

## **The complaint**

Ms P complains about the way that Topaz Finance Limited trading as Hyalite Mortgages (Hyalite) is handling arrears on a mortgage which she took out alongside her ex-partner, which she believed she was no longer a party to following their divorce. She is also unhappy that Hyalite is reporting adverse information to credit reference agencies (CRAs) in respect of this, which is affecting her ability to obtain credit.

The mortgage was taken out with a different lender in 2007 and sold to Hyalite in November 2023. Hyalite has confirmed that it is accepting responsibility for the complaint in its entirety, so I will refer to Hyalite throughout for ease.

## **What happened**

Ms P took out a mortgage in 2007 with her ex-partner, who I will call Mr E. She has had no contact with Mr E since April 2009 and they divorced in 2010. As part of the divorce settlement, a Consent Order was made on 3 October 2011, which included an undertaking by Mr E to use his best endeavours to release Ms P from any liability under the mortgage. Ms P understood that this meant she was no longer liable for the mortgage.

Having heard nothing about the mortgage since 2010, Ms P received a letter from Hyalite in August 2023, which was addressed to her under her previous married name. Ms P says that she has not used this name since her divorce in 2010. The letter asked her to contact Hyalite, so she did so. During a telephone conversation, Hyalite told her that there were arrears on the mortgage and that it had been unable to track down Mr E, so had searched for her instead.

Ms P indicated that she was willing to help in any way that she could to sell the property so that the debt could be settled. She has since contacted estate agents and solicitors in order to do so and been told that she would need litigation advice from a Scottish lawyer (as the property is in Scotland) and also advice from an English family lawyer (as the Consent Order was made by an English court). She has also been advised that she is unable to do anything to sell the property as she has signed over her rights in relation to this as part of the divorce settlement. Additionally, Mr E has rented the property to a tenant (in breach of the mortgage terms); as she is not party to the agreement, she is unable to do anything to remove the tenant in order for the property to be sold.

Ms P says that, despite keeping Hyalite up to date with progress as she tried to resolve the situation, it has reported negative information to CRAs for a mortgage debt which is not hers. Ms P says that she is being bombarded with letters addressed to both her in her former married name and Mr E, as well as calls and text messages demanding payment. She says that Hyalite demanding that she take action to pay a mortgage which is nothing to do with her has 'nearly pushed [her] over the edge'.

Ms P has described the relationship with Mr E as being financially and emotionally abusive. She says that due to what happened in the previous relationship, she has suffered from post-traumatic stress disorder and spent many years trying to recover from her experience. Ms P says that the situation has deeply affected her mentally, emotionally and financially. She says that receiving letters at her home in her former name, alongside that of Mr E has meant her reliving past trauma, due to the letters tethering her back to the person who abused her.

Ms P says that she has explained her situation to Hyalite on numerous occasions and asked it to remove Mr E from any connection with her address, to stop sending letters addressed jointly to her and Mr E and also to her former name alone. She says that she asked Hyalite to address any communication to her legal name however it refused. Ms P has also asked Hyalite to remove the adverse information from her credit file but it refused. Ms P says that this has severely impacted her life and the ability to support herself and she is facing severe financial difficulties and potential homelessness as she is now unable to get any form of credit, including being refused a mobile phone contract.

There are therefore a number of parts to Ms P's complaint as set out below:

- Ms P says that due to the Consent Order, the debt now belongs to Mr E and she has no liability for the mortgage or the outstanding debt.
- Ms P says that the person with her married name no longer exists, and has not existed for over 13 years, so the debt cannot belong to her in her current name.
- Ms P says that Hyalite has bombarded her with reminders of a traumatic past and that she desperately wishes to forget this. This includes sending letters to her previous married name and addressing correspondence to her and Mr E at her new address.
- Ms P says that Hyalite's actions mean that she has a black mark against her previously good credit record.

Hyalite says that as the mortgage was taken out in joint names, it is unable to remove Ms P from the mortgage without an application from Mr E which demonstrates that the mortgage is affordable for him alone. As no such application has been received, Ms P remains jointly liable for the outstanding debt.

Hyalite says that as the mortgage is in arrears and Ms P is jointly liable, it is required to send her information about the amount of arrears, the potential implications of this and what will happen next. It agreed that it had tried to contact Ms P by letter, phone and text message but disagreed that this had been excessive. However, it agreed to add a marker to the account not to contact her by phone or text in future.

In relation to the adverse information on Ms P's credit file, Hyalite said that as she was still named on the mortgage, the information reported to CRAs regarding the position of the account was correct.

