife to complete a transfer of equity application. But its lending policy is that for a transfer of equity application to proceed it requires the account to be transferred to a repayment mortgage, but it says that it was advised that this would not be possible as it would be unaffordable. Mr N says that the property is worth about £500,000 and there's a balance of about £172,000 owed to Topaz. Mr N says that since his divorce he has no beneficial interest in the property and hasn't lived in it for over ten years or contributed to the mortgage, so there is no benefit to anyone for him to be on the mortgage.

Our investigator didn't recommend that this complaint should be upheld as Topaz was entitled to consider the affordability of the transfer from joint owners to single owners when considering a TOE. Mr N disagreed and asked for a review.

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.

Our procedures normally require both parties to a joint account to bring a complaint in relation to that account. Mr N brings the complaint on his own account. The parties have lived apart for many years and are divorced. Although they still have a joint mortgage account, they deal with Topaz separately as two individuals. I recognise that there are matters that affect Mr N that may not affect the other party to the account. I have a discretion to consider the matter without the involvement of the joint account holder and my view is that given these circumstances this is a complaint that I can consider.

Mr N and his wife are long separated but remain on the title to the property and this mortgage. There is now a Court Order dated 10 March 2022 that I've seen those deals with the financial aspects of the matrimonial break-up. In respect of the property subject of the mortgage, the Court Order requires Mr N to transfer the home subject to this mortgage and another charge to a bank, to his former wife. I assume there to be a second charge. But, the

court recognises that the lender, namely Topaz, might not agree to the transfer of the legal title and it doesn't require Topaz to consent and deals with the legal position in that event. Mr N's former wife, as between her and Mr N, shall be responsible for paying the mortgage. But this does not release Mr N from his liability to pay Topaz under the mortgage contract. Mr N's former wife agrees to use her best endeavours to get Mr N released from the mortgage and shall indemnify Mr N for any liability under the mortgage. So, according to the Court Order unless Topaz agrees Mr N remains liable to pay the mortgage and Mr N's ex-wife will indemnify Mr N for payments he makes under the mortgage.

Mr N would like Topaz to release him from the mortgage. When Mr N and his then wife took out this mortgage they jointly provided security for the loan and they both agreed to repay it. Mr N has a continuing obligation to pay it because that's what he agreed to do when the lender agreed to lend the mortgage money to Mr N and his former wife. That's why he remains on the mortgage. As Mr N agreed to pay the mortgage and the lender lent on the basis of it I can't fairly require Topaz to remove Mr N from the mortgage although I know that it would suit Mr N if he was removed.

The mortgage was agreed to as Mr N and his then wife's application met the lender's criteria at the time. Topaz is saying that it will agree the transfer of the mortgage if the TOE application meets its lending criteria now. That policy is that where two borrowers are replaced by a single borrower that the mortgage should be a repayment mortgage. That is not simply a policy designed for Mr N but is a long-standing policy and part of Topaz's lending criteria. It's not our role to decide what criteria a lender should use in considering a lending application. If Mr N wanted to resolve the issue of the former family home by having him removed from Topaz's mortgage and replaced by Mr N's former wife, the application would have to meet Topaz's lending policy.

That this is a requirement of the lending policy should not have come a surprise to Mr N. There are file notes going back to 2011/12 about the divorce and indeed a note in July 2012 of Mr N enquiring about a TOE but there was then, like now, arrears on the account. I understand then that these were historic arrears going back to 2010, which persisted on the account for some years and no application was made then for the TOE. I see that an enquiry about a TOE was made in October 2015 when Topaz said that it would consider a TOE, but the account would need to be converted to a repayment mortgage. In December 2018, Mr N contacted Topaz about a TOE. At that stage a TOE pack was issued but nothing further happened. In March 2019 Mr N called about a TOE and I see a reference to the pack that had been issued in December 2018. For many years Mr N has been aware that a TOE was needed to have him removed from the mortgage and the notes indicate that Topaz was always open to discuss what that required to meet its lending criteria.

There seem to be several problems in meeting this lending criteria. Firstly, Mr N's former wife apparently can't afford to pay the mortgage now even on an interest-only basis never mind a repayment basis. Mr N tells me that instead of paying £885.52 per month under the interest only mortgage that his former wife pays £250 per month under an arrangement to pay. I'm not dealing with any application by Mr N's former wife and I'm basing this only on information provided by Mr N, but it seems to me that if the mortgage is unaffordable at present, it's difficult to see how a transfer of equity application could proceed. But the failure to make the monthly payments leads to a second problem. As Mr N knows from previously raising the issue many years ago, the lender will normally require the arrears to be paid off before agreeing a TOE which involves a new mortgage arrangement, and I don't see any suggestion from Mr N that they will be paid off. So, for the above reasons I can't fairly require Topaz to remove Mr N's name from the mortgage he holds jointly with his former wife.

There are a number of other issues raised. Because of Mr N's ex-wife's financial difficulties, Topaz agreed a short term reduced payments arrangement which had a knock-on effect on

Mr N as it showed the contractual monthly payments (“CMPs”) not being made. It seems to me that because of her financial difficulties the CMPs wouldn’t have been made in any event and that would have been reflected in the credit files. So, Topaz’s accommodation of Mrs N’s request wouldn’t have made any difference to their credit files. I note that Mr N wasn’t contacted before the reduced payments were agreed. As a joint account holder, I would have thought that there should have been contact with Mr N. On the other hand, the reality of the situation was that he hadn’t made a payment to the mortgage in over a decade and this situation had to be dealt with urgently, so I can understand why in this particular situation that the bank was understanding to his former wife’s financial difficulties and agreed the reduced payments with her without reference to him. I note that Topaz then contacted Mr N in relation to his former wife’s consent to lease application and as a joint account holder in a matter involving the letting of a property jointly owned that seems appropriate.

I can see that Mr N is in a very difficult situation. But my role here is to decide whether Topaz did anything wrong. Topaz has always been open about its lending policy and what was required to obtain a TOE. That policy seems to have been in place for many years and should have been known to Mr N and not a surprise to him for any financial planning that was required for his divorce. So, I don’t consider that Topaz has done anything wrong, and I don’t uphold this complaint.

Finally, I note that in its letter to Mr N of 23 January 2023, Topaz said that *“Our records show we have confirmed we can reconsider the request, as an exception to our policy, and have also confirmed what we require in order to do this. I do need to make it clear, this does not mean a TOE will be approved.”* Mr N’s objection has been to Topaz’s policy. I can’t see that there has actually been a TOE application because of that policy. Although that will involve a joint application, the prime mover will be Mr N’s former wife as she would be the sole account holder thereafter. The suggestion in this letter indicates that if certain requirements are met that Topaz could consider the request as an exception to its policy. I will leave it to Mr N if he wants to explore this with Topaz and his former wife.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr N to accept or reject my decision before 12 December 2023.

Gerard McManus
Ombudsman