

The complaint

Mr L complains that Topaz Finance Limited trading as Hessonite Mortgages contacted him about his old mortgage account. He said he was no longer liable to pay the debt because of a long-discharged bankruptcy, and he strongly objected to Hessonite getting in touch.

What happened

This complaint is brought against Hessonite. Mr L's mortgage was originally with another lender, but the mortgage has transferred to Hessonite now, so it's responsible for responding to this complaint. I won't name the previous lender here, but in resolving this case, I've taken account of what that lender has done too.

Mr L said that he'd had a mortgage with a previous lender, many years ago. In 2013, the property was repossessed, and Mr L said because of this and other issues, this was an extremely difficult time in his life. He said a couple of years after this, he filed for bankruptcy, and was discharged from that bankruptcy a year later.

Mr L said in November 2023, he got a letter from his previous lender, and then from Hessonite, telling him that his old mortgage had been moved from that previous lender to Hessonite. Mr L said he contacted Hessonite about it, and it said Mr L had to tell it that he'd been discharged from the bankruptcy. Mr L said that was wrong, there wasn't a discharge notice for bankruptcy. He thought Hessonite should have deleted all his data, a year after the bankruptcy was recorded.

Mr L said he'd been extremely upset by this reminder of the past, it brought everything back, and also worried him that the threats of bailiffs and debt collectors might start again. Mr L wanted Hessonite to delete all his data from its systems, and pay £5,000 compensation for the distress it had caused him.

Hessonite didn't think it, or the previous lender, had done anything wrong. It said it hadn't received confirmation of Mr L's discharge from bankruptcy. So his mortgage account was still active, and that's why it had got in touch with him. It said if Mr L forwarded confirmation of his discharge from bankruptcy it would update his account, and that would prevent any further correspondence being sent to him.

Hessonite said it was sorry that Mr L had been upset by receiving this correspondence, but it didn't think sending those letters was a mistake on its part.

Our investigator thought this complaint should be upheld. He didn't think Hessonite had reassured Mr L that it wouldn't pursue him if he could show he'd been discharged from bankruptcy. And he said Hessonite should have realised by now that Mr L had been discharged from bankruptcy, so it should already have closed the account, and shouldn't be writing to him. He thought Hessonite should pay Mr L £200.

Hessonite disagreed. It said it doesn't chase its customers for details of the discharge from bankruptcy, it expects them to provide that. And Hessonite said the letters which were sent about the transfer of the mortgage were clear Hessonite wasn't asking for payment. But it

said it had now received evidence of Mr L's discharge from bankruptcy, so it wouldn't be in touch with him again. Hessonite wouldn't close the account altogether, because it could still ask the other borrower to make payment.

Our investigator didn't change his mind. He still didn't think Hessonite should have contacted Mr L after he was discharged from bankruptcy. And he didn't think Mr L should have to do the administrative work in proving his bankruptcy had been discharged.

Hessonite wrote again to confirm that it wouldn't have been in touch with Mr L if it had already been notified of his discharge. The discharge may be an automatic process in many cases, but not all. And Hessonite said it isn't responsible for checking that discharge has happened. It also said this debt was still enforceable.

Mr L said he thought Hessonite should have checked if he had been discharged, or it should have assumed so from the notice a year earlier. And he said no other creditors had been in touch. He said Hessonite was falsely claiming that he had to notify it of the discharge.

Because no agreement was reached, this case then came to me for a final decision. And 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 not propose to uphold it. This is what I said then:

I've listened to the call Mr L had with Hessonite. It's clear that he had expected Hessonite to have a record both of his bankruptcy and its discharge. But I've also checked the notes that Hessonite has, and it didn't receive any notice of the discharge of bankruptcy.

Creditors don't automatically receive notice of the discharge, and the Information Commissioner's website sets out that when people are discharged, they do usually have to inform their creditors themselves. It says this:

Once you have been discharged you will have to notify each of the lenders whose accounts were included in this bankruptcy as they will not automatically be told. You should send them the evidence of this and ask them to amend their entry on your credit file to reflect this.

Mr L has never suggested that he notified Hessonite or the lender who previously held the mortgage, before this transfer, that he was discharged from bankruptcy. Mr L has argued strongly that the previous lender should have collected this information itself. But I don't think that's right, and I note that it doesn't fit with the advice from the Information Commissioner's Office.

I also note that Mr L's mortgage was the subject of possession proceedings in 2013. The resulting shortfall from the sale remains potentially enforceable (although not in Mr L's case) for 12 years, so until 2025. So I don't think this debt has simply expired.

For the reasons set out above, I don't think the previous lender or Hessonite made a mistake when they wrote to Mr L to tell him about this transfer.

Mr L said that Hessonite holding his data now was a breach of data protection rules. For the above reasons, I don't think Hessonite having retained Mr L's data was unreasonable or unfair. But I note Mr L has made a separate complaint to the

Information Commissioner's Office, so I leave it to that Office to comment on the data protection issues here.

