



Mortgage Prisoner Litigation – Information For Mortgage Holders

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H A R C U S
P A R K E R

Mortgage
Prisoners

Introduction

Harcus Parker is a commercial litigation firm. We specialise in bringing and defending complex claims, often involving large groups of claimants.

We take on projects we believe in. The firm's partners have fought for the rights of consumers, pensioners, shareholders and the victims of financial misselling.

As a firm we have relationships with a number of charities and, in the event that claims succeed we commit to donating a proportion of our fee to our charity partners. Our particular partners in the mortgage prisoner litigation are Support Through Court and Crisis.

We are acting for former Northern Rock mortgage customers whose mortgages were transferred to new lenders following the bank's collapse and nationalisation. These new lenders do not offer (or did not originally offer) new mortgage products to their customers. As a result, our clients have been trapped paying excessively high rates of interest on their mortgages. If we are successful, borrowers will be entitled to compensation, and the affected lenders will be required to charge customers a 'fair' standard variable rate of interest in the future.

Background to the claims

Hundreds of thousands of homeowners are, or have until recently been, trapped paying excessively high 'standard variable rates' (or 'SVRs') of interest rates on their mortgages.

When Northern Rock collapsed and was nationalised it stopped offering new introductory rates to its customers. Its mortgages were subsequently sold to a number of lenders who also did not compete in the mortgage market for new business and as a result did not offer new rates to their customers. Some of Northern Rock's mortgages were also sold to 'active lenders' such as TSB Bank PLC, however, although at the time of the sale this was presented as providing an opportunity for these mortgage holders to access the 'ordinary' mortgages deals available to other TSB customers, this did not happen for several years after the purchase. Over time, the interest rate applicable to these customers' mortgages reverted to these lenders' Standard Variable Rates, and they have been trapped paying them ever since.

WHAT IS AN SVR?

The SVR is usually the rate onto which a mortgage moves following the expiry of an initial fixed term introductory rate. It is normally set at a higher level than the lender's introductory rates and is often used to encourage borrowers to re-mortgage and take advantage of a lender's lower introductory rates. This model benefits borrowers and lenders and ensures competition in the market; lenders generate fees on the transition and borrowers benefit from interest rates lower than the SVR. However, this model does not work when customers are unable to switch to alternative products.

WHY COULD BORROWERS NOT RE-MORTGAGE?

Our clients were often unable to re-mortgage with other providers. Despite previously qualifying for a mortgage, they tended not to pass the stricter affordability requirements introduced by regulators following the global financial crisis. They became trapped – unable to access cheaper products available from active lenders. This was even true in cases where borrowers were keeping up with their payments at higher interest rates. Inactive lenders were able to take advantage of the captive state of their mortgage customers, and the fact that they were not competing for new customers in the market, by setting interest rates at a high level.

Borrowers in this position have had no choice but to pay the high rates set by their inactive lender or face losing their home. They are known as 'Mortgage Prisoners'. There were and are hundreds of thousands of Mortgage Prisoners in the UK.

If we act for you, we will seek to reclaim the difference between the high interest you paid and the interest you would have paid if the rates had been set fairly.

What are the claims?

We will say that your treatment has been unfair and that your lender's actions have been in breach of the terms, of your mortgage contract, as well as various financial regulations by charging a rate of interest that was not permitted under the contract or as a matter of regulation.

CAN I CLAIM?

We are acting for former Northern Rock mortgage holders whose mortgages were transferred to:

- NRAM Limited;
- Landmark Mortgages Limited;
- Heliodor Mortgages (a trading name of Topaz Finance Limited); or
- Whistletree (a trading name of TSB Bank plc),

and who have not have redeemed their mortgages more than six years ago. If the mortgage was a 'together mortgage', the mortgage holder must have had either the mortgage or the unsecured loan outstanding within the last six years.

WHAT WE WILL NEED FROM YOU

To complete a registration for the claim you will need to complete an online questionnaire and provide us with some details about your mortgage. We will also need to see evidence that you held a mortgage with the relevant defendant. Generally, this evidence will be a letter addressed to you regarding your mortgage on your lender's branded letterhead.

