

The complaint

Mr and Mrs M complain that Topaz Finance Limited trading as Heliodor Mortgages has unfairly charged them legal fees following court action in relation to their mortgage account.

What happened

Mr and Mrs M had an interest only mortgage with Heliodor, the term of which ended in 2020. They redeemed the mortgage in March 2023 when they re-mortgaged to another lender.

In 2020 Mr and Mrs M complained to Heliodor about it refusing to put a payment holiday in place. That complaint was investigated by the Financial Ombudsman Service at the time, and the investigator said Heliodor should re-work Mr and Mrs M's mortgage account as if a three month payment holiday had been in place from April 2020. The investigator also recommended Heliodor pay Mr and Mrs M £200 for the distress and inconvenience caused.

Mr and Mrs M made another complaint in July 2021 as after the previous complaint was resolved, they found there were still arrears recorded on their credit files. Mr and Mrs M explained they were trying to re-mortgage the outstanding balance to another lender but were having difficulty because of the arrears on their credit files.

Heliodor sent a final response letter on 30 September 2021. It said there was an arrears balance on the mortgage of £85.22 which was owed, and it had recorded this accurately to credit reference agencies. It also said it had incorrectly reduced the arrears following the outcome of the previous complaint and offered to pay Mr and Mrs M £100 to apologise. It said it wouldn't add that arrears balance back onto the account. It said Mr and Mrs M could refer the complaint to the Financial Ombudsman Service if they remained unhappy with the outcome, but they must do so within six months of the date of the letter.

Heliodor started legal action to take possession of Mr and Mrs M's property as the mortgage term had expired and it hadn't been repaid. A hearing was scheduled for July 2022. On 19 July 2022 Mr and Mrs M's solicitors told Heliodor's solicitors that the property was on the market for sale and asked them to agree a stay of proceedings for three months to allow the sale to progress. The hearing went ahead, and the judge ordered the claim be stayed for three months, and that Heliodor should be liable for the costs associated with the hearing. The account continued to be managed by Heliodor's solicitors and another hearing was scheduled for March 2023.

Mr and Mrs M requested a redemption statement, which Heliodor sent on 21 March 2023. The statement showed that Mr and Mrs M needed to pay £10,547 for third party costs. Mr and Mrs M redeemed the mortgage, but their solicitors also requested a breakdown of what had been added under the heading of 'third party costs'.

Mr and Mrs M contacted our service again in November 2023 and we made a new complaint to Heliodor on their behalf. They were unhappy with the legal costs that Heliodor had passed onto them and that they hadn't received a breakdown of those costs despite their solicitor's request. They remained unhappy with the way Heliodor had reported their mortgage account

to credit reference agencies. They said this had impacted their ability to re-mortgage with a new lender at a cheaper interest rate.

Heliodor sent its final response letter in March 2024. It said that on the mortgage redemption statement third party costs were listed as £10,547. £6,155 of that amount was estimated costs. A refund of £648 was processed after the account was closed as the costs had been overestimated. It said it hadn't passed on any costs that Heliodor was liable for, and it was satisfied the redemption figure was correct. It provided a breakdown of the solicitors costs it had passed on to Mr and Mrs M's mortgage account and details of when they were incurred. Heliodor acknowledged it had received a letter from Mr and Mrs M's solicitors in March 2023 requesting a breakdown of the costs and noted that had not been provided. It apologised for the length of time Mr and Mrs M had had to wait to receive that information and offered to pay them £200.

In relation to Mr and Mrs M's concerns about their credit files, Heliodor said it had made the necessary changes following the outcome of Mr and Mrs M's previous complaint that was considered by the Financial Ombudsman Service. It said April, May and June 2020 had been reported as 'OK' to credit reference agencies. It said once Mr and Mrs M's payment holiday came to an end after June 2020, their account was in arrears by more than one monthly payment. That was because the interest rate reduced and so did the monthly payment. As a result, Heliodor reported arrears from July 2020 to April 2021. In May 2021 the arrears reduced to under one monthly payment again and so the mortgage was reported as 'OK' until March 2023 when the mortgage was redeemed. Heliodor was satisfied the information it had reported to credit reference agencies was a true reflection of Mr and Mrs M's account.

After the complaint had been assigned to an investigator at this service, Heliodor found that it had passed on the costs it had incurred by its solicitors attending the scheduled hearing for March 2023 after the mortgage had been redeemed. It said it would offer to refund those costs which totalled £540. It didn't give our service consent to consider the complaint about the credit files as it said it had been referred out of time.

The investigator looked into what had happened and explained we couldn't consider Mr and Mrs M's concerns about the arrears reported on their credit files as Heliodor had addressed that complaint in the final response letter it sent in 2021, and Mr and Mrs M hadn't referred the complaint to our service within six months of the date of the letter. He didn't think the complaint had been referred late as a result of exceptional circumstances.

He considered the parts of the complaint he said fell within our service's jurisdiction, and said that he thought Heliodor's offer to refund £540 worth of fees was fair. He didn't think it needed to refund anything further. He thought the £200 Heliodor had already offered for the distress and inconvenience caused was fair.

Heliodor agreed to the view and said it would pay 8% simple interest on the legal fees. Mr and Mrs M asked for their complaint to be referred to an ombudsman to review, so the complaint has been passed to me to decide.

I issued a decision which said our service only had the power to consider Mr and Mrs M's complaint about the legal costs Heliodor had passed onto them. Although I said it wouldn't be appropriate for us to deal with a complaint about any costs that have been determined by a court order. I said we couldn't consider Mr and Mrs M's complaint about the way in which Heliodor had reported their mortgage to credit reference agencies as that complaint had been made out of time.

