

The complaint

Mr and Mrs C complain that Topaz Finance Limited (trading as Hessonite Mortgages) keeps contacting them about a mortgage debt they don't believe they owe.

What happened

Mr and Mrs C had a mortgage with another provider. That provider wrote to them in late 2023 saying their mortgage would be transferred to Hessonite.

Mr C says they became bankrupt in late 2008 and their mortgage was included in the bankruptcy. They were upset to be contacted about a debt they say they don't owe. When Hessonite contacted them, they thought it might be a scam.

Hessonite said the property had been taken into possession and sold in 2011. There was a shortfall debt. Hessonite said the mortgage account remained active as it hadn't received evidence that Mr and Mrs C's bankruptcies had been discharged.

Mr C says they shouldn't have to provide a letter of discharge for a debt that doesn't exist. He said 15 years had passed since they were made bankrupt, and they haven't kept the paperwork.

I sent a provisional decision to the parties explaining why I didn't intend to uphold the complaint. Since then, Mr and Mrs C obtained and provided copies of their certificates of discharge. Mr and Mrs C asked if Hessonite would compensate them for the court fee and their lost income and transport costs of driving to the court several times. Hessonite declined, saying it hadn't made an error and it wasn't reasonable to expect it to cover the cost of something out of its control – Mr and Mrs C failing to keep copies of their original certificates of discharge.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr and Mrs C were made bankrupt in late 2008. The property was in negative equity and they didn't have other assets for a distribution to creditors.

Hessonite says the property was taken into possession and sold in 2011. There was a shortfall debt.

I haven't seen records of the contact between the lender and Mr and Mrs C after 2011. I think there must have been some contact as Mr and Mrs C were aware that their mortgage account remained open. Mrs C wrote to the previous lender in March 2022 to notify it of a

change of address. She asked that it close the account and send her the balance. The lender wrote back in May 2022 to say that there was a shortfall debt (of about £93,000) for which they remained liable. The lender asked Mr and Mrs C to get in contact to reach a suitable solution.

Mr C called the lender and said they'd both been made bankrupt in 2008. While lenders are usually entitled to try to recover a shortfall debt, the position is different if the mortgage debt was part of a bankruptcy (as was the case here). The lender was aware of Mr and Mrs C's bankruptcies but hadn't received certificates of satisfaction or evidence of discharge of the bankruptcies. The lender asked Mr C to send the certificates of satisfaction or evidence of discharge of the bankruptcy so that it could update its system.

Mr and Mrs C brought their complaint to us after they received letters in late 2023 saying their mortgage account was being transferred to Hessonite.

Mr and Mrs C found contact about the debt upsetting. However, I can only uphold this complaint and order Hessonite to take action – such as to write off the debt and close the account – if I find it made an error.

Bankruptcies are usually discharged automatically after 12 months. But this isn't always the case. Lenders aren't notified when a bankruptcy has been discharged. The lender relies on the borrower providing evidence of the discharge from bankruptcy.

Here, Hessonite (and the previous lender) say they didn't receive evidence that Mr and Mrs C's bankruptcies had been discharged. I can't fairly find that Mr and Mrs C's mortgage account should have been updated to reflect this.

The current position is that Mr and Mrs C's mortgage account is still active. The letters sent by Hessonite didn't say it was pursuing Mr and Mrs C for the debt – in fact the letters say they are not a demand for payment. The letters were intended to inform Mr and Mrs C about the transfer of the account to Hessonite. In the circumstances, I can't fairly find that Hessonite made an error when it wrote to Mr and Mrs C about the account.

Hessonite says it doesn't intend to collect the debt. It wants Mr and Mrs C to provide evidence that their bankruptcy was discharged so that it can write off the balance, close their account and update their credit reports (if this is necessary).

Mr and Mrs C have now obtained and provided copies of their certificates of discharge. Our investigator forwarded copies to Hessonite. Hopefully this is sufficient for Hessonite to close the account and this will be the end of the matter for Mr and Mrs C.

Mr and Mrs C had to pay a fee to the court for the certificates of discharge and incurred costs in travelling to court. Hessonite didn't agree to compensate them for this, and I don't think it's fair and reasonable to require it to do so. It was Mr and Mrs C's responsibility to provide copies of their certificates of discharge to Hessonite or the previous lender. I can't fairly find that Hessonite was responsible for them not doing so, or for them not keeping the original certificates of discharge.

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 Mrs C and Mr C to accept or reject my decision before 12 December 2024.

Ruth Stevenson
Ombudsman