Hyalite said that it needed documentation to change Ms P's name on its system, but said that she should be aware that her new name would then appear on all automatic correspondence sent to both parties. Hyalite said that it understood that Mr E continuing to be named on correspondence sent to her address was causing distress but said that this would continue whilst the mortgage remained in both names. It offered £300 compensation in respect of this and said that it was looking at how it could address its automated letters differently in the circumstances.

Our Investigator looked into Ms P's complaint. He found that, as Hyalite wasn't a party to the Consent Order, it wasn't bound by its terms. It was Mr E who undertook to remove her from the account but there was no evidence that he had applied to do so. Therefore, Ms P remained jointly liable for the debt and her obligation to pay this was not extinguished when she changed her name. For those reasons, the Investigator thought it was reasonable that Hyalite had contacted Ms P about the debt and that it wasn't willing to remove her from the mortgage account.

However, the Investigator didn't think Hyalite had acted fairly in respect of some of the issues involved. He found that Hyalite was not communicating with Ms P fairly by writing to her in her previous married name or by sending her correspondence with Mr E's name on it. To recognise the fact that Hyalite continued to do this over many months and the severe

impact of this on Ms P's health, the Investigator recommended that Hyalite increase its offer of compensation to £750 and address future correspondence to Ms P alone using her current name.

In relation to the data reported to Ms P's credit file, the Investigator did not think Hyalite was acting fairly in the specific circumstances of this case. He didn't think it was accurate for Ms P's credit file to reflect that she had been maintaining the account and then stopped, and felt that Hyalite's current reporting was having a disproportionate effect on her given the time she had spent recovering from the relationship and its impacts. She was also prevented from selling the property to mitigate the impact to her credit file. The Investigator therefore thought it was fair for Hyalite to stop reporting information about the mortgage account on Ms P's credit file and remove the information it had reported since 2018.

Hyalite agreed with the Investigator's view in respect of it failing to communicate with Ms P fairly and agreed to increase the compensation in respect of this to £750. However, it disagreed with the Investigator's view in respect of whether it was reporting information to Ms P's credit file correctly, for reasons which I have set out more fully later in my decision. The case has therefore come to me to make a decision.

Ms P accepted the view but queried whether we could encourage Hyalite to pursue Mr E to take responsibility for the debt.

### **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.

Having looked at the evidence, I agree with the Investigator's view for broadly the same reasons and I've explained my reasons further below.

When Ms P and Mr E took out the mortgage in 2007, they agreed that they would be jointly liable for repaying the debt in accordance with the terms.

They have since divorced and I have seen a copy of the Consent Order made as part of the divorce settlement on 3 October 2011. This included an undertaking to the court that Mr E would agree "to use his best endeavours to procure the release of [Ms P]... from any liability under the mortgage... and in any event to indemnify [Ms P] against all such liability". Further, the undertaking that he would agree "to indemnify [Ms P] against any liabilities which may have arisen in respect of the outgoings on the former matrimonial home... which may have arisen since separation... and promptly to discharge any such liability".

I can appreciate why Ms P understood that this meant that she was no longer liable for the mortgage – particularly given that she had no involvement with paying the mortgage or any contact from Hyalite for the following 12 years. However, Hyalite was not a party to this order, so it is not bound by the terms within it. This is demonstrated by the fact that the order does not include an agreement that Hyalite is to remove Ms P from the mortgage, but instead refers to the agreement that Mr E use his best endeavours to do so. In other words, the order required Mr E to make an application to put the mortgage into his sole name, but did not require Hyalite to grant it.

Hyalite has confirmed that there has been no application from Mr E to remove Ms P from the mortgage. Whilst I can understand that this is frustrating for Ms P, it is not for Hyalite to get involved in any arrangements as to who pays the mortgage, or to enforce the terms of the order, as this would be a matter between Ms P and Mr E, and their legal representatives.

Hyalite would not be able to simply remove Ms P from the mortgage; this would require an application by Mr E to transfer the mortgage into his sole name and would be subject to an affordability assessment. Given that Mr E has not been making the contractual monthly repayments, it seems unlikely that the mortgage would be affordable for him alone if he were to make such an application.

I understand that Hyalite has provided Ms P with some further information having taken legal advice about whether it can do more to assist her and it has directed her to seek legal advice as to how best to achieve arranging for her name to be removed from the property title and the mortgage. I can appreciate that the situation puts Ms P in a difficult position. However, I can't say that Hyalite has acted unreasonably or unfairly in not removing Ms P from the mortgage.