WHERE YOU CAN REGISTER

- (i) [NRAM Limited,](#)
[Landmark Mortgages Limited,](#)
[or Heliodor Mortgages](#)

If your mortgage was transferred to NRAM Limited, Landmark Mortgages Limited or Heliodor Mortgages you can register here:

Mortgage Prisoners Litigation
mortgageprisonersclaims.com

- (ii) [Whistletree](#)
If your mortgage was transferred to TSB Bank plc's Whistletree brand, please register here

Whistletree Mortgage Prisoners Litigation
whistletree.mortgageprisonersclaims.com

Our Terms and Conditions

Everybody who instructs us to act for them in the claims arising, must agree to the terms of our Letter of Engagement. The letter includes an overview of our terms and a number of schedules including:

- a. a damages-based agreement ('DBA');
- b. a Litigation Management Agreement ('LMA');
- c. Harcus Parker's terms of business; and
- d. an 'Authority Document'.

In summary, these documents create a no-win, no-fee relationship between us and you, under which we agree to act for you in your claim in return for a percentage of any damages you receive. We also agree to pay all of the expenses associated with the case on your behalf.

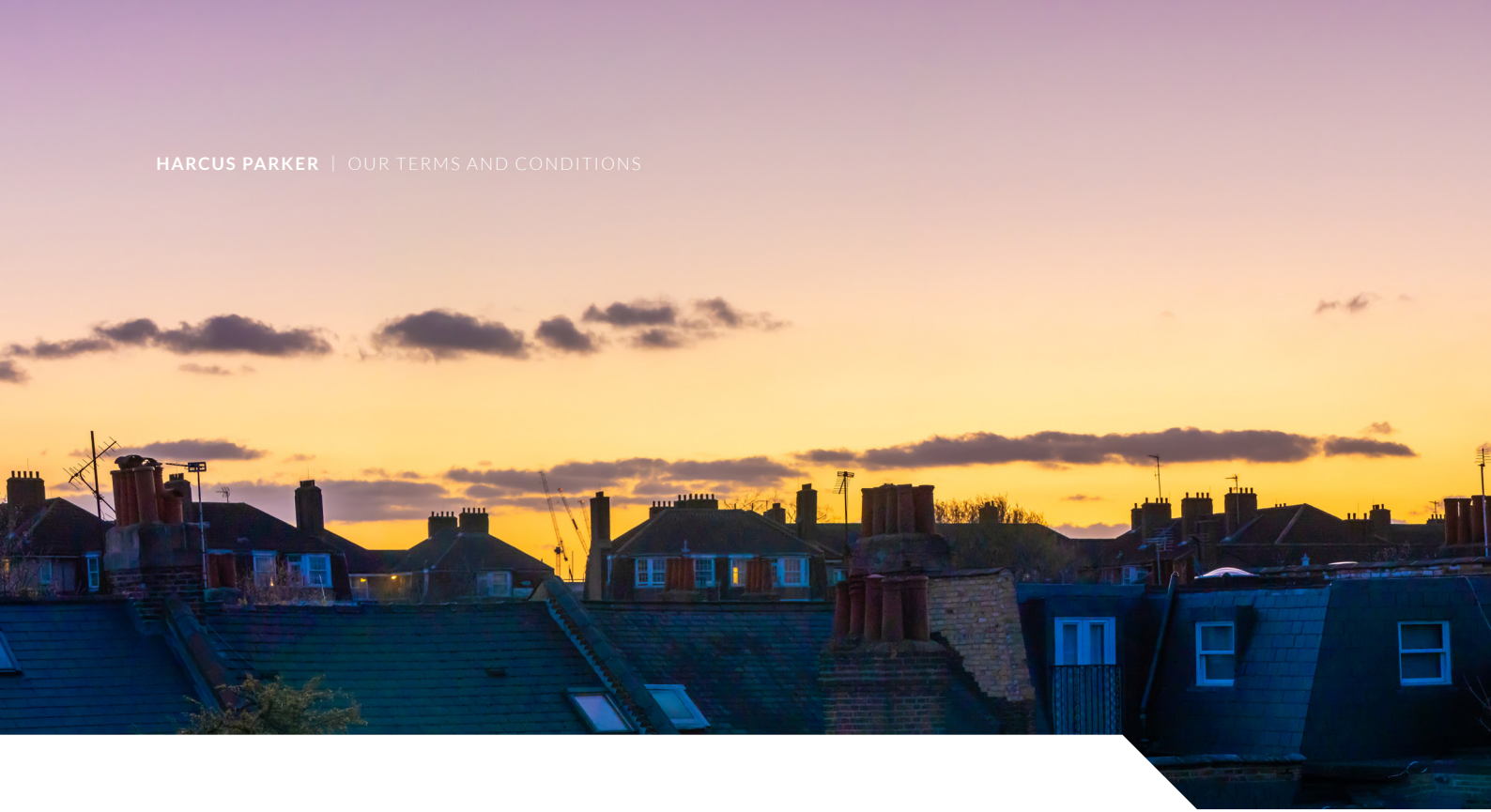
THE DAMAGES-BASED AGREEMENT

This means that we will pay all of the costs of bringing the claim on your behalf (including Court fees, the costs of barristers and experts' costs). We will only be repaid that money if: i) the claim is successful; and ii) the claimants recover money from the defendants. If the claims are successful, we will be paid 35%+VAT of any damages or settlement money received.

The amount we are actually paid will be reduced by any fees that we can claim back from the defendants. This means that if the claims succeed and the defendant is ordered to contribute to your costs, you will keep a greater proportion of your damages with the likely outcome that you will retain two thirds of the compensation awarded to you.

Finally, in no circumstances can we deduct more than 50% (including VAT) of your damages, and the fee you ultimately pay should be significantly less than that.

We will use the money we recover to repay the costs that we have incurred in bringing the claims. In addition, we will donate a proportion to charities with who we have corporate partnerships including Support Through Court and Crisis.



THE LITIGATION MANAGEMENT AGREEMENT

The LMA sets out how the claim will be run: it deals with things like the way confidential information can be shared between the claimants; the establishment of a committee of claimants who will give us day-to-day instructions on the claim (the 'Committee'); the way costs will be shared between you and the other claimants; and the way that the hypothetical risk of adverse costs is shared between you and the other claimants.

