

## **The complaint**

The estate of Miss C has complained about what happened when an application was made to Topaz Finance Limited trading as Siberite Mortgages for a second charge to be placed on the property.

Mr P is administering the estate, so any reference to Mr P in this decision should be taken to mean him acting in that capacity where appropriate.

## **What happened**

Miss C had a mortgage with Siberite. She died in December 2018, and in March 2020 Mr P obtained Letters of Administration so he could settle the estate.

I won't detail all the back and forth here as it isn't in dispute that there was confusion and delays. Instead, I will just highlight the key points.

In March 2022 Mr P contacted Siberite to ask for its consent for a second charge to be granted in favour of the local council for a loan to fund repairs to the property. The mortgage was still in the name of Miss C, albeit Siberite was aware she had died and that it was corresponding with Mr P as the representative of her estate.

On 8 April 2022 Siberite wrote to Mr P confirming it would consent to a second charge in favour of the council for a loan of £25,000 with a five-year term.

On 10 June 2022 the council wrote to Siberite. It said it was in receipt of an application for a loan under a scheme which aimed to bring empty properties back into use. It said the council would require consent from Siberite for a temporary second charge to be registered against the property, with the details of its loan being that it would be for £30,000 over a three-year term.

Siberite misunderstood the situation and declined the request from the council on the grounds it thought the council wanted its charge to be first priority, ahead of Siberite's charge. Siberite said it would need to remain as first charge.

Once that situation was resolved, on 1 August 2022 Siberite confirmed it would still be unable to consent to the second charge due to the length of time since Miss C had died and it would have expected the mortgage to have already been redeemed.

Mr P complained to Siberite and it responded in September 2022. It said it should have turned the request for consent down in April 2022, apologised for the inconvenience and offered £100 compensation.

Meanwhile Mr P had referred the complaint to our service, and it was looked at by one of our Investigators who thought that whilst Siberite had got things wrong, he didn't think it should be bound by the April 2022 letter (which is what Mr P wanted).

Mr P didn't accept our Investigator's findings and so the case was passed to me to decide.

## What I've decided – and why

I issued a provisional decision earlier this month, the findings of which said:

*“Under our rules, we can consider a complaint from a consumer, which was the late Miss C in this case. As she had died the right to complain passed to her estate. But I must explain that, although Mr P is representing the estate, he (personally) wasn't Siberite's customer here. Mr P's role is to bring the complaint on behalf of the estate, in the same way that a person might instruct a solicitor or other professional to represent them in a complaint.*

*I don't have the power to look at a complaint from Mr P in his personal capacity or look at how this matter has affected him (or had a financial cost to him) personally. In saying this I understand the points he's made, but unfortunately that's just not something I've got the power to consider.*

*This means we can't consider a complaint about the costs Mr P incurred as that is about him personally and he's not Siberite's customer in this matter under our rules. We also can't consider any distress he's been caused or his loss of expectation because, again, those are all things that affected Mr P personally.*

*Mr P has said the April 2022 letter from Siberite was a legally binding agreement, and that is what the courts would decide. I can't comment on what a court may or may not decide in this matter, however I would say that Mr P's request that Siberite responded to in April 2022 was for £25,000 over five years, whereas the application the council said it had (and it asked for consent for) was for £30,000 over three years, so a different request.*

*If Mr P feels a court would order Siberite to grant the second charge to the council then he can take matters to court if he wants to do so. However, I would recommend he seeks independent legal advice before doing so.*

*But for our consideration I have to think about what is fair and reasonable in all the circumstances of the case.*

*Upon reflection, Siberite wasn't willing to grant consent for a second charge over the property for any amount, term or reason as the mortgage remained in Miss C's name, despite her having passed away four years earlier. It is generally expected that mortgage debts are settled (that is, either the property is sold, or the debt refinanced in some way) within a year or so of the mortgage holder passing away, so I don't think it was unreasonable for Siberite to not agree to the second charge in these circumstances.*

*Siberite should have told Mr P that in April 2022, rather than it taking four months until August to do so. I would normally consider awarding any out-of-pocket expenses a complainant had incurred due to that delay. That is, I'd look at what costs the estate incurred, but wouldn't have incurred if Siberite had given the correct information in April.*

*As I've explained, the eligible complainant is Miss C's estate not Mr P personally, and so our Investigator asked Mr P for evidence of any costs that the estate incurred (rather than costs he personally had incurred) due to the delay between April and August.*

*Eleven weeks have passed since our Investigator requested that evidence and, despite a chaser from our Investigator, that information has still not been provided by Mr P. We can't keep cases in abeyance indefinitely and so, as we haven't received any evidence of any costs incurred by the estate due to the delay, I can't make any order or award for any financial loss.*

*I appreciate how frustrating this has been for Mr P but this complaint is made by Miss C's estate (rather than by him personally). And, while I sympathise with his position, I can't award compensation for any loss of expectation and distress caused to him. I understand his strength of feeling about this matter but I can't see that he's evidenced that Miss C's estate has suffered any financial loss due to the actions of Siberite. That, ultimately, is the test I must apply.*

*However, I do think an estate can experience delay or inconvenience – but in this case Siberite has already offered £100 for that in its response to the complaint.*

*There's always going to be inconvenience in dealing with an estate especially where, as here, the estate still hadn't been settled some four years after Miss C's death, and two years after Mr P had been granted the Letters of Administration so he could settle the estate.*

*In my view and taking everything into account, I think the £100 Siberite has already offered adequately, fairly and reasonably compensates the estate of Miss C for the delay in saying the second charge wouldn't be granted due to the length of time that had passed without the estate being settled.*

*In closing, I understand that Mr P will be disappointed with the limit to my consideration of things – but I hope my explanation helps him to understand why this is the case."*

Despite a reminder of the deadline neither party responded to my provisional decision.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, and having considered the full file afresh, I see no reason to depart from my provisional findings.

### **My final decision**

Topaz Finance Limited trading as Siberite Mortgages has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that Topaz Finance Limited trading as Siberite Mortgages should pay £100 to the estate of Miss C. Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Miss C to accept or reject my decision before 20 November 2023

Julia Meadows

**Ombudsman**