

The complaint

Mr C complains that Topaz Finance Limited trading as Hyalite Mortgages did not treat him fairly when he experienced financial difficulty.

What happened

In 2007 Mr C took out an interest only mortgage with GMAC-RFC. The mortgage was later transferred to Mortgage Express and then to Hyalite. I will refer to Hyalite throughout this decision. That reflects that it is the respondent to this complaint and it has not set out any reasons why it would not be responsible for any part of this complaint.

The circumstances to this complaint are not in dispute. I will summarise them briefly.

Mr C's mortgage was paid by the support for mortgage interest scheme (SMI). He planned to sell the mortgaged property as he did not want all of the equity in the property to be swallowed up by the SMI. He said that Hyalite sent him letters about how he planned to repay the mortgage balance. He said he found the letters threatening.

Mr C made arrangements to find a local authority flat to move in to. He needed to prove it was affordable so he asked the lender what would happen if he moved out of the mortgaged property and put it on the market. He said the lender told him that he would not need to make any payments as long as he could prove the property was on the market.

In 2022, Mr C moved into a local authority flat. He said he found it difficult to contact the lender to tell it what had happened – but once he did it bombarded him with letters about the arrears. And it denied that it had previously agreed that Mr C would not need to make any payments. Instead it asked Mr C to give it details of his income and expenditure so it could decide to offer a concession. Mr C was diagnosed with and received treatment for cancer during the time in question.

Mr C also said that when he had agreed to sell the property, Mortgage Express delayed the sale of his property and that contributed to him accepting a lower price to sell the property.

Mr C complains that Hyalite has not treated him fairly, including that:

- It went back on an agreement that he would not need to make any payments if he moved out but had the property on the market.
- It sent threatening letters – regarding both the end of term and the arrears.
- Its call waiting times were too long.
- It delayed responding to letters. That delayed the sale of the property, meant he had to accept a reduced price for the property and caused further arrears to be added to the mortgage.
- Did not treat him fairly despite him keeping Hyalite up to date when his circumstances

changed.

I issued a jurisdiction decision explaining that we could not consider the complaints that Mr C was given incorrect information in 2017, that Hyalite's call waiting times were too long in December 2022, and that Hyalite declined Mr C's application for a zero-payment concession as they had been referred to us outside our time limits.

The investigator thought the complaints we could consider should be upheld in part. He thought that Hyalite ought to have given Mr C a zero-payment concession after September 2023. The investigator said that Hyalite should pay Mr C £250 to reflect the distress caused to him by not doing so.

Hyalite accepted the investigator's recommendation. Mr C did not. He made a number of points, including:

- He would not accept £250. The "small guy" is discriminated against while the "fat cat" walked away with an illicitly obtained £4,000.
- He needed the money to pay of his individual voluntary arrangement (IVA). He had to enter into the IVA because of the ill health he'd suffered over the past decade. It would have been settled had Hyalite not reneged on its promise and added thousands of pounds to the settlement figure.
- The circumstances had been "twisted". He accepted a lower sale price for the property due to his overall circumstances. The outcome was potentially worse if he'd not accepted the offer to limit any damages.
- Mortgage Express lied to him and he relied on that information in good faith. He knew he could not afford both the rent on the new property and the mortgage payments.
- Hyalite should pay the £250 on top of a refund of the mortgage arrears.

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 thank Mr C for his honesty about his very difficult personal circumstances and what he has been through over the past few years. I understand that it must have been very difficult for him. But after very carefully considering everything that both he and Hyalite have said and provided, I agree with the conclusions reached by the investigator.

The fact that Hyalite is large company with more resources than Mr C has not made any difference to my decision. I am satisfied that the compensation I have awarded is in line with our approach, bearing in mind that I have upheld the complaint in part.

End of term and arrears letters

Mr C has complained about both the end of term letters and the arrears letters that were sent to him.

Dealing with the end of term letters first, Mr C had an interest only mortgage. There is the potential for harm to borrowers if they have such a mortgage and do not have the means to repay it at the end of the mortgage's term. The regulator set out that it was good practice for lenders to write to such borrowers over the term of the mortgage so that they have time to

take action if there was any doubt about the ability to repay the mortgage as agreed.

The information that was sent to Mr C, including the “take stock” leaflets, was in line with good industry practice and the relevant guidance from the regulator. I’m required to take both of those things into account in deciding what I consider to be fair and reasonable in the individual circumstances of this complaint. In view of that, I think it would be difficult for me to criticise the lender for sending those letters to Mr C.

Mr C said he felt pressured to pay off the mortgage. But one of the reasons the letters were sent was to encourage borrowers to take action if they did not have a plan in place to repay the mortgage. Therefore, it was not an unreasonable outcome for Mr C to decide to take action to sell the property based on the information he’d received (along with other considerations he’s set out) if he had no other way to pay back the money held been lent.

