

The complaint

Mr H complains that Topaz Finance Limited trading as Heliodor Mortgages (Heliodor) gave him advice when not permitted to do so and didn't adhere to the legal requirements for providing information under a data subject access request (DSAR). He also complains about other aspects of Heliodor's service and that it has continually failed to respond to any form of communication from him. As a result he would like Heliodor to write off his outstanding mortgage and return his property to him unencumbered.

What happened

Mr H took out a residential mortgage with a predecessor lender – of which the administration was subsequently taken over by Heliodor – in 2007. He was subsequently given consent to let in 2015. But in 2022 Mr H began discussions with Heliodor about the options available to him as he began to experience some repayment difficulties. Mr H has brought separate complaints to us about those matters which have now been considered and addressed.

In September 2023 Mr H returned a missed call he'd received from Heliodor and during the call the issue of whether he should consider a voluntary surrender (VS) of his property was discussed. Mr H says Heliodor's agent told him this was the best option for him – which he perceived as giving advice and was something Heliodor wasn't authorised to do. He says when he asked the agent to provide other options to him, they disconnected the call. He says he wasn't recontacted by the agent and when he called back to complain he was advised that no notes had been added to the system regarding the previous conversation, so it didn't appear there was any record of what he'd been told.

Mr H then requested transcripts of the telephone calls but says they weren't provided within the agreed timescale and weren't in the format he expected. He says that when he requested further information Heliodor continually breached the DSAR timescales and didn't provide everything he asked for.

So Mr H complained. He said:

- Heliodor breached its regulatory permissions by giving him advice around VS.
- It failed in its duties to provide a DSAR request in a timely manner and didn't provide the correct information in a way he could access.
- It had provided him with a poor service during this time and as a result he had suffered both mental and physical health issues at what was already a very stressful time for him and his family.

Heliodor responded to each of Mr H's complaint points as follows:

- It was satisfied its agent didn't deliberately disconnect the call but agreed that they should have called Mr H back.
- It accepted that, while it didn't think the agent intended to provide advice or pressure Mr H, they ought not to have suggested VS was the best option for him and should simply have outlined the available options.

- It was satisfied the agent had left notes about the conversation but thought these hadn't been fully uploaded by the time Mr H called back – when another agent was unable to locate notes of who Mr H spoke to and what was discussed.
- A manager had called Mr H back within 48 hours as had been arranged, but they were unable to speak with him and had left a voicemail with contact details.
- It accepted it hadn't provided the information Mr H requested under a DSAR within its service level agreement.
- It thought its transcript of the calls with Mr H was an accurate representation but conceded it should have included the dates and times of the calls.
- Overall it offered £150 compensation as an apology and in respect of the complaint points it upheld.

In February 2024 Heliodor then provided a final response letter regarding the additional issues around the DSAR, and it offered a further £200 for the distress and inconvenience caused by the delays and errors.

Mr H wasn't satisfied with the outcome, so he brought his complaint to us where one of our investigators looked into the matter. He first confirmed that he couldn't look at any of the issues that had already been addressed by the service and therefore had only considered the other matters that Mr H raised. He made the following points in support of his assessment.

- Towards the end of the telephone call of 25 September 2023 Heliodor's agent did suggest VS might be Mr H's best option – even though he had said he wasn't willing to discuss it. The investigator also noted the agent didn't attempt to call Mr H back after getting cut off. He thought both these issues constituted poor service.
- But he thought the lack of notes added to Mr H's records when he subsequently called back might have been explained by a "time lag" in the system updating. But in any case, noted there was recording of the call to refer back to if needed.
- He noted the call transcripts Mr H requested weren't provided within the agreed timescale – but he thought those transcripts were an accurate depiction of the calls.
- But he hadn't considered the further issues Mr H experienced around the DSAR and suggested Mr H could raise those as a new complaint.
- Overall he thought Heliodor's offer of £150 was fair and reasonable for the distress and inconvenience caused by those matters.

Mr H didn't accept the assessment making the following points in response.

- He thought that regardless of whether the agent *meant* to give advice around the VS Heliodor still wasn't authorised to give any advice.
- He didn't find the idea of a time lag in uploading notes onto a system to be credible. He said this meant Heliodor wouldn't be giving accurate information over a large volume of calls.
- He didn't think £150 was sufficient compensation for the impact the matter had on his mental and general health and his family life.

Mr H wanted the matter to be referred to an ombudsman – so it's been passed to me to review.

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.

And having done so I broadly agree with the outcome reached by the investigator. I know this is an outcome that will disappoint Mr H and I've seen the strength of his feelings about this matter from his submissions – so I'll explain my reasons below.

I would like to acknowledge the quantity of documents and commentary Mr H has provided here and I can assure him that I've read and considered everything he's provided. But I should also explain that we're an informal dispute resolution service, set up as a free alternative to the courts. In deciding this complaint I've focused on what I consider to be the heart of the matter, rather than commenting on every issue raised by Mr H in turn. This isn't intended as a discourtesy to him but rather it reflects the informal nature of our service, its remit and my role in it.

Mr H has brought previous complaints about the management of his mortgage account and the support offered to him during his financial difficulties. Those have been considered separately – so I won't be making any further comments on those matters. This complaint is about the "advice" that Mr H says Heliodor gave during a telephone call of 25 September 2023 and other matters of service and provision of information which happened subsequently.

The "advice" that Mr H says Heliodor gave during the call

I've listened carefully to the conversations that Mr H had with Heliodor on 25 September 2023 when he contacted it following a call he'd missed the previous week. In the first conversation the agent explained they had seen an appointment was arranged with the financial hardship team about VS and were enquiring if Mr H wanted to proceed with it. Mr H said he had requested the information but still hadn't received it. He said he would need to consult with his solicitor when he got the information but also hadn't had responses to all their questions. The agent said she could put Mr H through to the relevant team, but he reiterated his position and thought at this point he was being "pressured into VS" without understanding what the alternatives were. He asked what other options were available.

