

The complaint

Mrs W and Mr I complain about how Topaz Finance Limited, trading as Hyalite Mortgages, and its predecessors have administered their mortgage and the sale of the mortgaged property.

What happened

Mrs W and Mr I took out a mortgage with Kensington Mortgage Company Limited in 2005. The mortgage and the shortfall balance following the sale of the mortgaged property have been transferred to various different lenders since then, most recently to Hyalite.

In 2009 Mrs W and Mr I were in financial difficulty and they missed some mortgage payments. In May 2010 the mortgage was changed to interest-only, which reduced the monthly payments. Mrs W and Mr I were able to reduce the arrears in the following few years, but stopped making payments in mid-2013.

The lender began legal action to recover the mortgage debt, and in late 2013 it changed the mortgage back to a capital and interest repayment basis. In early 2014 Mrs W and Mr I voluntarily surrendered the property. In October 2014 the property was sold in possession for £145,000, leaving a shortfall of just under £15,000.

Mrs W and Mr I have made several complaints over the years. In summary, they're unhappy about:

- the change to interest-only payments in 2010 and the change back to capital and interest payments in 2013;
- the way the lender took possession of the property and handled the sale, including the eventual sale price;
- interest and other charges added to the mortgage following the repossession, including some which they say should have been waived or refunded;
- correspondence being sent to wrong addresses;
- how subject access requests were handled;
- a 'hard' credit search carried out in connection with the mortgage in 2023.

The various lenders issued final response letters on 25 March 2014, 25 September 2014, 4 July 2016, 21 December 2023, and 16 May 2024.

Mrs W and Mr I made their most recent complaint referral to the Financial Ombudsman Service on 15 June 2024.

Our Investigator concluded that we couldn't consider Mrs W's and Mr I's complaint about the changes to the payment basis of the mortgage, or about the possession and sale of the property. He said we could consider the complaint about more recent events, including the correspondence address used, how a subject access request was handled, and a credit search. He found Hyalite had made some mistakes and recommended that it increase its offer of compensation to Mrs W and Mr I from £125 to £200 in total.

Hyalite accepted that conclusion, but Mrs W and Mr I did not. They said they had complained many times before, within six years of the events in question, and they had made a referral to the Financial Ombudsman Service in 2016. They considered that new evidence had since come to light, and their whole complaint should now be investigated.

The complaint was referred to me to decide, and I issued a decision setting out what the Financial Ombudsman Service can look into in this complaint.

I said that parts of Mrs W's and Mr I's complaint are time-barred and parts of it are dismissed without further consideration because the Financial Ombudsman Service had dealt with them before. I said that the parts of the complaint I can consider are:

- recent correspondence being sent to wrong addresses;
- how subject access requests were handled;
- a 'hard' credit search carried out in connection with the mortgage in 2023.

I then issued a provisional decision setting out my provisional conclusions about the parts of the complaint I could consider.

My provisional decision

I said:

"I think that Hyalite should pay Mrs W and Mr I £300 compensation and remove the credit searches it recorded on their credit files in August 2023.

Hyalite has accepted that it sent letters intended for Mrs W and Mr I to the wrong addresses and that as a result there was a delay in responding to their subject access request in 2023. I think this caused Mrs W and Mr I avoidable upset and distress, as well as inconvenience in having to chase up their subject access request. However, Hyalite explained to them that it didn't send information they had asked for in their subject access request to the wrong place. I find nothing to suggest otherwise, and I'd expect Hyalite's explanation to have been of some reassurance to Mrs W and Mr I that large amounts of their personal information didn't go to the wrong address.

Mrs W and Mr I have said they have identified a dozen or so letters that were sent to previous or wrong addresses and were returned to sender undelivered. Some of these letters appear to have been attempts to trace their whereabouts and some were sent to addresses where the lender ought already to have known Mrs W and Mr I weren't living. Writing to a wrong address also delayed Hyalite's response to Mrs W's and Mr I's subject access request, because they couldn't reply to a letter asking for their signatures which they didn't receive.

The Financial Ombudsman Service doesn't make a set award for every 'data breach'. We decide complaints on their individual facts and circumstances in order to reach an outcome which is fair and reasonable. I think Mrs W and Mr I should fairly receive some compensation in recognition of the impact on them of Hyalite's mistakes, but I don't calculate that award on the basis of a fixed amount per mistake. I'll say more about the total award below.

I also note that Mrs W and Mr I have complained about discrepancies between a response to a subject access request which they received from a previous lender some years ago and a more recent response from Hyalite. Hyalite has invited them to set out their concerns about the discrepancies in more detail so that it can address them as appropriate, and I think that's fair.

I turn now to the 'hard' credit searches which Hyalite, or an agent acting on its behalf, recorded on Mrs W's and Mr I's credit files in August 2023. When Mrs W and Mr I complained about this, Hyalite said, in its letter of 21 December 2023: "When a shortfall debt is outstanding on your account, [a credit reference agency] send us a report that includes a trace address for each customer. This is not something we request; however we are within our rights to do so."

