

## The complaint

Mr K and Mrs B complain about the way Topaz Finance Limited trading as Hessonite Mortgages has administered their buy-to-let mortgages. They've raised the following specific complaint points:

- The previous lender sold six of their buy-to-let properties unfairly and they've now been left with a significant shortfall to pay. They don't think they should be liable for those shortfall debts because the lender would have claimed for them on its insurance policy.
- Hessonite has taken recovery action in relation to the remaining mortgage accounts unfairly.
- The interest rates charged on the mortgages have been unfairly high, and haven't reduced in line with the Bank of England base rate.
- They never agreed to any mortgage contracts with Hessonite and so they don't agree it has any basis to pursue them for the funds.
- Hessonite hasn't sent them information they've asked for, and has unfairly declined a request to temporarily reside at one of their buy-to-let properties.

## What happened

Mr K and Mrs B have a portfolio of buy-to-let properties. Six of the mortgaged properties were repossessed and sold by the lender several years ago leaving shortfall debts, and two mortgaged properties remain with Hessonite now holding the first legal charge. Mr K and Mrs B also own other buy-to-let properties that are mortgaged with different lenders.

In September 2019, an Ombudsman issued a final decision in response to Mr K and Mrs B's complaint about the way the lender had administered the mortgages and sold six of the buy-to-let properties leaving them with a shortfall. The Ombudsman didn't uphold the complaint.

In 2021 Mr and Mrs B complained again about the way the lender had taken possession and sold their buy-to-let properties leaving them with a significant shortfall to pay. They also complained about the legal costs that had been added to the mortgages. In March 2022 an Ombudsman decided that it wouldn't be appropriate for our service to look at any parts of the complaint again that had previously been considered by us. She didn't uphold the complaint about the legal costs.

In 2023 the remaining mortgages fell into arrears, and Mr K was suffering with poor physical and mental health. The director of an auction house wrote to the lender in September 2023 to say it had been instructed to sell all of the properties in Mr K and Mrs B's buy-to-let portfolio and anticipated it could take up to six months to complete all the sales and generate the necessary funds to repay the outstanding debts in full.

In 2023 the court ordered that the shortfall debts from the previous property sales were secured on Mr K and Mrs B's remaining properties by way of charging orders.

In October 2023 the mortgages were transferred to Topaz trading as Hessonite Mortgages.

Mr K and Mrs B made further complaints. They were unhappy about the way their mortgage accounts had been handled, the interest rate charged, and the customer service they had received.

In January 2024 Mr K and Mrs B contacted our service. They wanted us to consider their complaint about the way the lender had sold their mortgaged properties which they said had resulted in significant financial loss of approximately £1million. They were also unhappy that the interest rate charged on the mortgages had not reduced when the Bank of England reduced the base rate.

Mr K and Mrs B told our service that they had recently fallen behind on their mortgage payments due to rising interest rates. They had decided to sell the properties at auction and said they had negotiated favourable terms with the auction house. They said the properties would be sold within six months at which point the arrears would be cleared. They were unhappy that Hessonite had told them it was appointing LPA Receivers in the meantime. They also questioned under what authority Hessonite was acting on those properties as the mortgages were not taken with it originally.

Mr K and Mrs B also said they wanted information about the lender's indemnity insurance. They didn't think the lender should be able to pursue them for the shortfall balances from the previous property sales if those funds had already been claimed on insurance. They also said they wanted to stay in one of the buy-to-let properties near the hospital whilst Mr K was undergoing medical treatment, but Hessonite had refused. They also complained about the interest rate charged on the mortgages.

One of our Investigators looked into things and said that parts of the complaint had been made outside the time limits our service must apply. She also found it wouldn't be appropriate for us to consider any part of Mr K and Mrs B's complaint that had already been subject to court proceedings, or had been considered by our service before. Of the parts of the complaint the Investigator felt she could look at, she didn't think Hessonite had acted unfairly or needed to do anything to put things right.

Mr K and Mrs B disagreed, and so the complaint has been passed to me to decide.

### **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.

#### Which parts of the complaint can we, and should we, consider?

Before I decide a fair and reasonable outcome to the merits of this complaint, I first need to determine whether we have the power to look at it.

