

## **The complaint**

Mr M complains that Topaz Finance Limited (trading as Hyalite Mortgages) required him to provide income and expenditure information before it would consider his request to capitalise his arrears.

## **What happened**

Mr M took out a mortgage in 2007 with a different lender. The mortgage has since been transferred to Hyalite. Mr M's mortgage fell into arrears in 2013 when he was unable to work for a period. Mr M was making monthly payments to reduce the arrears in accordance with a court order. Mr M was unable to work during the Covid-19 pandemic and his arrears increased.

Mr M previously brought a complaint to us about the amount of his arrears and his mortgage balance, whether the historic arrears and Covid arrears should be recorded separately, his interest rate, being a mortgage prisoner and wanting to have a suspended possession order set aside. Mr M told us he had a lump sum that could be used to reduce his arrears. Our investigator didn't require Hyalite to take further steps with regard to that complaint. She said Mr M could explore with Hyalite whether it would consider capitalising any arrears remaining after he made a lump sum payment. She said this would alter Mr M's contractual monthly payment and it would be for Hyalite to assess whether this was right for Mr M.

After this Mr M made a proposal to Hyalite to repay about £5,000 (which would clear the historic arrears) with the remaining arrears (about £7,000) capitalised. Hyalite said Mr M needed to provide income and expenditure information so that it could consider this. Mr M didn't agree this was needed. He says his proposal would reduce the monthly cost of the mortgage, improve his credit score so that he can access credit, and remove a lot of stress.

Our investigator said it was fair for Hyalite to ask for income and expenditure, as it had to assess whether the mortgage would be affordable if the arrears were capitalised.

Mr M didn't agree. He said Hyalite had given us incorrect information as he didn't intend to re-mortgage at this point or increase his debt. He said Hyalite had told him his monthly payments would be less after his proposal was put in place. Mr M said he was concerned Hyalite would use his income and expenditure against him and are using it as an excuse to keep him on a higher rate.

Mr M said the arrears came about through no fault of his own. He said he'd taken the mortgage out on a self-certified basis and considers Hyalite is changing the contract by asking for income and expenditure information.

## **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 must first be clear that I'm not re-considering any parts of Mr M's previous complaint. I'm

only considering Mr M's complaint that it was unfair for Hyalite to ask him to provide income and expenditure information before it would consider his proposal to clear his arrears.

As of March 2024, Mr M's arrears were about £12,000. He proposed making a lump sum payment of about £5,000 to reduce his arrears if Hyalite agreed to capitalise the remaining £7,000.

There's no restriction on Mr M making a lump sum payment to reduce his arrears. The issue here is whether Hyalite should agree to capitalise his arrears – more particularly whether it should do so without Mr M providing income and expenditure information.

When arrears are capitalised they're added to the mortgage balance. There are advantages to this. For instance, the arrears are cleared which could improve the customer's credit file over time. But there are risks. Capitalisation increases the customer's contractual monthly payment. If this isn't affordable it could lead to further problems, including their mortgage falling into arrears again. If a customer has funds available, it might be cheaper overall for them to repay the arrears over a shorter period, if they are able to do so.

Hyalite needs to work with Mr M to try and get his mortgage back on track. Mr M has shown his willingness to do this by making regular overpayments towards the arrears. But it wouldn't be fair for Hyalite to agree to capitalise Mr M's arrears if that isn't sustainable or affordable for him.

I don't think Hyalite would be able to demonstrate it had treated Mr M fairly if it didn't assess whether the monthly payments would be affordable after capitalising the arrears. In order to do this it needed information from Mr M about his financial circumstances.

Hyalite passed Mr M's proposal to its underwriters. They were willing to consider his proposal. They noted that Mr M had been maintaining payments at a level that suggested capitalisation would be affordable. The underwriters said they needed income and expenditure information to demonstrate the mortgage was affordable going forwards. They said without this they didn't know how Mr M's income was made up or whether the monthly payments were sustainable.

I haven't seen anything to suggest Hyalite asked for information in order to take advantage of Mr M and I don't think that's the case. I think Hyalite asked Mr M for information about his income and expenditure so that it can fairly consider his request to capitalise his arrears.

Recent guidance for lenders says that it might be appropriate for a lender to agree to capitalise arrears if (1) it reasonably considers the customer can afford the capitalised monthly payments, (2) other options to repay the arrears more quickly have been considered, and (3) taking account of the customer's circumstances it considers capitalisation to be in the customer's best interests.

While this doesn't say the customer must complete an income and expenditure form, I think it would be difficult for a lender to show it had followed this guidance without this.

Hyalite has internal criteria and guidelines which reflect its own risk appetite and help it to comply with rules on mortgage regulation. It provided its criteria for capitalising arrears to us, in confidence. This includes asking for income and expenditure information.

The fact that Mr M didn't provide income and expenditure when he took out the mortgage doesn't change matters. Nor does it change matters that Hyalite estimated Mr M's monthly payments would fall if his proposal (which includes a lump sum repayment) was agreed. Hyalite needs information from Mr M so that it can fairly consider his proposal in accordance

with mortgage regulations and its duty to treat him fairly.

I appreciate that Mr M will be disappointed. I don't think it's fair and reasonable to require Hyalite to capitalise his arrears without him providing income and expenditure and any other information it needs fairly to consider this.

### **My final decision**

My decision is that I do not uphold this complaint.

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

Ruth Stevenson  
**Ombudsman**