I've looked at the correspondence Mr L received, and I can see the letters sent about the transfer of this mortgage from the old lender and from Hessonite both said that Mr L wasn't being asked to make payment. The first letter said:

If you don't currently make payments, this letter is not a demand for payment and is for information only. Your rights under your mortgage and/or loan agreement(s) are unaffected by this transfer.

Then the letter from Hessonite said this:

This letter is not a demand for payment; nor should it be seen as a demand for payment

I understand that this upset Mr L very much, to receive this correspondence, as it reminded him of a difficult time in his life. But I don't think that Hessonite or the previous lender made a mistake here, and so I don't think it has to pay compensation in this case. I know Mr L will be disappointed, but I don't think this complaint should be upheld.

Hessonite has now received confirmation that Mr L's bankruptcy has been discharged, and it has told our service that it will take action as a result of this. So I would not expect Hessonite to contact Mr L about this debt again in future. If it does so, then Mr L will not be prevented by this decision from bringing any future complaint to our service.

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.

Hessonite said it agreed with the provisional decision, and had nothing to add. Mr L wrote to disagree strongly.

Mr L said he thought the quote I had taken from the ICO website was taken out of context, and wasn't relevant here. He said that was in response to a question about what to do if a credit reference agency hadn't updated someone's credit file. Mr L said he thought I was manipulating that to fit my agenda.

The reason I thought this quote might assist here, is that it sets out the ICO's understanding that a lender won't automatically be told about the discharge of a bankruptcy. And Mr L appears to accept that this provision "... *highlights that lenders don't get notices of discharge etc and may still leave debts showing on a person's credit file*".

But Mr L said that wasn't the case here. He said this debt had been removed from his credit file. And he said the ICO contradicted itself, because elsewhere it said that a discharged bankrupt should get a discharge notice and send it to the credit reference agencies, not the lender, to get their file updated.

I note that Mr L does now appear to accept that a discharged bankrupt can obtain a notice of discharge from bankruptcy, having initially said there was no such thing. It's not for me to defend the advice of the ICO, but I would expect that a notice of discharge sent either to the

lender, or to the credit reference agency, would be likely to lead in due course to a debt which ought no longer to be on a credit file, being removed.

Mr L also said that in most cases, when a bankruptcy notice is placed in the gazette discharge will be automatic, and lenders get that same notice too. He said his bankruptcy was an automatic discharge. And then all his debts vanished from his credit file like they should have, so he thought correct action was taken by the previous lender in 2016 in resetting this debt to zero. And the previous lender hadn't then been in touch with him at all. Mr L said there was then no reason for Hessonite to contact him.

I note that when this transfer took place, Mr L received two letters. The first was from the previous lender, the second was from Hessonite.

I don't know when this debt was removed from Mr L's credit file. But I note Hessonite's position is that this debt ought not to be on Mr L's credit file now, because it is over six years old. I don't think I can assume, because this debt is not on Mr L's credit file now, that the previous lender did have a note of his discharge from bankruptcy, and the current lender has written to him regardless, in an attempt to wrongfully revive this debt.

Mr L said Hessonite had systems in place to get this right, it harvests data from the gazette and other institutions to ensure that things are flagged as and when and acted on, and he said there was no way Hessonite was treating every person who went bankrupt like this, he said that wouldn't be good for its business.

I think it's important to stress here that while discharge will usually be automatic, it isn't always automatic. The position on this can change following publication of the notice of bankruptcy. So I don't think Hessonite had to assume, because Mr L's bankruptcy was initially intended to be automatically discharged, that it must have been discharged a year later.

Mr L said although the letter didn't ask for payment, it also didn't say that he didn't owe Hessonite anything. And he said that it was obvious why Hessonite was getting in touch. He said it would later have demanded payment, and our service would know this.

Hessonite told Mr L when he spoke to it on 17 November 2023, that it wouldn't pursue him for any money if he had been discharged from bankruptcy, and these letters were for information only in his case. And Hessonite asked Mr L then to send his notice of discharge, so it could note this on his files.

Hessonite has now seen this notice. And I can see it then wrote to Mr L, saying this –

I can now confirm we have received confirmation of your discharge from bankruptcy and have updated the account accordingly and you will no longer be pursued for any outstanding debt in relation to this account.

So I do not expect Hessonite will be in touch asking Mr L to make payment. But, as I said in my provisional decision, if Hessonite does that, then this decision doesn't prevent Mr L from complaining about that in future.

I understand Mr L feels very strongly about this. But I don't think it's unfair or unreasonable for the first lender, and subsequently Hessonite, to have contacted Mr L about this debt in circumstances where he has told us it hadn't been notified of his discharge from bankruptcy. So I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 October 2024.

Esther Absalom-Gough

Ombudsman