Overall, I don’t consider the letters sent regarding the end of term were unfair or unreasonable.

The lender also has an obligation under the relevant rules to send letters when a mortgage is in arrears. I understand why Mr C found the letters threatening. But the letters set out the correct position and explained factually what the potential consequences were if the arrears continued. I don’t consider it was unfair or unreasonable for Hyalite to send the letters it did – apart from when it should have agreed a zero-payment concession after 26 September 2023. I will explain why below.

Did Hyalite treat Mr C fairly when he experienced financial difficulty

Mr C’s main point is that the lender told him in 2017 that if he moved out of the property and put it on the market then he would not have to make any payments to the mortgage providing he had evidence the property was on the market. I’ve already explained in my jurisdiction decision why we can’t consider that point.

I would add however, that I would not expect a lender to make such a promise in advance. It would not necessarily be the right thing for the borrower – it would depend very much on the borrower’s individual circumstances at the time the concession was needed. So the correct position is that a lender should explore a borrower’s income, expenditure and circumstances and consider whether there are any concessions it could offer to help – and that might include a zero-payment concession depending on the borrower’s overall circumstances. But such a concession could only be agreed based on the information about the borrower’s actual circumstances when the concession was needed.

I can see that when Mr C was in contact with Hyalite it asked him for details of his income and expenditure. Mr C initially refused as he thought it was pointless as he was not working and could not afford the mortgage. But it was reasonable for Hyalite to request that information. It needed it to be able to decide if there was a concession that was appropriate and affordable for Mr C.

When Mr C did provide details of his income and expenditure it showed a deficit. Hyalite referred the request for a zero-payment concession for three months to allow the sale to complete to its underwriters. But the request was declined.

Hyalite made that decision in August 2023. For the reasons I explained in my jurisdiction decision, I can’t look at that decision because Mr C referred his complaint to us about that outside the time limits in our rules. But Hyalite had an ongoing obligation to treat Mr C fairly and I can look at whether it should have offered a different concession and/or a zero-payment concession after 26 September 2023.

Looking at the information Hyalite had about Mr C's circumstances I can't see that other than a zero-payment concession, there was any other concession that was available to Hyalite that would have helped Mr C bearing in mind he could not afford to pay anything to the mortgage.

Bearing in mind that Mr C's circumstances were largely the same after 26 September 2023 as they were before, I consider it was unfair for Hyalite not to offer Mr C a zero-payment concession after that date. I say that as Hyalite knew Mr C's circumstances, including his ill health, that his property was up for sale and that he could not afford to make any payments to the mortgage. In those circumstances it would have been reasonable to agree the zero-payment arrangement for at least three months.

Where a business has acted unfairly, we usually look to put the affected party back in the position they would have been in had they been treated fairly. Mr C considers that if Hyalite had agreed the zero-payment concession then his arrears would have been lower. But I'm afraid that is not correct. Hyalite would have continued to apply interest to the mortgage – and the mortgage balance would have increased by that amount. So the balance of the mortgage would have been no different if there was a formal zero-payment concession in place or not. There were no arrears charges applied. Therefore, I do not see that Mr C has suffered a financial loss because the concession was not agreed.

I accept that Mr C will have been caused distress and inconvenience because Hyalite did to agree the zero-payment concession. He had additional contact with Hyalite that could have been avoided. And Hyalite would not have sent him arrears letters. After carefully reviewing everything, I consider the investigator's proposal of £250 is a fair amount to reflect the distress and inconvenience caused to Mr C by it not agreeing a zero-payment concession.

I know that Mr C thinks the amount of compensation is unfair. But I have already explained that he has not suffered any financial loss because of this matter – the arrears balance would have been the same if the zero-payment concession was agreed or not.

The award is intended to compensate Mr C for the distress and inconvenience caused by Hyalite not agreeing the zero-payment concession after 26 September 2023 and the impact of that on Mr C. It is not intended to compensate Mr C for the undoubtedly very difficult time he was going through. That is not because I do not sympathise with the position that Mr C was in. Rather, it reflects that I can only award compensation where Hyalite did not act fairly or reasonably. And my findings are that it did not do so – but not to the extent that Mr C considers and only for the period after 26 September 2023.

Delays

Mr C said that his property sale was delayed because his solicitor was waiting for information from Hyalite. It is not clear what information that was. The investigator asked Mr C to provide further information about what his solicitor needed from Hyalite. But he has not provided it.

Looking at the evidence I have, there is no evidence to support that Hyalite delayed providing any information to Mr C's solicitor or that it delayed the sale of the property. Therefore, I could not reasonably find that it was responsible for Mr C's decision to accept a lower price for the property. That is not to criticise Mr C for the decision he made and I accept he was looking to achieve the best outcome he could in the circumstances.

My final decision

My final decision is that Topaz Finance Limited trading as Hyalite Mortgages should pay Mr

C £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 February 2025.

Ken Rose
Ombudsman