Ms P therefore remains jointly liable for the mortgage. Whilst I can appreciate that Ms P has now changed her name from the name under which the mortgage was taken out, this does not extinguish her liability under the mortgage agreement or mean that she is no longer liable for debt incurred in her married name.

Ms P is unhappy with the contact made with her by Hyalite. I understand that Hyalite has said that it would no longer text and call Ms P in relation to the mortgage. However, as Ms P remains liable for the mortgage for the reasons set out above, and the mortgage is in arrears, Hyalite is obliged to send her certain information about this in writing, so I don't think that it was unreasonable for Hyalite to keep Ms P updated about this.

In respect of the way in which the correspondence to Ms P was addressed, Ms P has explained that receiving letters addressed to her previous married name and addressed to her and Mr E at her home has caused her significant distress, given the circumstances of her former relationship.

I can see that Ms P informed Hyalite of the distress this was causing on numerous occasions, yet it continued to send letters addressed to her in her former married name alone and to both her and Mr E for many months. Hyalite also accepted in its final response to Ms P that Mr E continuing to be named on correspondence sent to her address was causing distress, yet it said that this would continue as it couldn't do anything to change the way automated letters were sent.

I don't think that it was fair or reasonable for Hyalite to continue sending correspondence in a format which it knew was causing distress to Ms P, regardless of how its internal processes operated. Hyalite should therefore compensate Ms P in light of the distress caused by this by paying her £750. And all future correspondence regarding the mortgage account should be addressed to Ms P in her current name alone.

Ms P is also unhappy that Hyalite is reporting adverse information to CRAs in respect of the arrears on the account, which is affecting her ability to obtain credit.

Hyalite has provided information about what it has reported to Ms P's (and Mr E's) credit file since January 2018. This shows that the mortgage account was up to date until March 2020, and low-level arrears were reported from then until July 2021. From August 2021 until January 2023, the account was reported as being up to date again. Low-level arrears were reported between February 2023 and July 2023, and high-level arrears from August 2023 onwards.

Hyalite says that Ms P remains liable for the mortgage debt and the arrears it is reporting against Ms P's credit file are therefore factual and accurate. It says that reporting this information ensures that CRAs have a true and fair view of Ms P's creditworthiness and it is essential that lenders can rely on the accuracy of data provided to make informed lending decisions.

Hyalite says that it is reporting in accordance with industry standards and the '*Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies*' (the Principles), which set out that reporting must be fair, accurate, consistent, complete and up to date. It therefore says that not reporting the arrears position when Ms P remains liable for the debt would not be accurate, consistent or complete and that altering or removing this would compromise the integrity of the credit reporting system and could lead to Ms P over-

committing herself. It says that this could prejudice any future lender who would not have offered her credit had they known about the existence of the Hyalite debt.

Hyalite says that unless and until Miss P enforces the Consent Order and removes herself from the mortgage, this Service should not ask it to report inaccurately and inconsistently in breach of the Principles, as this would mean it was breaching its contracts with CRAs. It says that this is irrational and unreasonable in the circumstances.

I have considered the Principles referred to by Hyalite. The first principle is that *“Data that is reported on your credit file must be fair, accurate, consistent, complete and up to date”*.

Under the section on ‘Calculating and reporting arrears’, the Principles state *“In general, the reporting of arrears indicates that the account has not been maintained according to the terms and conditions. The purpose of reporting arrears is to indicate at the earliest reasonable opportunity that a customer is showing signs of potential financial difficulty or inability to manage his/her finances”*.

As set out above, it is my view that Hyalite is not bound by the terms of the Consent Order. So I am satisfied that it is accurate to say that Ms P is jointly liable for the mortgage and that the mortgage is in arrears – and this is what has been reported to Ms P’s credit file.

However, I don’t think it is accurate to say that this is a reflection of Ms P’s creditworthiness in the particular circumstances of this case. In my view, it would also not be accurate to suggest that Ms P has been mis-managing this credit commitment or that she is unable to make the contractual payments due to financial difficulties. I also have to bear in mind that the Principles set out that – in addition to being accurate – the data reported must also be fair.

The reality is that Ms P has had no involvement in paying this mortgage for many years and now has no control over the property the mortgage is secured on. She simply wants the mortgage to be transferred into Mr E’s name in accordance with the Consent Order, or alternatively for the property to be sold to pay off the mortgage. In light of this, I am also satisfied that not reporting information about the mortgage account on Ms P’s credit file would not lead to Ms P over-committing herself, nor would it be likely to prejudice any future lender.