I will now decide the merits of the part of the complaint I can look at.

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.

As a starting point, the terms and conditions of Mr and Mrs M's mortgage stated that they agree to pay the lender any costs incurred in any legal proceedings concerning the mortgage, and in recovering the mortgage debt. So I think Heliodor was contractually entitled to pass on the costs it incurred when it took legal action to recover the outstanding balance that was overdue on Mr and Mrs M's mortgage. However, I need to decide whether despite that, it was fair and reasonable for it to do so.

Mr and Mrs M's mortgage term ended in 2020. Mr and Mrs M had told Heliodor they were trying to re-mortgage, but were struggling because of the arrears that were reported on their credit files. After Heliodor addressed the complaint about the arrears on the credit file in September 2021, Mr and Mrs M remained unhappy with the outcome reached and told Heliodor they were taking the matter to court. As a result of Mr and Mrs M's concerns about their credit files, unfortunately there wasn't much meaningful engagement between the parties about their plans to repay the mortgage balance.

Heliodor instructed solicitors to start legal action to recover the outstanding mortgage balance. I don't think it was acting unreasonably by doing so at the time. I say that because the mortgage balance had expired more than two years ago, Mr and Mrs M had made Heliodor aware of their plan to repay the balance, but they weren't making any progress with executing that plan. The conversations Heliodor was able to have with Mr and Mrs M repeatedly turned into disagreements about the arrears on the credit file, and they seemingly blamed Heliodor for them not being able to re-mortgage.

Heliodor had dealt with that matter in September 2021. Mr and Mrs M hadn't referred that complaint to our service and so as far as Heliodor was concerned, that matter was resolved. Mr and Mrs M weren't engaging with Heliodor about alternative plans or options they were looking into to redeem the mortgage, and so I don't think it was unreasonable for it to take further action at that point.

Mr and Mrs M had engaged their own solicitors following advice they'd received from their local council. They wrote to Heliodor's solicitors in July 2022 three days before the hearing was scheduled to take place. They asked Heliodor to cancel the hearing as Mr and Mrs M had put their property on the market. Heliodor decided that the hearing should still go ahead, but the court ordered the claim be stayed for three months.

I've explained in my jurisdiction decision that I won't be considering the costs incurred as a result of that hearing – as they were covered by the court order. But Heliodor did incur costs as a result of the legal work its solicitors undertook before the hearing, and I don't think those costs were unreasonably incurred. It was only three days before the hearing that Heliodor had been made aware of Mr and Mrs M's change of circumstances and plans, so any costs incurred before that I consider to have been incurred reasonably. As such, in line with the terms and conditions of the mortgage, I don't think it was unreasonable for Heliodor to pass those costs on to Mr and Mrs M.

After that hearing, Mr and Mrs M's solicitors continued to engage with Heliodor's solicitors about their concerns regarding the arrears reported on their credit files. They explained they would be issuing proceedings against Heliodor in reference to their breach of the Data Protection Act 2018 in processing inaccurate information. Looking at the account notes, I can't see that Mr and Mrs M were engaging with Heliodor directly about their plans to

redeem the mortgage. Mr and Mrs M say their solicitor was trying to engage with Heliodor about their repayment strategy, but it seems the communication was largely about the disputed entries on the credit files and a dispute over the previous judgment that had been made in relation to costs.

As no progress had been made in respect of the mortgage balance being repaid, Heliodor's solicitors sought a new hearing date that was scheduled for 29 March 2023. Mr and Mrs M redeemed the mortgage on 24 March 2023. Heliodor's solicitors attended the hearing despite the fact the mortgage had been redeemed. But Heliodor has agreed to refund the costs incurred as a result of that.

Overall, looking at the account history and the contact that's taken place between the parties, I'm not persuaded Heliodor has acted unfairly in the legal action it's taken. I appreciate Mr and Mrs M strongly believed Heliodor's reporting to credit reference agencies was incorrect and affecting their ability to re-mortgage. But from Heliodor's point of view that matter had been resolved. And despite that, there still hadn't been any progress in respect of the mortgage balance being repaid. Unfortunately, because of Mr and Mrs M's concerns about their credit files, there was a relationship breakdown here which led to the engagement between the parties taking place largely through solicitors. This would have increased the costs Heliodor incurred as a result of that work, and I'm not persuaded Heliodor was responsible for that. As a result, I don't think it was unreasonable for Heliodor to pass those costs on to Mr and Mrs M's mortgage account.

I've seen copies of the invoices Heliodor received from the solicitors for the work completed. I'm satisfied Heliodor hasn't passed on more than it was entitled to. I agree it shouldn't have charged Mr and Mrs M for the costs it incurred by its solicitors attending the March 2023 hearing, and am pleased to see it's offered to refund those, along with 8% simple interest.

It's also disappointing that it took Heliodor a year to provide Mr and Mrs M with the breakdown of the costs their solicitors had requested in March 2023. But I'm not aware of any particular distress or inconvenience this caused beyond the inconvenience of them not having access to that information. It didn't prevent them from making their complaint. As a result, I'm satisfied the offer Heliodor has made to pay £200 for the distress and inconvenience caused is a fair way to put things right.

Putting things right

To put things right Heliodor should pay Mr and Mrs M the following:

- £540 for the legal fees it added to the mortgage account in March 2023.
- 8% simple interest* on the above amount calculated from the date the mortgage was redeemed to the date of settlement.
- £200 for the distress and inconvenience caused.

My final decision

My final decision is that Topaz Finance Limited trading as Heliodor Mortgages has made a fair and reasonable offer to put things right for Mr and Mrs M, and should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 7 November 2024.

Kathryn Billings

Ombudsman