We don't decide every complaint that's referred to us. There are some complaints that we can't look at because the rules we operate under don't allow us to. And there are others that we are able to look at, but we choose not to due to their circumstances. The rules that set this out are the Dispute Resolution (DISP) rules in the Financial Conduct Authority's handbook.

In particular, the rules state that a complaint can be dismissed if dealing with such a complaint would otherwise seriously impair the effective operation of our service. DISP gives examples of when this might arise, and one of those examples is where the subject matter of the complaint has previously been considered or excluded by our service, unless material new evidence which the Ombudsman considers likely to affect the outcome has

subsequently become available to the complainant.

Some of Mr K and Mrs B's complaint has been considered and decided by our service before. We've already determined that Hessonite was not acting unfairly when it repossessed six of Mr K and Mrs B's properties several years ago. I'm not aware of any material new evidence that has subsequently become available to Mr K and Mrs B that would likely affect the outcome we reached previously. So whilst I appreciate Mr K feels very strongly about this matter, I'm satisfied it would not be appropriate to look at those complaint issues again.

Mr K and Mrs B are also continuing to complain about the shortfall debts that the property sales left, and the lender asked them to pay. This matter was taken to court, and charging orders were issued for the debts to be secured on Mr K and Mrs B's remaining properties. The court orders set out the amounts owed under the charging orders. I'm satisfied it would not be appropriate for our service to look at whether or not Mr K and Mrs B are liable to pay that debt, as that matter has already been determined in court. That also means we won't consider how that debt accrued, for example, whether interest was charged correctly before the mortgages ended. I'm satisfied it would be inappropriate for us to do so.

There are other rules I must consider which set out the time limits that apply to complaints brought to our service. DISP 2.8.2R says that where a business doesn't agree, which Hessonite hasn't, I can't look at a complaint that's made more than six years after the event complained about. Or if later, more than three years after the complainant was aware, or ought reasonably to have been aware, of a cause for complaint. Unless the complaint was made to the business before this, and the complainant received a written acknowledgement, or there's some other record of the complaint having been received.

We can however consider complaints that have been brought to us outside the above time limits if we're satisfied the delay was a result of exceptional circumstances.

A lot of the complaint points Mr K and Mrs B have raised are about events that took place within six years of when they complained in 2024. And so they've been made within the time limits. Those complaints are:

- The interest rate charged on the mortgages since March 2018 has been unfairly high, and has not reduced in line with base rate.
- Hessonite has taken recovery action in relation to the remaining mortgage accounts unfairly.
- They never agreed to any mortgage contracts with Hessonite and so they don't agree it has any basis to pursue them for the funds.
- Hessonite hasn't sent them information they've asked for, and has unfairly denied a request to reside at one of their buy-to-let properties.

I'm satisfied our service has the power to consider these parts of the complaint. But Mr K and Mrs B have also complained about the interest charged on the mortgages since inception. These mortgages were taken out in 2006 and 2007. So a complaint about interest charged more than six years before the complaint was made had been made outside the six year time limit. I'm satisfied it's been made outside the three year time limit too.

Mr K and Mrs B feel the interest rate hasn't reduced in line with Bank of England base rate and so they've been overcharged. I've seen a selection of the letters Mr K and Mrs B were sent from the lender over the years telling them about changes to their interest rates. If Mr K and Mrs B felt their rate wasn't reducing by as much as it ought to have been then I think they ought to have been aware of that at the relevant times. Particularly as the reductions in base rate in 2008 and 2009 were widely publicised, and I've also kept in mind that Mr K and

Mrs B were running this property portfolio as their business. As a result, I think a complaint about the interest rates charged on their mortgages before March 2018 has been made too late.

I've thought about whether there were any exceptional circumstances that prevented Mr K and Mrs B from complaining about this issue earlier. But I'm not persuaded there were. Mr K and Mrs B have made several complaints in the past about other issues they've been unhappy about. They haven't told us about anything in particular that would have prevented them from complaining about the interest rate earlier than they have done. So I don't think we can consider their complaint about the interest rate charged before March 2018. However, I will consider how the interest rates have varied over time as relevant context and background, in order to determine whether the rates charged from March 2018 onwards were fair and reasonable.

