

The complaint

Mr I and Mr S complain that Topaz Finance Limited trading as Siberite Mortgages has unnecessarily prolonged their request for a shortfall sale. They said it has lost documents they sent, and still hasn't registered a lasting power of attorney for Mr S.

What happened

Mr I and Mr S have a Buy To Let ("BTL") interest-only mortgage with Siberite.

Mr I brings this complaint to our service on behalf of himself and Mr S. Mr I has told us Mr S no longer has capacity to act in his own affairs, for reasons of ill health which I do not need to detail here. Mr S has a lasting power of attorney ("LPA" hereafter) which empowers his son to act for him. Mr S's son has agreed to this complaint being brought, on behalf of Mr S, and he has asked us to communicate with Mr I about this complaint. So I'll mainly refer to Mr I in this decision, although Siberite has written to both Mr I and Mr S, and occasionally also to Mr S's son.

Mr I told us he is winding up the property business that he and Mr S used to run, so they want to sell this property. Mr I told Siberite it cannot be placed on the open market, because the tenant won't allow any potential buyers to view it, and it would take too much time and money to evict the tenant. So he says it must be sold with the tenant in situ.

Mr I told Siberite they had an offer for the property, sold with the tenant there. But that was a little below the outstanding mortgage balance. So they wanted Siberite to agree to this sale. Mr I said they'd first started to get Siberite to agree to the sale in mid-2023, and they had stopped making mortgage payments at around the same time.

Mr I wanted us to look right back to when all of this started. But our service has supplied a separate decision explaining we're not able to do that, and we can look at events starting from 18 January 2024. I won't reopen that previous decision here.

Mr I told us that he and Mr S's son had sent Siberite the documents it asked for, to make a decision on the sale. But Siberite just kept asking for more, and it had lost the documentation they had sent. Mr I just wanted Siberite to make a decision, then either to allow their sale or to move ahead with repossessing the property.

Siberite didn't think it had done anything wrong. It said the reason the sale hadn't progressed was that Mr I and Mr S just hadn't responded to its requests for documentation and discussions which were needed before it could consider the sale. It sent us a number of letters it had sent to Mr I and Mr S, asking for more documentation, and details of calls it had with Mr I.

Siberite said when Mr I complained in October 2024, it still didn't have certified identity documentation ("ID") from Mr S's son, so that it could allow him to act for Mr S. And it still didn't have information from an estate agent about why the property hadn't been placed on the open market.

After this, Siberite wrote to Mr I and Mr S saying that their request for a sale at shortfall had been turned down, and it was now considering legal action.

Our investigator didn't think this complaint should be upheld. She didn't think Mr I and Mr S had complied with the requests for documents that Siberite had made.

Mr I didn't agree. And because no agreement was reached, this case was passed to me for a final decision. I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it in part. This is what I said then:

Siberite has said the reason things haven't moved forward with Mr I's request for a shortfall sale is that it still doesn't have certified ID for Mr S's son, which it needs to record his legal authority to act for Mr S. I do think it's reasonable for Siberite to ask for a certified copy of the lasting power of attorney ("LPA") and of Mr S's son's ID, before it will allow him to act for Mr S. So first, I'll look at whether that requirement has actually been met. Then I want to look at how Siberite made both Mr I and Mr S's son aware of this requirement.

Mr I said Mr S's son had sent both a certified copy of the LPA and a certified copy of his ID, by recorded delivery, and he had proof this had been received. Mr I hasn't shown our service that proof, and I haven't been able to see that Siberite has been supplied with certified copies of both Mr S's LPA, and certified copies of ID for Mr S's son.

If Mr I and Mr S's son wish to challenge this conclusion, they may wish to send us some further evidence. They may be able to show evidence of both the LPA and Mr S's son's ID having been certified by a solicitor at the same time. However, on the evidence I've seen to date, I do currently think it is likely that Siberite hasn't actually received all the documentation it wanted in order to register Mr S's LPA, and recognise his son's right to act for him.

But I think something else has gone wrong here. I think if Siberite wanted certified copies of the LPA, and certified copies of specific ID from Mr S's son, then it should have been clear on this from the outset, and it should have said consistently that this is what it needed. I can't see that Siberite has made clear in all its letters to Mr I and Mr S, what it requires.

Siberite's letters say it became aware of Mr S's health condition on 6 March 2024. That is apparently when it received a letter dated 1 March which said Mr S no longer had capacity to act in his own affairs, and his son would be acting for him under an LPA.

