

The complaint

This complaint is brought by Mr F and Ms F and is in relation to a joint mortgage they hold with Topaz Finance Limited, under its trading name of Heliodor. (I will refer to Topaz throughout).

Mr F and Ms F, who were once married, have complained that Topaz has unfairly refused to remove Mr F from the joint mortgage account, even though he has not lived at the property nor contributed to the mortgage for many years. Topaz says that it's unable to do this, because Ms F doesn't meet affordability and lending criteria to have the mortgage in her sole name.

To settle the complaint, Mr F and Ms F want Topaz to agree to remove Mr F from the mortgage account.

What happened

I don't need to set out the detailed background to the complaint. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr F and Ms F being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision..

Mr F and Ms F brought their complaint to our service. An investigator looked at what happened and thought the complaint should be upheld. He was satisfied that, under the regulations that apply to requests to make changes to mortgage accounts, Topaz should remove Mr F from the mortgage account, as this would be in the best interests of him and Ms F.

Topaz didn't agree and so the complaint was referred to me for a decision.

On 16 August 2023 I issued a provisional decision, in which I made the following points:

Mr F and Ms F took out the mortgage in 2007, and so any changes they want to make to the mortgage fall within transitional arrangements put in place by the regulator. The transitional arrangements are the rules introduced in 2014 by the Financial Conduct Authority ("FCA") as part of the Mortgage Market Review ("MMR"). MMR tightened up the rules on checking affordability.

However, as highlighted by the FCA, the purpose of the transitional arrangements is to allow flexibility so that exceptions can be made to the affordability rules for existing borrowers as long as there is no additional borrowing and the proposed transaction is in their best interests.

This involves a degree of discretion on the part of the lender. The rule doesn't say that it *must* not apply the new requirements – it says that it *need* not do so. The removal of a customer from a mortgage comes within the scope of the rule. So I think

it follows that where a change to a mortgage account is in a consumer's best interests, the rules shouldn't be used unfairly to prevent it happening.

I've noted what Topaz has said about affordability, and that Ms F was in an IVA within the last five years. But she has been able to pay the mortgage from her own resources for many years, and there is nothing to persuade me that she would not be able to do so going forward.

So on the face of it, taking into consideration the fact that Ms F has paid the mortgage on her own for at least 15 years, I think it would be fair to remove Mr F from the mortgage account, as this would be in the best interests of both parties. But that isn't the only factor that I have to take into consideration.

Mr F and Ms F have confirmed that the title to the property remains in their joint names, so they are both joint owners of the property. In the circumstances, I don't think it would be fair for me to order Topaz to remove Mr F from the mortgage whilst his name still remains on the title to the property; this would pose a risk to Topaz in having a co-owner of the property who is not on the mortgage.

Whether or not Mr F has lived in the property or not, being on the title deeds as a joint owner grants him a legal interest that would interfere with Topaz's standing as mortgagee if Mr F is also not on the mortgage account. For this reason it is standard practice amongst mortgage lenders not to grant a mortgage where there are joint owners on the property title who are not also on the mortgage.

In the circumstances, I think that Mr F and Ms F will need to take steps to remove Mr F from the title to the property, and provide evidence that this has been done, or confirmation from solicitors that they are doing this, before asking Topaz to make any changes to the mortgage account. Removal of a party from the title deeds is a legal process, unconnected with Topaz, and so Mr F and Ms F will need to arrange this themselves.

To be clear, if the title to the property had already been transferred into the sole name of Ms F, then I would have upheld this complaint; it is in the best interests of both parties to release Mr F from his covenants under the mortgage, given that he has had no involvement in the mortgage (or the property) for many years, and Ms F has paid the mortgage from her own resources throughout.

I do have considerable sympathy for the position in which Mr F and Ms F have found themselves. But as things currently stand, while Mr F remains a joint owner on the title deeds, with a legal interest in the property, I do not think it would be fair or reasonable to order Topaz to make any changes to the mortgage.

Topaz had nothing further to add.

Ms F said that she'd asked a solicitor about this and been told that Topaz's consent would be needed to remove Mr F from the title deeds. Ms F provided a copy of the ancillary relief order made in their divorce proceedings in 2011 which ordered Mr F to transfer his interest in the property to Ms F.

Mr F responded separately and said that he and Ms F have never tried to do this, and he isn't sure if it was ever explained to them that this was an option. Mr F said that he and Ms F would be "*more than happy*" to go ahead with this.

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've noted what Ms F has said, and I also note that the court order she's provided shows that Mr F was ordered by the court to transfer his legal interest in the property to her. In my experience, although generally a lender's consent is required for this, where a court has ordered this to take place, it *is* possible to remove one party from the title deeds, even though they still remain on the mortgage.

I can see that, once the order was made, Ms F's solicitors sent her a copy of it and said they had no further involvement in the matter. I don't know why either Mr F's or Ms F's solicitors didn't deal with the transfer of title in 2011. There is nothing in Topaz's contact notes to show that this was requested once the court order was made in 2011. It wasn't raised with Topaz until 2016 when Ms F asked about it.

Removal of a party from the title to a property isn't something that falls within the scope of the Financial Ombudsman Service's remit. I therefore can't order Topaz to agree to this. I reiterate the points I made in my provisional decision – that there is a legal risk to a mortgage lender if there is someone on the property title who is also not on the mortgage.

But given that I have found, under the MMR provisions, it would be in both Mr F's and Ms F's best interests to allow the removal of Mr F from the mortgage, I think it would also be unreasonable for Topaz to withhold consent for removal of Mr F from the title deeds, if Mr F and Ms F were to instruct solicitors to do this and ask Topaz for consent. As I have already said, I can't force Topaz to do this, as it is a legal issue.

Consequently, as things stand I am unable to compel Topaz to agree to remove Mr F from the legal title to the property. I think it would be helpful for Mr and Ms F to take some legal advice and to request formal consent from Topaz to releasing Mr F from the property title.

I hope I have made it very clear that I would expect Topaz to give careful consideration to any request for consent to a transfer of title, taking into account the findings I have made above concerning releasing Mr F from the mortgage pursuant to the provisions of MMR. However, given that the property is still in joint names, I am regretfully unable to order Topaz to release Mr F from the mortgage.

My final decision

My final decision is that I am unable to uphold this complaint.

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 correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Ms F to

accept or reject my decision before 3 October 2023.

Jan O'Leary
Ombudsman