I'm not persuaded at this point that the agent was pressing Mr H towards VS, although he had made it clear he wasn't going to consider it without more information and without knowing his options. The agent then said it wasn't possible to know Mr H's options without understanding his affordability position, but when Mr H said he "*can't afford it*" the agent said, "*if you do not want to pay towards your mortgage, then it's probably the best option for yourself (VS).*"

Whilst I'm not persuaded this was a financial advice in the truest sense, I do think it was a suggestion that Mr H would *probably* be best placed to consider VS in the circumstances. The agent themselves accepted they couldn't look at Mr H's options without an affordability test, so it was unreasonable to suggest what might have been the best option without undertaking the test.

However, I don't think it's for us to determine whether Heliodor has breached its regulatory permissions here – that's something for the regulator to look at, and I understand Mr H has complained about this matter to them. But what I can consider is the impact this had on Mr H and whether it caused him a financial loss or some degree of trouble and upset.

There's nothing to suggest that Heliodor's actions caused Mr H any financial loss here, but I can understand his frustration at being told something was "*probably his best option*" without any basis and I've heard how this added to his overall stress about the whole matter during the subsequent conversations he had with Heliodor. This was compounded when the first call he had was disconnected without his questions about other options being answered.

Mr H says he thinks this was because the agent was unable to answer his query and simply terminated the call – although there's no evidence to support that claim. But in that situation, I would have expected the agent to have called Mr H back to continue the conversation which clearly wasn't completed.

So I can understand that would have added to Mr H's frustrations – as would have the situation when he called back himself only to discover that notes of his conversation hadn't been added to his records. This meant he had to explain the situation again to another agent as well as making his complaint about the "advice" he said he'd been incorrectly given. I do think this amounted to poor service on top of the original conversation that Mr H was clearly frustrated by about the VS.

Heliodor said the issue with the notes was explained by the system not immediately uploading the information – it says they were visible later on. I'm unable to confirm whether this was the case, but it still impacted Mr H to some degree at that point.

As I've said previously my consideration here is to what extent this impacted Mr H and how that might be translated into a compensatory payment. Undoubtedly, it did impact Mr H as he was upset by the advice inference, but I don't think it led him to make any decisions in favour of the "advice". Mr H had already said he wasn't considering VS at that time, and he wasn't influenced to change his mind by the agent's statement. However Heliodor has fully accepted that its agent ought not to have made the statement and it would have been better if the second agent could have seen the notes when Mr H called back. It's offered to pay £150 for its errors and I think that's a fair and reasonable offer in the circumstances and within the range of what I would have recommended for such an impact on Mr H.

The DSAR

Mr H's complaint is that:

- Heliodor didn't provide all the calls he asked it to provide and didn't provide them in the format he wanted to access the information. And the calls weren't date and time stamped, so they weren't easily identifiable.
- When he asked for further information Heliodor treated each request as a new one and "reset" the 30 day time limit.
- It didn't provide information when it sent him a covering letter saying that information was enclosed.
- Not all the information has been received.
- The 30 day timescale has been consistently exceeded.

I should first confirm that following receipt of the transcripts Mr H experienced further issues with his DSAR as set out above. These issues weren't addressed by Heliodor until a later final response letter in February 2024 and as such haven't been considered by this service.

I note Heliodor made an offer of compensation within that response, so it's up to Mr H to consider that and – if he remains unhappy – he can raise a new complaint with us about those matters.

But I can consider the matter of the transcripts that Mr H requested in October 2023. It's not in dispute that Heliodor didn't meet the one month time limit to provide these, but my role isn't to say whether it breached the information rights law or to penalise Heliodor if it has. I understand Mr H has already made the information commissioner's office aware of the incident.

Mr H says he only received transcripts of two calls instead of three and that they were printed on plain instead of headed paper. He says they weren't date or time stamped. So I have to consider the impact this had on Mr H and to that end I've listened to the calls to match them against the transcripts. I'm satisfied they are an accurate representation and provided Mr H with the information he requested. I've no doubt it would have been frustrating for Mr H not to have been made aware of the date and time of each call, but I think the information was provided accurately and I think Mr H would have been aware of the content of each call he made when he read the transcript.

I know Mr H went on to request the recordings in another format that he thought was better suited to his needs. But that doesn't mean Heliodor did anything wrong in what it provided – simply that Mr H preferred an alternative format. So I don't think Mr H was impacted by the way Heliodor issued him with the transcripts and, as I've already said, any matters relating to the DSAR and subsequent delays or errors in providing the information would need to be raised as a new complaint if Mr H wishes to do so. Overall, I'm satisfied that Heliodor provided Mr H with accurate transcripts.

The other question of poor service

Mr H has referred to Heliodor's poor overall service during the time he has discussed his mortgage situation with it. Although I note that to some degree these aspects of service have been addressed within the other complaints. I have though considered what Mr H has said about the poor service he received when he called Heliodor on 25 September 2023 and the lack of call backs and responses during the time he was requesting information and made a DSAR.

But I think these have been addressed above within the main complaint points I've looked at and I think that the overall compensation offered is fair and reasonable including any aspects of poor service that might have occurred during the course of those events. So I don't think any additional compensation is warranted here and I think the overall offer is fair in all the circumstances.

My final decision

Topaz Finance Limited trading as Heliodor Mortgages has already made an offer to pay £150 in total to settle this complaint and I think this offer is fair in all the circumstances.

So my decision is that Topaz Finance Limited trading as Heliodor Mortgages should pay £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 August 2024.

Keith Lawrence
Ombudsman