

The complaint

Miss C1, the administrator of the estate of her late sister Miss C, complains on behalf of Miss C's estate that Topaz Finance Limited trading as Hyalite Mortgages wouldn't correspond with her and appointed receivers to manage properties secured by Miss C's buy to let mortgages.

What happened

The late Miss C had four buy to let mortgages with Hyalite. Sadly she passed away in May 2023 leaving no will. Miss C1 applied to the court for letters of administration to manage Miss C's estate, but the application took a long time to be granted.

In November 2023, Miss C1 notified Hyalite that Miss C had passed away. By that time the mortgages were in arrears. Hyalite explained that it required mortgages to be repaid within a year of the death of a borrower, and that payments should be maintained in the meantime if possible to stop arrears mounting. Miss C1 said she would pass on any rent received but two of the tenants had stopped paying. Hyalite explained it couldn't discuss matters with her in any detail until it received a grant of probate or letters of administration.

In April 2024, Hyalite sent final demands, saying that if the accounts had not been repaid by 8 May, it would appoint receivers to manage the properties or take legal action. It didn't take action straightaway, but receivers were appointed at the end of June. The correspondence was sent to the late Miss C's address, not to the address Miss C1 had given Hyalite.

In August 2024, letters of administration were granted and Miss C1 sent a copy to Hyalite. But it wouldn't accept a copy – it said it would only accept the original or a certified copy. Miss C1 sent a certified copy in September.

Miss C1 complained. She said that Hyalite ought to have written to her, not the property addresses, so that she knew what was happening with the mortgages – it knew she was applying for letters of administration. She said that the receivers should not have contacted the tenants. And she said that Hyalite ought to have accepted the copy of the letters of administration, authorising her to act, that she had sent it – not insisted on seeing the original or a certified copy. She said that Hyalite's actions had caused her a great deal of stress and she was worried that the properties would be sold for less than they are worth, diminishing the value of Miss C's estate.

Hyalite didn't agree it had acted unfairly. It said it couldn't write to Miss C1 or change the correspondence address until letters of administration had been issued. And it said it was reasonable to appoint receivers when the loans hadn't been repaid and arrears were increasing.

Our investigator didn't think the complaint should be upheld, so Miss C1 asked for it to be reviewed by an ombudsman.

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 hope Miss C1 will accept my sincere condolences on her loss. It must have been very difficult for her to lose her sister unexpectedly and then to have deal with all the administration that comes with that, including in relation to these mortgages. I have every sympathy for the position she found herself in. And I've taken full account of everything that she's said.

However, I don't think I can fairly uphold this complaint. This was a difficult situation, but I think that overall Hyalite has acted fairly.

I think it was reasonable that Hyalite wouldn't agree to discuss the mortgages with Miss C1, or change the correspondence address on them, until it had a copy of the letters of administration. Without that, it had no way of knowing that Miss C1 was the appropriate representative of Miss C's estate. Things might have been different if there had been a will appointing Miss C1 as executor – a copy of the will and death certificate would have told Hyalite that Miss C had passed away and that (pending probate) Miss C1 was the appropriate representative of her estate. But without that, Hyalite had no way of confirming that Miss C1 would be the lawfully appointed representative of Miss C's estate until the court appointed her. It's not unheard of in situations where someone has passed away, particularly without a will, for there to be disputes between family members who want different things. Thankfully that wasn't the case here, but Hyalite had no way of being sure of that, or of being sure that Miss C1 was the proper person for it to deal with, until that was confirmed by the court.

For those reasons, I'm satisfied that it was fair and reasonable – in the interests both of Hyalite and Miss C's estate – that Hyalite didn't deal with Miss C1, or send correspondence to her address, until letters of administration had been granted. I appreciate that took a long time, but I can't hold Hyalite responsible for the delay in the grant.

In the meantime, the mortgages were falling further into arrears. Miss C1 says that letting agents continued to collect the rent, but wouldn't release it to her without the letters of administration, though some of the tenants were paying her direct. But overall the mortgage balances, and the arrears, were continuing. After allowing over a year for Miss C's estate to resolve the situation, and in the absence of probate or administration, Hyalite took the view that it would need to appoint receivers to stop things escalating further.

Again, based on what was known at the time and without the benefit of hindsight, this was a fair and reasonable decision. It was over a year since Miss C had passed away, there was still no grant of probate or letters of administration or any clear indication of when one would become available, and the arrears were mounting. Until Miss C1 was actually granted letters of administration, Hyalite had no way of knowing whether or not she would be, or when that would happen.

In those circumstances, appointing receivers to manage the properties wasn't unfair. It meant that the interests of Miss C's estate could be protected – as well as those of Hyalite – by collecting rent (or taking action if rent wasn't paid – something Miss C1 couldn't do without a grant of letters of administration), using the rent to pay the mortgages, and if that couldn't happen taking steps to resolve things in another way, such as by selling the properties. Given the level of arrears, Hyalite says it will only agree to stand the receivers down if Miss C1 has firm mortgage offers to refinance the loans. I'm afraid I don't think that's unreasonable.

Once Miss C1 was granted letters of administration, she sent a copy to Hyalite. It's standard practice and not unfair to require either originals or a certified copy.

By then, though, the receivers had been appointed. I have no power to consider the actions of the receivers. That's because receivers act as the agent of the borrower, not the lender, and so they don't fall within the jurisdiction of the Financial Ombudsman Service. I appreciate Miss C1 says that the receivers have obstructed her attempts to resolve the situation by remortgaging some of the properties. But I can't consider anything done or not done by the receivers. But I have found the receivers were validly appointed, which means they were entitled to collect the rents – it causes confusion and difficulties if Miss C1 asks the tenants to pay her.

I do appreciate the difficult situation Miss C1 has found herself in. I'm very sorry for everything she's experienced. Her sister's passing without a will put her in a very unfortunate position – unable to collect the rent from the letting agents to pay the mortgages, and unable to deal with the lender, until she obtained letters of administration. I understand how frustrating the delay in obtaining letters of administration would have been for her. But I also understand Hyalite's concern about what was happening with the mortgages in the meantime, the uncertainty (from its point of view) over when or if things would be resolved, and its desire to appoint receivers to prevent the situation getting worse. Overall, I'm not persuaded Hyalite acted unfairly in all the circumstances.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C1, on behalf of the estate of Miss C, to accept or reject my decision before 18 June 2025.

Simon Pugh
Ombudsman