It appears to have taken Siberite until 5 July to send Mr S and his son full details of how to have that LPA registered, and Mr S's son authorised to act for him. And in the meantime, Siberite appears to have made requests for documentation which would, if fulfilled, still not result in it recording Mr S's LPA and recognising his son as acting for him.

On 17 May 2024, Siberite wrote to Mr I and Mr S, saying that it would need "Evidence of the power of attorney that has been granted for [Mr S's] son". There is no mention here of specific ID that Mr S's son must supply, or of any requirement for this ID to be certified.

I've seen a letter dated 12 June 2024 from Mr S's son, which states copies of the relevant documents are attached, including the relevant LPA and his ID. Siberite said the copy ID document wasn't certified. I think that's because Siberite hadn't yet included that criterion in its request for information.

Siberite says now that it needs certified copies of specific items of ID, and still hasn't received those. But what it seems to have said in June 2024, after it had received the above, was that it still needed bank statements for Mr S, and to know if he has ever been in an IVA, as well as an explanation from an estate agent of why the property wasn't put on the open market. This was confirmed in a letter dated 29 June 2024. It is notable that Siberite didn't mention any concerns then about the documentation it had received to support Mr S's LPA and his son's right to act for him. It doesn't seem to have told Mr S or his son right away that this documentation hadn't been accepted, and the LPA hadn't been registered.

Mr I then complained. In response to that complaint, dated 4 July 2024, Siberite said it would need *"either original or certified copies of the court executed Power of Attorney and proof of identification of the attorney"* This is ambiguous as to whether Mr S's son must supply proof of ID, or certified proof of ID. However, Siberite then wrote to Mr S's son separately, on 5 July 2024, setting out what it would need. In that letter it was clear that it would need certified copy of the LPA, and two forms of ID from Mr S's son, both of which needed to be certified.

I think this letter, which is the first time I can see that Siberite set out the requirements for registering an LPA with it, should have been sent to Mr S's son in early March 2024, not in early July 2024. Siberite may be able to provide further correspondence which does evidence an earlier request. But on the evidence I've seen to date, I haven't been able to see that Mr I and Mr S, or indeed Mr S's son, were made aware of Siberite's specific requirements for accepting an LPA until four months after it had been told Mr S had lost capacity to act. And if that's right, then I would say that by not posting out its requirements promptly, to both Mr S and his son, Siberite caused a delay in resolving matters.

I know that Mr I and Mr S weren't paying the mortgage during this period, but I currently think Siberite has caused a delay from early March to early July. That means arrears built up during this time, which will reflect in any future redemption of this mortgage, however it is eventually paid off. Because the evidence I've seen to date makes me think that this delay is Siberite's responsibility, I currently think that Siberite should rework Mr I and Mr S's mortgage to show that interest payments were made for March, April, May and June 2024, and to reduce the arrears on the mortgage accordingly.

But from early July, Mr S's son was aware of the documentation that Siberite wanted to see, in order to register Mr S's LPA. And Mr I had long been aware that Siberite wanted something in writing from an estate agent, to confirm what Mr I had told it about why the property couldn't be sold on the open market.

On 31 July, Mr I wrote to say that he didn't have the outstanding documents, and Mr S's son couldn't supply documents as he was on holiday. On 27 August, Mr I rang to see if the documents had been sent in, and Siberite said they hadn't. On 2 October, Siberite wrote to Mr I and Mr S, saying it still hadn't had three months of bank statements from Mr S, and copies of both the power of attorney documents and proof of identification from Mr S's son. It was also still waiting for a letter from the estate agent who had introduced them to a buyer for the property, explaining why the property couldn't be put on the open market.

Siberite then received a letter dated 3 October 2024, which said it contained a certified copy of the LPA, with bank statements and copy ID for Mr S's son. Siberite said that ID wasn't certified, so it didn't meet the ID requirements set out in the letter dated 5 July 2024.

On 4 October, Siberite wrote to ask for further ID from Mr S's son, in line with its earlier request in the letter of 5 July 2024.

I don't think the delay after 5 July 2024 in supplying all of the above requested documentation is Siberite's fault.

But I do think Siberite made one more mistake. I note that the letter of 4 October said before it could register the LPA, Mr S and his son both needed to sign a form, which it had apparently sent only to Mr S. Siberite had already been told that Mr S lacked capacity, its notes say it had medical evidence of this, and by this point it had been supplied with a certified copy of the LPA in place for him. So I don't think asking both Mr S and his son to complete a further form was an appropriate request in these circumstances. I'll include this when I'm thinking about compensation below.