I am satisfied that – whilst not correct in law – Ms P genuinely believed that the Consent Order ended her involvement in the mortgage. She has not been contributing to the mortgage payments for many years. Moreover, Hyalite’s contact records support that it had no involvement with Ms P in relation to the mortgage in the 12-year period between the Consent Order being made and it contacting her in August 2023. So, the lack of contact – and the fact that Mr E appears to have been paying the mortgage himself during the intervening years – is likely to have reinforced Ms P’s belief that she was no longer liable for the mortgage. This is not a case where Ms P was aware of her liability and simply stopped making the repayments.

I can see that, after a significant period of non-payment by Mr E, Hyalite instructed a field agent to visit the property in July 2023. Following this, it instructed an agent to trace Ms P and wrote to her at the address found. I can see from the contact notes that Ms P called Hyalite shortly after the letter had been sent to inform it that she had received the letter and that she thought that she had been removed from the account. I can see that Ms P has kept Hyalite updated throughout and Hyalite accepts that Ms P has been in contact with it since she was made aware of the arrears. So this is not a case where the relationship between the lender and the borrower has broken down.

Ms P has traced Mr E and provided his details to Hyalite in order to try and resolve the issue. From the outset, she has told Hyalite that she wanted to sell the property in order to discharge the debt and that she was taking advice on this. Ms P has shared the legal advice she has received; she has been advised by Scottish lawyers that she can’t do anything to

seize or sell the property unless they first challenge the Consent Order made by the English court. Ms P has instructed solicitors who have written to Mr E setting out that he is in breach of the Consent Order as he has failed to transfer the property into his sole name and release Ms P from the joint mortgage.

There is evidence showing that Mr E has rented out the property (in breach of the mortgage terms). This is supported by the field agent report obtained by Hyalite. Ms P has also provided information showing that Mr E has registered himself as the landlord for the property on the Scottish Landlord Register and declared that there is no joint ownership. Ms P has received legal advice that she is unable to take any action in relation to this. She is not a party to the tenancy agreement and has no power to remove the tenant in order for the property to be sold. Therefore, despite still being legally jointly liable for the mortgage, Ms P has no control over the property and is prevented from selling the property in order to repay the mortgage and mitigate the impact to her credit file.

In respect of the fairness of Hyalite reporting this information, I also have to bear in mind the nature of the relationship between Ms P and Mr E. She has described the relationship with Mr E as being financially and emotionally abusive and told this Service that she has spent many years trying to recover from this.

Weighing up everything I've said, I note the importance of credit files generally, the need for them to be accurate, and Hyalite's obligations to report. But I also have to take into account the very specific circumstances of this case and Ms P's situation. The underlying purpose of a credit file is to report how a borrower manages credit so that future lenders have a full picture of their outstanding liabilities and creditworthiness. Ms P – reasonably, if incorrectly – thought she was no longer liable for this mortgage and ever since she learned that wasn't the case has done everything in her power to resolve the situation. This is not a case where she has simply stopped paying. She has no interest in the property the mortgage is secured over.

Given the particular circumstances of this case detailed above, I think that the continued reporting of the arrears against Ms P is not a fair reflection of her conduct or creditworthiness, is having a disproportionate impact upon her in the circumstances, and that those factors, in all fairness, outweigh the arguments in favour of continued reporting.

For the reasons set out above, and in the specific circumstances of this case, I do not think it is fair or accurate for Hyalite to report the adverse information regarding this mortgage to Ms P's credit file. I therefore think it is fair for Hyalite to stop reporting information about this account on Ms P's credit file and remove the information it has reported since 2018.

Ms P queried whether we could encourage Hyalite to pursue Mr E to take responsibility for the debt. As explained by the Investigator, this Service is unable to help with this as we have no power to consider disputes between individuals. As Mr E is a joint party to the mortgage but not a party to this complaint, we also can't direct Hyalite to do anything which may prejudice his position. Therefore, whilst I can appreciate that Ms P wants the matter resolved, unfortunately I will be unable to make any directions in relation to this particular aspect.

### **Putting things right**

For the reasons set out above, I uphold this complaint and require Hyalite to:

- Stop reporting information about this account on Ms P's credit file and remove the information it has reported since 2018.
- Address all future correspondence regarding the mortgage account to Ms P alone in her current name.
- Pay Ms P £750 in respect of the distress and inconvenience caused (if it has not already done so).

**My final decision**

For the reasons I've explained above I uphold this complaint against Topaz Finance Limited trading as Hyalite Mortgages and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 17 April 2025.

Rachel Ellis  
**Ombudsman**