Mr K and Mrs B are also complaining about the ongoing impact Hessonite's (and the previous lender's) actions have had on the fairness of the lending relationship as it is now. In the recent case of *Smith v RBS*, the Supreme Court said that deciding whether a relationship is unfair under section 140A of the Consumer Credit Act 1974 requires consideration of all potentially relevant matters that might have given rise to unfairness, whenever they took place, and that consideration should take place as at the date of the decision or, if earlier, the date of the end of the relationship.

The relationship between Mr K and Mrs B and Hessonite is continuing, and therefore if there is any unfairness Hessonite has an ongoing obligation to put it right. In order to decide whether or not the relationship is unfair, I will need to consider all matters relevant to that, whenever they occurred. This part of their complaint is in time, so I will keep this in mind when determining a fair outcome to Mr K and Mrs B's complaint.

#### Has Hessonite acted unfairly?

##### *The interest rates charged*

One of Mr K and Mrs B's mortgages was taken out on a lifetime tracker interest rate that tracked the Bank of England base rate. We don't have a copy of the original mortgage offer for the other mortgage, but Hessonite has confirmed it's been on the lender's Buy-to-let standard variable rate (SVR) since the initial fixed rate product ended in 2009. It's disappointing that Hessonite hasn't been able to provide a copy of the original mortgage contract that Mr K and Mrs B agreed to when they took the mortgage out. But based on the balance of probabilities, I think it's likely they did agree for their mortgage to revert to the SVR at the expiry of the fixed rate.

I say that because that was normal practice at the time. And I'm also aware that was the case for all the other buy-to-let mortgages Mr K and Mrs B agreed to around this same period where they took fixed interest rate products. Mr K and Mrs B have not said that a different interest rate product should have been applied to the mortgage, just that the rate has been too high and hasn't fallen in line with reductions to base rate. So that is what I've considered.

I've looked at the history of the interest rates charged since these mortgages were agreed. Firstly, to determine whether the rates charged from March 2018 onwards were charged fairly, and also to determine whether an unfair relationship has been created. Having done so, I'm persuaded Hessonite has not overcharged interest on Mr K and Mrs B's mortgage accounts.

The interest rate charged on the mortgage that is on the tracker rate has varied in line with changes made to the Bank of England base rate by the margin set out in the documents Mr K and Mrs B agreed to.

For the mortgage that reverted to the SVR, I'm satisfied this rate has varied in line with the terms and conditions of the account. In practice, the only variations that have been made to the SVR have followed changes in base rate. I'm satisfied the terms and conditions allowed for those changes to be made.

Whilst during the financial crisis in 2008 and 2009 the SVR didn't reduce by the same proportion as base rate did, the terms in the contract didn't oblige it to. This was a time of significant change in the wider market as a result of the financial crisis. This impacted the funding costs of businesses and was reflected in changes to a number of lenders' interest rates charged across the market at the time. Whilst the SVR was higher than those charged by some of the mainstream high street lenders at the time, the rate still remained broadly in line with those charged across the industry and was not an obvious outlier. So whilst the reductions during this period didn't mirror reductions to the base rate, I don't think the terms obliged the lender to make the reductions in that particular way. And I don't think, taking into account all the circumstances in the round, that these changes resulted in unfair treatment for Mr K and Mrs B.

I appreciate the rates have risen a lot in more recent years, but that's a result of the increases to base rate and is also reflective of the changes being seen across the wider financial market too.

Considering all the circumstances, I'm not persuaded Mr K and Mrs B have been overcharged interest on their mortgage accounts. And so it follows that I'm not persuaded an unfair relationship has been created because of this.

#### *The recovery action Hessonite has taken*

I'm sorry to hear about the difficulties Mr K has experienced with his health and managing this buy-to-let portfolio in recent years. It's clear he's been under a great deal of stress and the rising interest rates have made it harder for him and Mrs B to keep on top of the monthly mortgage payments. Since 2023 the mortgages have been in arrears.

The terms and conditions that apply to the mortgages state that the mortgage debt must be repaid immediately if more than two total monthly payments become overdue. However, whilst Hessonite was entitled to demand full repayment of the mortgages once the accounts were more than two months in arrears, I would also expect it to take into account the individual circumstances of Mr K and Mrs B and treat them fairly and reasonably when deciding on appropriate action to recover the sums owed.

