

The complaint

Mr M complains that Topaz Finance Limited trading as Hyalite Mortgages is asking him to repay a shortfall debt which remains after the sale of his mortgaged property was used to pay off the rest of the debt. Mr M set out why he doesn't think Hyalite should ask him to pay.

What happened

Mr M told us about his personal and family circumstances, including ill health, and working well beyond retirement age. He said things had been made much worse, because Hyalite was now pursuing him for a mortgage shortfall.

Mr M also told us how he'd come to own the relevant property. He explained that the value of this property dropped sharply not long after he purchased it, and never fully recovered. Whilst Mr M suggests there was considerable wrongdoing in persuading him into this purchase and mortgage, the mortgage wasn't sold by Hyalite or its predecessors. Mr M received advice from a broker.

Mr M said he'd written extensively to the mortgage company he'd originally taken this mortgage with (who I will refer to here as X) saying he was very concerned at being in negative equity. But he said it just refused to engage with him about this.

Mr M said he wasn't able to remortgage at the end of this mortgage term, because of the negative equity on the property. He said he was never in arrears, and repeatedly asked for help, but at the end of the mortgage term, X decided to repossess the property.

Mr M said at the repossession hearing, X's solicitor reassured him that X had no intention of taking any action against him for any shortfall from a future sale. Mr M said the fact that no costs were awarded against him proved this. And he had a witness statement too, from someone who'd heard the solicitor say this.

Mr M said after May 2020, he'd then heard nothing more from X, but on 20 January 2024, a new mortgage lender, Hyalite, started asking him to pay the shortfall, and telling him it intended to take legal action to force him to pay. Mr M said the shortfall was almost £39,000.

Mr M thought this was all contrary to X's previous reassurance that he wouldn't be pursued for the debt.

Mr M said Hyalite hadn't proved he owed it this money. Mr M has repeatedly asked Hyalite to share with him how much it paid to purchase this debt. Mr M believes that if Hyalite paid less for the debt than it is now asking him to pay, the debt wouldn't exist, so he wouldn't have to pay Hyalite money.

Mr M also said that he understood our service issued guidance telling lenders not to pursue a debt like this, if the person concerned is ill. And given his ill health, he didn't think he should be asked to pay the money back

Mr M wanted Hyalite to confirm in writing that it wouldn't be pursuing him for this debt. And he wanted it to pay compensation for the distress this had caused.

Mr M also wanted to complain that X had never engaged with his efforts to discuss the shortfall on his mortgage. He wanted compensation for that too. Mr M also mentioned that he'd told X he'd been offered more for the property than X sold it for. Our service has already written to Mr M separately to explain why we are not now able to consider those points.

Hyalite explained that this mortgage had been transferred to it, from X. It said this was provided for within the terms of Mr M's mortgage, and that both X and it had written to Mr M at the time of the transfer.

Hyalite said when it was writing to Mr M, it was using a new mortgage number, that Mr M had previously been notified of. It said there wasn't any confusion here, this had been his mortgage, and was his debt.

Hyalite didn't think it was doing anything wrong, by asking Mr M to repay the debt.

Our investigator didn't think this complaint should be upheld. She said the transfer of this mortgage from X to Hyalite was provided for in the terms of the mortgage. Mr M's consent wasn't required for that. Our investigator said she was satisfied the mortgage and the associated shortfall that was with X now belongs to Hyalite. She could see that the transfer happened in October 2023. X had notified Mr M of the transfer shortly before it happened, and Hyalite confirmed this soon after it happened.

Our investigator said although Mr M had expressed concern the shortfall wasn't his, because the account number wasn't the same, she could see that X had previously notified Mr M of a change to his account number, before the mortgage transferred to Hyalite. She said she was satisfied the shortfall on the account Hyalite was pursuing did belong to Mr M.

Mr M also said Hyalite shouldn't be taking this action now, because X's solicitor had said in 2019 that X didn't intend to take any action about the shortfall. He said the proof of that was that he wasn't required to pay court costs, and also he had a witness to this. But our investigator said she didn't believe that Hyalite couldn't ask him to pay the shortfall now. There didn't appear to be any formal agreement saying X would not pursue the debt in future, so she didn't know if this was just a mistake by the solicitor, or if it was just a temporary arrangement.

Our investigator said she understood that receiving this letter from Hyalite would have been distressing, as there had been no communication between Mr M and his lender for a couple of years before this. So she said Hyalite should pay some compensation because of that. But she didn't think that Hyalite was prevented from pursuing this debt. She said a shortfall isn't automatically written off when a property is sold. And the lender is allowed to take steps to recover that money. They do have to contact the borrower within six years of the sale, but here, Hyalite had done that.

Our investigator noted Mr M had shared information about his health conditions, but she said that there are no rules which say a business mustn't pursue a shortfall when the consumer suffers ill health. So she couldn't say that Hyalite was being unreasonable.