The Committee is an important feature of the way in which these claims are run: it is made up of members of the group who are interested and wish to be more engaged in the litigation process. Through the LMA and the Authority Document, you agree that the Committee can take certain decisions in relation to the claim on your behalf. Importantly, this includes decisions as to settlement. The Committee is necessary in claims of this sort so that we are able to take instructions quickly and efficiently from a large group of individual claimants.

The LMA governs the way costs are shared between you and the other claimants. Although our fee will be calculated by reference to the amount of damages you receive, it is important – at least notionally – for us to divide between all the claimants the costs we incur on your behalf. This is so that at the conclusion of the case, if your claims succeed, you are able to recover some of your costs from the defendant.

Your hypothetical share of the costs will be calculated by reference the initial size of your mortgage. For example, if the total level of borrowing across the group was £200,000,000 and each Claimant's mortgage was £100,000 then each claimant would be required to pay 0.05% (1/2,000) of the total costs incurred

Risks of litigation and how we protect you

ADVERSE COSTS RISK

Claimants who become involved in a court case put themselves at risk of having to pay the defendants' costs if they lose.

In this case, we will take a significant step to protect all of the claimants from that risk by taking out a policy of After the Event Insurance which is designed to pay out in respect of any adverse costs the claimants are ordered to pay (up to the value of the policy limit).

In addition, we will seek an order from the Court which will ensure that the risk will be shared proportionately between the claimants. This means that if the case was not successful, and there was no, or insufficient, insurance in place, your liability will be limited to your share of the defendants' costs.

Nevertheless, there are some remaining risks. We describe the main risks and what we will do to mitigate them here.

INSUFFICIENT INSURANCE COVER

It is our job to make sure that the level of the Insurance is sufficient. The Court's case management processes mean that the defendants will be obliged to update us regularly about their costs, which will increase as the case progresses, so that we can take steps to increase the Insurance cover if it is necessary to do so.