On 24 October, Mr I complained. He said he just wanted Siberite to make a decision on the offer in front of it. Mr I said Mr S's son was fed up of requests for information, on top of having to cope with his father's illness, so they would not be sending in any more documentation.

Siberite has now said it wouldn't agree to the shortfall sale. It said it would not reconsider that decision until it received original or certified copies of the identification documents required to register Mr S's LPA.

I haven't been able to see that Mr S's son did actually send certified ID to Siberite. So it does appear that Mr S's son has not always responded promptly, and in full, to Siberite's requests for information. However, he did send in June 2024, all the information he had then been asked to supply. And I note that Mr S is suffering from an illness which I would expect is very distressing to both him and his family, as well as placing the burden of resolving his financial affairs on his son. In light of this, I do think it is poor service for Siberite to have delayed in sending Mr S and his son the information that was actually required to recognise the LPA. And I think the request for a form to be signed by someone without capacity was both inappropriate and potentially deeply upsetting for Mr S. So I think Siberite should pay Mr I and Mr S £500 in compensation for the poor service it has provided.

This decision doesn't require Siberite to agree to the proposed shortfall sale. But if it does not do so, then I anticipate Siberite will wish to take legal action on this mortgage. Mr I and Mr S's son, on Mr S's behalf, may complain again if Siberite delays in doing so.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

Mr I replied, to say that he was a little disappointed in my provisional decision, but understood the reasons for it. He didn't raise any further arguments, or offer additional evidence.

Siberite also replied, to disagree with what I'd said. It said it had become aware of the LPA in March, and said it confirmed it would require evidence of this on a call on 18 March 2024 with Mr I. It said it then tried to call Mr I and Mr S, on 5 April 2024, 1 May 2024 and 29 May 2024. Siberite said it was intending to request evidence of the LPA on those calls, if they had been successful.

Siberite's notes tell me that it didn't get any answer to its calls on 5 April. It did speak to Mr I on 1 May, and its notes don't suggest it told Mr I how to provide evidence of the LPA then. It didn't manage to speak to Mr S on 1 May. It didn't try to call Mr S on 29 May, because of his recorded illness.

Siberite says these attempted calls mean any delay before 5 July 2024, isn't its fault. But it seems to have intended to pass on some quite specific details of how Mr S should ensure his LPA was evidenced, to Mr S himself, over a phone call. Given Siberite was already aware of the nature of Mr S's illness, including detailed information on how this affected him, I think it was already clear that relying on a phone call to him to pass on information on its specific requirements would have been wholly inappropriate. I think Siberite's requirements for evidencing the LPA should have been set out in writing, and preferably to both the parties named on the mortgage. I also still think this should have been done in early March, and that Siberite is responsible for delay caused by it not clarifying its requirements until early July.

I also said that asking Mr S and his son each to complete a form, at a point when Siberite was aware that Mr S had lost capacity, was not an appropriate request in the circumstances. Siberite said that it had written to Mr I, and to Mr S's nominated attorneys at that point, and sent me these letters. It said it didn't think this was a mistake.

The letters Siberite sent to Mr S's nominated attorneys tell those attorneys that a customer has requested their LPA be noted. There is one letter issued to the "*customer*" which was addressed to both Mr I and Mr S, posted to Mr I. This included the following instructions -

Next steps

*If you're happy to proceed, please complete, sign, and return the enclosed form in the pre-paid envelope provided. **Both you and your attorney/s will need to sign the form.***

If you're unable to complete and sign the form for any reason, such as if you have a medical condition, please let us know. If you need support urgently or immediately, please call us, and we'll discuss if you can provide a temporary authority.

My provisional decision set out that I didn't think it was appropriate for Siberite to ask Mr S to complete and sign a form, at a point when Siberite had been provided with detailed medical evidence of his illness, and informed that he'd lost capacity. I still think that. If, in fact, Siberite would have accepted a signature from Mr I, as part of recognising a LPA for Mr S, then it ought simply to have said that. These letters offer no clarity on this point.

For the above reasons, I continue to think that Siberite's service to a customer who was facing a deeply distressing illness, has been poor. It is disappointing that Siberite has not recognised this.

For the above reasons, I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is Topaz Finance Limited trading as Siberite Mortgages must rework Mr I and Mr S's mortgage to show that interest payments were made for March, April, May and June 2024, and to reduce the arrears on the mortgage accordingly. Topaz Finance Limited trading as Siberite Mortgages must also pay Mr I and Mr S £500 in compensation for the poor service it has provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I and Mr S to accept or reject my decision before 30 September 2025.

Esther Absalom-Gough

Ombudsman