

The complaint

Miss B has raised several complaints about Topaz Finance Limited trading as Hyalite Mortgages. Miss B said that Hyalite are pursuing her for a shortfall which was outstanding when her property was sold following repossession. She has raised the following issues:

- Miss B believes the alleged mortgage shortfall is statute barred under the Limitation Act 1980.
- There is potential negligence in the sale of the repossessed property which Miss B believes was significantly undervalued.
- Miss B has concerns regarding the original mortgage valuation in 2008
- There are errors in the possession order granted in 2011 which referred only to the first-floor property.

What happened

Miss B took out a mortgage with Kensington in 2008 which transferred to Mortgage Express and then Hyalite.

This mortgage was taken out in joint names with another party. They borrowed £344,500 plus £1,999 fees added to the loan over a term of 25 years on a repayment basis.

In 2011, Miss B's property was taken into possession, and it was later sold in March 2012. There was a shortfall of £105,290.11. Miss B believes that Hyalite should not be pursuing her for this debt as it is statute barred under the Limitation Act 1980.

She also said that her property was significantly overvalued at the time that the remortgage was taken out in 2008 and isn't happy with how much the property has sold for as it's left her with a significant shortfall that she cannot afford to pay.

She complained to Hyalite who sent their response on the matter on 27 May 2025 and they didn't uphold the complaint.

They said the previous lender (Mortgage Express) obtained a judgement on 26 May 2011 which set out the lender was granted possession of Miss B's property. At the time, there was an outstanding debt of £384,500 and this was a money judgement. Hyalite said that as a judgement had been provided by the court the limitation period under a statute bar no longer applies.

They also said that they reviewed the account, and the property was subject to an over valuation but a credit of £47,000 was applied to the mortgage to rectify this. Hyalite said this was applied on 8 May 2014 and this reduced the shortfall balance from £152,290.11 to £105,290.11. They didn't uphold the complaint.

Miss B wasn't happy with this response, so she brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. The investigator was of the opinion that we could only look into part of Miss B's complaint.

He said that Miss B's concerns regarding the property being overvalued was out of time for us to consider under the relevant time limits. He also said we wouldn't be able to look into Miss B's concerns regarding the court order documentation in relation to it referring to 'first floor'. This would be something that he said Miss B would need to go back to court for. The

investigator then gave Miss B an answer on whether Hyalite are able to pursue the debt and he said they could – so he didn't uphold the complaint.

Miss B disagreed and in summary made the following comments:

- Miss B raised her concerns about the overvaluation when she took the mortgage out and under valuation when the property was sold, the handling of the sale in 2014 – which was a very difficult time for her. She said she didn't get a response to her complaint and no contact was made by Hyalite for the next 10 years.
- Miss B said she was not in a position to understand legal time limits, debt enforcement rules and the structure of court orders. She was going through a difficult time during that period and wasn't able to deal with matters.
- Miss B has since queried with the court about the 'first floor flat' being mentioned in terms of repossession, and they have said it wasn't a clerical error but was submitted by the mortgage lender in their original application. Miss B said the lender may have repossessed and sold her property beyond the scope of the order.
- Hyalite has adjusted the shortfall figure due to the overvaluation at the time of the remortgage but they have not provided any evidence or rationale for the sale price which was lower than both the remortgage value and even original purchase price of the property.
- Miss B said she has maintained a perfect repayment record until she was made redundant in 2010 and what followed was a period of financial hardship, including being made homeless with her daughter. She said she had multiple address movements and sadly lost her father. She said this hardship has had a lasting impact on her life.

Miss B has asked that if the ombudsman cannot uphold this complaint, she would like a proportionate resolution to be considered such as writing off the debt or a significant reduction of it.

As Miss B didn't agree with the investigator, the case has been passed to me to decide.

I have already issued a decision setting out what I would and wouldn't be able to consider on Miss B's complaint. I explained that the only part of her complaint that I will be able to give an answer on, is that Hyalite have been pursuing her for the debt and whether they are allowed to do this.

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.

The first thing to point out here is that this mortgage is a joint mortgage, but Miss B has explained that she hasn't heard from the other party since 2010, so we don't have their consent on this complaint. It has been agreed that we can proceed to look at this complaint on Miss B's consent only – and I agree with this.

Miss B believes that the shortfall debt she still owes is statute barred under the Limitation Act and therefore Hyalite shouldn't be pursuing her to repay it.

We can't decide whether an account is statute barred or if an account is unenforceable as this is a matter that only a court can decide. We can however consider whether the lender acted fairly by asking Miss B to repay the debt.

A shortfall debt becomes unenforceable after 12 years where capital is owed. This can differ from six-year time limits that usually apply to simple contract debts. If a creditor waits longer

than 12 years without any payment or written acknowledgement from the debtor, they can no longer take court action to recover the debt.

However, this situation is different in Miss B's case. The court issued a money judgement order in May 2011 and gave the lender the right to possession. This means we cannot consider the amount of the outstanding balance of the mortgage and any related fees before this time. The court already made a decision on the merits of the case which included how much Miss B owed. So this means I can't look at the shortfall, but I can look at whether Hyalite should still be pursuing Miss B for it.

The consideration here is that once a judgement has been issued and decided on what money is owed, the rules surrounding a debt becoming statute barred no longer apply so the debt will remain enforceable until it has been repaid or if an agreement has been made between the borrower – Miss B in this case – and the lender.

Based on this, I can't therefore agree that Hyalite should not be pursuing Miss B for the debt. Miss B's property was sold in March 2012, and she was aware of the shortfall by at least late December 2013 as I know she has said she didn't receive any correspondence about the sale or the shortfall at the time. But the contact notes provided by Hyalite do show that Miss B was told about the shortfall debt when she contacted them, so she has been aware of it since then.

I understand that Miss B has asked us to tell Hyalite to write off the debt or agree to a lower debt if this complaint isn't upheld, but this isn't something that I am able to do. I don't find that Hyalite have done anything wrong in asking Miss B to repay what she owes so it follows that I won't be in a position to ask them to write it off or reduce it.

I'm sorry to disappoint Miss B and I do understand from what she has said that she has been through a very difficult time. I appreciate that she is very worried about this, but I'm satisfied that Hyalite have acted fairly.

Miss B may want to get some independent financial advice to see if there are any options to try and help her but for the reasons given above, I won't be upholding this complaint.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 8 December 2025.

Maria Drury
Ombudsman