Our investigator suggested Hyalite and Mr M work together to complete an income and expenditure form to outline what would be an affordable repayment plan for him, and she suggested some possible sources of support for Mr M. She said because X and then Hyalite hadn't kept in contact with Mr M since the sale, and Hyalite was only now asking him to pay

the shortfall, she thought that Hyalite should pay £150 in compensation. But she didn't think Hyalite had to do more than that.

Mr M replied to disagree. He said he hadn't objected to the transfer, he just hadn't been told it had happened. And he hadn't got any letter telling him his mortgage account number had changed either. Mr M noted a point in our investigator's view where she appeared to be suggesting there was no evidence X had agreed to pursue the debt.

Our investigator said that she'd thought it best to cover all the points Mr M had mentioned. And she said that the point Mr M raised was just a typo. She apologised for this minor oversight, and said that phrase should say that there was no documentary evidence to show X had agreed NOT to pursue the debt.

Mr M said he'd researched the relevant rules, and Hyalite didn't have to pursue the shortfall. He gave further reasons why he thought Hyalite shouldn't do so, in his case. Mr M said he was shocked that guidelines saying he shouldn't be pursued for the debt, were ignored. He expected this would make his health worse.

Our investigator said whilst a mortgage firm isn't obliged to pursue a debt, it is free to do so, if it does so in accordance with the rules. She said Hyalite's notes mentioned Mr M has other mortgages. If those were also in negative equity, then Mr M should raise that with Hyalite. And she repeated her suggestions for sources of advice. Although she said Hyalite should take Mr M's health into consideration, ill health doesn't prevent a mortgage company from pursuing a shortfall.

Because no agreement was reached, this case then came to me for a final decision.

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.

I've reached the same overall conclusion on this complaint as our investigator.

Mr M told our investigator that he wasn't complaining about the change to his mortgage number, or the transfer of this mortgage to Hyalite. However, for the avoidance of doubt, I should say that I'm also satisfied that this is the same mortgage that Mr M took out in 2008, and I haven't seen anything to suggest that the transfer of this debt to Hyalite isn't in line with the terms of Mr M's mortgage.

Mr M has also said to our service that he hasn't been shown any documents which he has actually signed. Our service has since sent Mr M the following -

- A copy of the original mortgage application, signed and dated
- A copy of the original mortgage offer
- A copy of the original mortgage deed, signed and dated
- Letter from X (13 October 2023) confirming mortgage transfer to Hyalite
- Letter from Hyalite (23 October 2023) confirming mortgage transfer from X
- Completion Certificate following the sale of the property

Mr M's concern is that he can't repay the money Hyalite says he owes it, and he feels it's wrong for Hyalite to ask. Mr M said X's solicitor told him X wouldn't do this.

I note that Mr M has offered witness evidence to this effect. But there doesn't appear to have been any formal agreement not to pursue the shortfall. And, like our investigator, I simply don't know if what was said was intended as a short term reassurance to Mr M, or if the solicitor was just wrong. I don't think Hyalite is barred from asking Mr M to repay now, because of what X's solicitor said previously.

Mr M said he had asked Hyalite how much it had paid to acquire his debt, and it wouldn't tell him. He believes if Hyalite paid less than he owes, that invalidates the debt. But I don't think that's right. Hyalite has reassured our service that the transfer of this debt from X to Hyalite has been done within the terms of Mr M's mortgage. I don't think it's likely that the debt that Mr M owes, would be affected by any financial arrangements between X and Hyalite which supported this transfer. And I don't think Hyalite has to give Mr M the information he wants, about how much it paid to acquire his debt. That's because I don't think this would affect whether Mr M has to repay this debt now.

Mr M also said asking him to repay the large shortfall now goes against guidance from our service, because of his ill health. But our service isn't a regulator, and we don't issue general guidance to lenders on how to deal with a shortfall. As our investigator said, I would expect Hyalite to take all of Mr M's circumstances into account, including his age, and his family and personal circumstances. However, I don't think Hyalite is currently prevented from asking Mr M to pay this money back.

Mr M has said to us that in his circumstances, he can't pay this debt. I know Mr M says he doesn't want to talk to the lender, but I would also encourage Mr M to have this conversation with Hyalite, so it can get a clear picture of his financial situation, and take account of that, as well as his wider circumstances, in deciding its next steps.

I do think that it would have been better if X, and then Hyalite, had maintained contact with Mr M since the sale, so that he was aware that he might still be asked to pay the shortfall, and wasn't taken by surprise when Hyalite said that. I think our investigator's suggestion of a payment of £150 in compensation would provide a fair and reasonable outcome to this part of the complaint.

But, for clarity, I'm asking Hyalite to pay this now because it doesn't look as if it or X kept in touch with Mr M during and after the sale, and before he was asked to repay the shortfall. I'm not asking Hyalite to pay compensation because it has asked Mr M to discuss paying back the shortfall with it now. And, although I know that Mr M will be disappointed, I don't think it would be fair and reasonable for me to ask Hyalite to stop pursuing this debt now.

My final decision

My final decision is that Topaz Finance Limited trading as Hyalite Mortgages must pay Mr M £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 July 2024.

Esther Absalom-Gough
Ombudsman