This was wrong. Hyalite has since told us that it carried out the search in order to get an understanding of Mrs W's and Mr I's circumstances to inform what debt recovery action it would take. It has also said that it usually warned customers it would carry out such a search beforehand, but it didn't do so in Mrs W's and Mr I's case, and it was nevertheless entitled to carry out the search because it had a legitimate interest in doing the search.

Hyalite has provided a copy of its debt recovery policy, which I've considered carefully. That says that Hyalite may review a customer's credit file to verify information the customer has provided in an income and expenditure assessment, and that it warns customers beforehand that this will create a hard search on their credit file. It also says that Hyalite will carry out credit checks from time to time which will result in 'hard' footprints on customers' credit files, and:

"Topaz will only conduct these searches when setting up a payment plan or when a payment plan is reviewed. Topaz will write to customers to let them know when it carries out a credit check on its file resulting in a hard credit footprint."

I'm not satisfied that Hyalite had good reason to carry out a credit search which was recorded in the way it was, as a debt collection search, on Mrs W's and Mr I's credit files. Besides that, based on the information it has provided, Hyalite didn't comply with its own policy in carrying out the search. It didn't tell Mrs W and Mr I what it was doing, and the search wasn't in connection with a payment plan Mrs W and Mr I were discussing with it. Hyalite should remove the record of the search.

I think it unlikely however that the search had much, if any, impact on how other lenders may have perceived Mrs W's and Mr I's credit files. The email Mrs W received from a credit report service when the debt collection search appeared confirms that – it said:

"We wanted to let you know that a debt collection search came through on your credit report. The search itself won't hurt your score."

I do think that Hyalite's mistake in carrying out the search in the way it did and its explanation compounded its other mistakes, and caused Mrs W and Mr I further upset and frustration which shouldn't have happened. In all the circumstances, I consider that a total of £300 compensation and removal of the searches is a fair and reasonable way to put things right."

I invited Mrs W and Mr I and Hyalite to let me have any further evidence or arguments they wanted me to consider before making a final decision.

Hyalite accepted my provisional decision, but Mrs W and Mr I did not. They still didn't accept my conclusions about what I could consider in this complaint, they didn't think £300 compensation was enough, and they asked for the Financial Ombudsman Service's support in referring their concerns to the Financial Conduct Authority (FCA).

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've carefully considered Mrs W's and Mr I's further submissions. Having done so, I've reached the same conclusion I set out in my provisional decision, for the same reasons. I remain of the view that Hyalite removing the 2023 credit searches and paying Mrs W and Mr I £300 compensation is a fair and reasonable resolution to this complaint in all the circumstances.

I've set out my conclusions about my power and discretion to consider this complaint in a previous provisional jurisdiction decision and a separate jurisdiction decision, along with my reasons for those conclusions. Mrs W and Mr I haven't said anything new which has led me to change those conclusions.

Mrs W and Mr I have said that £300 in no way reflects the cumulative and deliberate nature of Hyalite's data breaches and the distress and anxiety these breaches caused, or the impact on them of the credit search. They have also described my proposed award of £300 as a token reprimand which won't deter future misconduct.

Lenders do, as Mrs W and Mr I have pointed out, often take past credit searches into account when deciding whether and on what terms to lend. I remain of the view however that the searches Hyalite recorded are unlikely to have had a significant impact – for the reasons I set out in my provisional decision. Mrs W and Mr I haven't provided anything to show that these searches were the reason they were offered a higher rate mortgage product than they think they should have been offered in 2023, and in any event they have said that they didn't go ahead with the property purchase they were considering. I don't therefore consider that I can fairly make an award on the basis that they have lost out financially as a result of the credit searches.

I do think that Mrs W and Mr I should fairly receive some compensation for non-financial loss but, having thought about what they've said in response to my provisional decision, I consider that £300 is fair. Hyalite sent letters to the wrong address, causing delay, inconvenience, upset and distress. Those letters did not however include Hyalite's response to Mrs W's and Mr I's subject access request or, therefore, substantial amounts of their personal information, and Hyalite gave them an assurance about that. In the particular circumstances of this complaint, and bearing in mind our approach to awards for distress or inconvenience as set out on our website,¹ I think £300 is a fair and reasonable award.

Awards I make are not, and are not intended to be, a reprimand or deterrent to financial businesses. The Financial Ombudsman Service has no power to issue fines or make punitive awards. Nor do we have the power to require businesses to operate in a particular way in future. We do share insight with the FCA where appropriate, including where for example we see evidence of repeated failings on the part of a financial business. We don't however assist consumers to report matters to the FCA and, where we make regulatory referrals, we do so confidentially. We don't disclose referral details. There is more information available on our website about how we work with the FCA.²

Finally, it's for Mrs W and Mr I to decide whether or not to accept this final decision in full and final settlement of this complaint, and whether to take legal advice.

¹ <https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience>

² <https://www.financial-ombudsman.org.uk/who-we-are/work-other-organisations>

My final decision

My final decision is that Topaz Finance Limited, trading as Hyalite Mortgages, should:

- remove the credit searches it recorded on Mrs W's and Mr I's credit files in August 2023; and
- pay Mrs W and Mr I £300 compensation. It may deduct from that sum any amounts it has already paid them in connection with this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I and Mrs W to accept or reject my decision before 10 April 2025.

Janet Millington
Ombudsman