When these accounts fell into arrears in 2023, Mr K and Mrs B decided to try and sell the properties. They arranged for the properties to be put up for auction with one company. The director of that company wrote to the lender in September 2023 to say that the property sales should complete within six months and the proceeds would then be used to redeem the mortgages (including the arrears). When the mortgages were transferred to Hessonite in October 2023, the portfolio was assigned to a specific relationship manager who was Mr K's point of contact.

I can see Mr K advised Hessonite of his poor health and he asked Hessonite to discuss the mortgages with other third parties - a debt management organisation that was helping Mr K with his wider debts, as well as the auction house. Hessonite agreed to both of those

requests and said it would take no further action before March 2024 to allow Mr K and Mrs B more time to deal with things themselves.

Unfortunately, a lot of the time leading up to March 2024 was taken up by Mr K asking questions about the indemnity policies he thought Hessonite had in place in relation to the mortgages and the shortfalls he still disagreed with. He also asked for a lot of information about the history of all his accounts, which Hessonite sent him.

As no progress had been made with the sales of the properties and the arrears continued to grow, Hessonite instructed LPA Receivers to take over the management of the properties in May 2024. Considering the circumstances, I don't think that was unreasonable. It had allowed more than six months since Mr K had started to try and sell the properties himself, and the arrears position on the accounts was worsening month on month where Mr K and Mrs B were not able to make the full monthly payments. Under the terms of the mortgage contracts Hessonite was entitled to take action much sooner than it did, but it took account of Mr K's poor health and the fact he was trying to sort things himself by allowing him additional time to repay the funds. Unfortunately, no progress had been made in that time and the position of each of the accounts was deteriorating. I'm not persuaded Hessonite acted unfairly by appointing Receivers when it did.

*Is Hessonite entitled to recover the funds lent?*

Mr K says that he and Mrs B never agreed to any mortgage contracts with Hessonite and so it has no basis to demand the mortgage funds from them. Whilst it's true Mr K and Mrs B originally took these mortgages out with another lender, they have since been transferred to Hessonite. That's something that is allowed under section 7 of the terms and conditions titled "our rights to transfer" that Mr K and Mrs B agreed to when they took these mortgages out. It's also not uncommon in the mortgage industry and legally, the rights and obligations the original lender had under the contract, have now passed over to Hessonite. The lenders wrote to Mr K and Mrs B in 2023 to inform them of this. I'm satisfied that Hessonite has a contractual right to collect the mortgaged funds from Mr K and Mrs B.

I've also not seen anything to suggest that Mr K and Mrs B have suffered any detriment as a result of the transfer itself. So I'm not persuaded Hessonite needs to do anything further.

*Hessonite hasn't sent them information they've asked for*

Mr K and Mrs B have requested a lot of information from Hessonite in recent years in relation to their mortgage accounts. I can see Hessonite has sent them redemption statements, transaction histories, copies of annual statements, and copies of the title deeds. It's also complied with Data Subject Access Requests (DSARs). I appreciate Mr K has also asked for information about the indemnity policies he thinks the lender has in place to cover shortfall mortgage debt. His relationship manager has told him on more than one occasion that there is no such policy in place. So I'm satisfied Hessonite has answered the question when asked. And it doesn't need to do anything further.

*Hessonite wouldn't allow Mr K to reside at one of his properties*

Mr K has said Hessonite wouldn't allow him to move into one of his buy-to-let properties that was near the hospital whilst he was receiving medical treatment. I haven't seen any evidence that Mr K has asked Hessonite about this, or that Hessonite has refused such a request. But the property is a buy-to-let property, and whilst Mr K and Mrs B own it, the mortgage contract they agreed to did not allow them to reside in it. I also think it's relevant that at the time Mr K says this request was made, the mortgage portfolio was in growing

arrears and Hessonite was considering what action to take. And so I don't consider it would have been unfair of it to decline such a request in the circumstances.

### *Summary*

Overall, considering all the circumstances of the complaints I've been able to look into, I don't think Hessonite has treated Mr K and Mrs B unfairly. For the reasons I've set out above, I'm also not persuaded an unfair relationship has been created between Hessonite and Mr K and Mrs B. And so I don't require it to take any further action.

However, I am aware that Mr K remains in poor health. And so I would expect Hessonite to take this into account in the way it communicates with him moving forward, engaging with third parties acting on his behalf if Mr K would prefer.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr K to accept or reject my decision before 6 May 2025.

Kathryn Billings  
**Ombudsman**