

## **The complaint**

Mrs J complains that Topaz Finance Limited trading as Hyalite Mortgages has not treated her fairly. She said that it has unfairly increased the interest rate on her mortgage. As a result that has caused her financial difficulty. Mrs J considers that Hyalite has not properly taken account of her and her family's vulnerability.

## **What happened**

In 2005, Mrs J took out an interest only mortgage with Kensington Mortgages. The mortgage had a fixed rate of 6.4% for 365 months followed by the standard variable rate (SVR) of 6.4%. The mortgage was transferred to Mortgage Express.

In 2009, Mrs J switched to a new fixed rate of 4.29% until 31 December 2010. After that the mortgage reverted to a variable rate that was 2.74% above the Bank of England base rate (the base rate), which at the time was 1%, giving an interest rate of 3.74%.

In October 2023 the mortgage was transferred to Hyalite mortgages. Hyalite has accepted responsibility for the complaint and I will refer to it throughout the decision.

Mrs J complains that Hyalite has not treated her fairly: She said she is a mortgage prisoner, the interest rate on her mortgage has been increased unfairly and she is not able to afford the mortgage payments. Mrs J considers that Hyalite has not properly taken account of her and her family's vulnerabilities – and that the situation is affecting all of their health.

I issued a jurisdiction decision saying that we could only look at events from 18 January 2018.

The investigator did not think the complaint should be upheld.

Mrs J did not accept what the investigator said. She responded to make a number of points, including:

- She was a mortgage prisoner being held on a high interest rate. She went on to that interest rate over ten years ago when things were very different for her and her family.
- Her change of circumstances and the increase in interest rates has caused arrears to build.
- If she was with an open lender her interest rate would have been reduced because she is a vulnerable customer.
- Being a mortgage prisoner has contributed to her family's poor mental health.
- They rely on benefits due to no fault of their own.
- She has entered into payment arrangements with the lender because she was frightened of the consequences if she didn't and confused by her situation.

- No one from the lender has ever shown that they understand her predicament.

### **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 have read everything that Mrs J has provided. I haven't set out everything here as I can't disclose information that may identify her. I thank Mrs J for her honesty about some very difficult and traumatic events she and her family has been through. I was sorry to hear how tough things have been and I can understand why she has brought this complaint. I'm afraid though, after reviewing everything, I agree with the outcome reached by the investigator. I will explain my reasons why.

#### Interest rate

When Mrs J originally took out the mortgage she agreed a fixed rate for 36 months followed by the SVR. I have not seen any evidence that the lender agreed that it would always offer Mrs J a new interest rate product.

After the mortgage was transferred to another lender, Mrs J agreed a new fixed rate. That agreement was for a fixed rate followed by a variable rate that was 2.74% above the base rate. Again, I have not seen any evidence that the lender agreed to offer Mrs J new interest rate products. There is no obligation for a lender to offer new interest rate products to its customers.

As far as I can see, the mortgage has operated in the way that the lender said it would and that Mrs J agreed to. She had a fixed rate that was followed by a variable rate that tracked the base rate. I have not seen any evidence that the rate has not tracked the base rate as it should.

Since Mrs J was on the variable rate from 2011, the base rate remained very low. In late 2021 the base rate started going up. That is why the monthly payment on her mortgage had increased.

#### Support

Hyalite has a duty to treat Mrs J fairly when she is in financial difficulty. She has been in and out of arrears since 2009. I can only consider what happened since 18 January 2018. Since that point the mortgage has almost always been in arrears.

There are a range of concessions Hyalite can offer to help borrowers who are in arrears, including switching to interest only, capitalising arrears, extending the term, deferring interest due and making payment arrangements. Usually we would expect a lender to gather details of a borrower's income and expenditure so it can understand a borrower's wider circumstances and what they can afford to pay.

The difficulty here is that Mrs J is already on an interest only mortgage. So switching to interest only is not possible. Adding the arrears to the balance will make her payments more expensive. Extending the term would not reduce her payments. And I can't see that deferring interest would help Mrs J. So the options available to Hyalite to support Mrs J were limited.

I've looked at Hyalite's records of its conversations and contact with Mrs J to decide if it has treated her fairly. It has recorded details of her vulnerability and has been dealt with by a specialist team. Hyalite has regularly looked at her circumstances, agreed payment

arrangements and exercised some forbearance and flexibility in the amount and timing of payments. I will deal with the more recent events in more detail, but overall I consider that Hyalite has treated Mrs J fairly in the way it has dealt with her when the mortgage was in arrears.

In April 2023, Hyalite considered a request to offer a concessionary interest rate to 0.75%, which was the most Mrs J could afford. It obtained new details of Mrs J's income and expenditure and had its underwriters review the request. Ultimately, Hyalite declined the request. It said that Mrs J had not consented to a charge being taken over her home for support for mortgage interest (SMI) payments to continue and that it could not take into account an inheritance that Mrs J expected to receive.

I consider those were valid reasons for a lender to decline such a request. It is up to Mrs J whether to agree to the requirements to qualify for SMI. But it is reasonable for a lender to take into account that a borrower is not getting all of the support they are entitled to. It was also reasonable for it not to accept a potential inheritance. There are a number of uncertainties around that. In my experience it was not out of line with good practice for Hyalite not to accept that. So in the circumstances, it was reasonable for Hyalite to reject Mrs J's proposal.

Mrs J then proposed paying £200 a month and putting her home up for sale in 12 months. But again Hyalite rejected the proposal. It said that Mrs J's income and expenditure did not show that the payment was affordable and bearing in mind the realistic timescales to sell the property, that would mean arrears would increase by at least £15,000. Again, I consider that Hyalite had valid reasons to reject the proposals.

The mortgage payment due is considerably more than Mrs J can afford. Hyalite has fairly and reasonably considered her proposals. But looking at the information available to me, it was reasonable for Hyalite to reject the proposals she made and I can't see there was a sustainable way to get the mortgage back on track. In all the circumstances, I don't consider Hyalite has treated Mrs J unfairly or unreasonably.

I appreciate how upset and disappointed Mrs J will be with my decision. She should continue to engage with Hyalite – and it should consider if there is anything else it can do to help. But for the reasons I have explained, I don't consider it has treated Mrs J unfairly.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 24 December 2024.

Ken Rose  
**Ombudsman**