THE INSURER REFUSES TO PAY OUT

The insurer may deny or seek to withdraw cover, either:

- a. after the unsuccessful conclusion of the case; or
- b. while the case is continuing.

It is our responsibility to ensure that the insurers are fully informed about all aspects of the case so that it is not open to them to refuse to honour a claim if the case is lost. We are quite literally invested in the case, and we are equally anxious as you to ensure that the insurers are fully informed and have no reason to refuse cover.

THE INSURER GOES OUT OF BUSINESS

There is a possibility that the insurer fails so that they are unable to pay. There is nothing we can do about this risk, other than to seek to take cover from insurers whose rating is sufficient to give us comfort that they will be able to pay.



THE GROUP DOES NOT ATTRACT ENOUGH CLAIMANTS

There is also a further risk: that the case is successful but any recoveries for the claimants are limited.

The terms of the DBA are such that we cannot take more than 50% of any damages you receive, but if too few claimants instruct us, so as to make the case not economically viable, we may have to terminate our retainer with you. This is unlikely, and we would consult the Committee before doing so in order to make sure the group could continue to be adequately represented, if at all possible.

YOU SUCCEED IN YOUR CLAIM BUT OTHER CLAIMANTS FAIL IN THEIRS

The Insurance would be on the basis of the group claim, so that the insurance would respond only if the Claimants' claims as a whole fail. If some claimants succeed and others fail, they would pay out only to the extent that the costs payable to the defendants in respect of failed claims cannot be paid from the amount recovered for successful claimants.

OUR ADVICE ON RISK

It is our advice to potential claimants that the risk of personal liability falling on any claimant is low.

INFORMATION SHARING

Confidential Information includes any information and documents provided by a Claimant to Harcus Parker for the purposes of the Claim save insofar as it is already in the public domain or requires to be disclosed to the court and the Defendant or otherwise made public for the purposes of the Claim.

Under the LMA you agree that Harcus Parker can share this information on a common interest basis, with other Claimants and any third-party funder who in due course provides litigation funding for the Claims and the Committee. You also agree that Confidential Information can be used by Harcus Parker in the proceedings in so far as Harcus Parker considers it necessary or helpful to compare the facts of individual Claims for the purposes of advising on and conducting the common aspects of the Claimants' claims. In all cases Confidential Information will be shared on terms of mutual confidentiality and without any waiver of privilege.

YOUR RESPONSIBILITIES

As a claimant, you will be a party to formal legal proceedings. You must respond quickly and fully to any questions we ask you which relate to your claim.

We will use the information that you provide to us as the basis of your claim. This will involve us making representations to the defendant and signing statements of truth on your behalf. It is essential that what we say is true. If the contents of a statement of truth are not true contempt of court proceedings can be brought against you and us.

You will also have a duty to disclose (that is, tell the other side about and provide copies of) documents which might be relevant to your claim regardless of whether they are harmful or helpful to your own case. This means that whilst you are a claimant you must keep such documents safe, and be prepared to produce them if required.

ALTERNATIVE ARRANGEMENTS

You may have legal insurance which would pay your legal costs, typically as part of the household insurance policy. This is known as 'Before The Event' (or BTE) insurance. We regret that unfortunately you will not be able to use your BTE insurance for this claim; that is mainly because we do not think that it will be economically viable to assist claimants with individual insurance claims.

Other law firms might be prepared to act for you in claims like these on a similar basis. We believe that the arrangements we have put in place are fair and in your best interests. It is likely that a significant proportion of the claims will go to trial, and we have sought to create a structure in which we can run that litigation in a way that is economically viable for us and for you.

CANCELLATION

If you change your mind after signing up, you can cancel within 14 days without a reason. To do so, please contact Harcus Parker by email at: mp@harcusparker.co.uk or whistletree@harcusparker.co.uk. We will email a cancellation form to you once you have completed the registration process. You may use this form to cancel, but you do not have to.

Our engagement with you is governed by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.



If you would like to discuss any aspect of the case or your potential participation with us, please contact Matt Patching at Harcus Parker by email on mp@harcusparker.co.uk or whistletree@harcusparker.co.uk