

The complaint

Mr O has complained about how he has been treated by Topaz Finance Limited trading as Hyalite Mortgages in respect of a mortgage shortfall from 2013. He said Hyalite intentionally used false information to demand money with menaces, have breached Financial Conduct Authority guidelines, and possibly were not in a position to chase the outstanding debt.

What happened

Mr O bought the property in October 2006 and held a mortgage with a lender I will refer to as M. An Order for Possession was granted in March 2013, and the property was taken into possession in June 2013 with it being sold by the mortgage company in September 2013 leaving a shortfall of around £32,340.

Mr O made £20 a month payments to the shortfall debt from November 2014 until November 2015 which reduced the amount owed to around £32,130.

The debt was passed to Hyalite and in October 2023 it started to send letters to Mr O about the shortfall debt. Mr O has said that at the time he believed the time frame for legal action had passed.

In February 2025 Hyalite sent a letter to Mr O which said:

‘You’ve been sent communications previously about your shortfall debt and attempts have been made to reach a repayment agreement with you. These attempts were unsuccessful, so legal action was taken. As a result, you now have a county court judgement (CCJ) against you, which means the court ordered you to repay the outstanding amount. You still owe the shortfall debt of £32,128.65 in respect of the court order.’

It said if Mr O didn’t get in contact within 20 days then it might send a field agent to visit him or consider taking legal action to help recover the debt.

Mr O spoke to Hyalite on 12 March 2025, and a repayment arrangement was discussed for the shortfall to be repaid at an amount of £50 a month. Mr O also offered an alternative of a £10,000 lump sum in full and final settlement of the debt. There was a further conversation on 14 March, and a complaint was raised as part of that. Mr O said he was unhappy about the wording of the February letter as it was threatening and incorrect about a CCJ being in place, and also about a credit search being undertaken.

On 20 March Mr O was told Hyalite had accepted his offer to pay £10,000 in full and final settlement of the debt.

In response to the complaint on 21 March, Hyalite said the CCJ it referred to related to the Order for Possession from March 2013, and it wouldn’t be visible on his credit file due to it being issued over six years ago. It apologised for some incorrect information in the letter which said a hard credit search would be conducted, when it would only be a soft credit search, and it offered £50 compensation for that error.

Mr O paid the £10,000 on 1 April 2025.

Our Investigator said Hyalite hadn't done anything wrong in chasing Mr O for the shortfall, but he said it hadn't been clear about what credit searches were done and why, for which he felt a further £50 compensation should be paid.

Neither party accepted our Investigator's findings and so the case was passed to me to decide.

What I've decided – and why

I issued a provisional decision in November 2025, the findings of which said:

“Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

It's not our role to say whether a business has acted unlawfully or not – that is a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances of a case. In order to decide that, we need to take a number of things into account, including the relevant laws and what we consider to be good industry practice at the time.

Unfortunately, due to the passage of time and the change in lender, there is limited information available to show exactly what happened when the property was sold in possession. It is possible lender M obtained a CCJ at the time, but I've asked Hyalite to evidence that, and it has been unable to do so.

The reason I say it is possible that a CCJ was obtained at the time is because the internal screenshots Hyalite has provided shows two letters were issued in 2014 immediately before Mr O started to make payments to the shortfall debt. One noted to be “Legal Action Letter” was issued on 24 July 2014 and the second “Other Letter (Manual)” was issued on 2 September 2014. Mr O then started making £20 a month payments from November 2014. It may be those letters were just a warning a CCJ may be obtained, or even something else entirely, and of themselves aren't sufficient evidence for me to be able to say a CCJ was obtained in 2014 in relation to this shortfall debt. And whilst Mr O has said he's obtained an extended report upon which a historical CCJ would show, I don't think it would show if one had been obtained in 2014, so I don't think that proves matters either way.

As Hyalite has been unable to provide evidence to prove a CCJ was obtained after the property was sold in possession, that means I must approach this complaint from the viewpoint that a CCJ wasn't obtained.

Mr O has said the February 2025 letter was misleading, and led to him contacting Hyalite when he wouldn't otherwise have done so. He's said:

‘This letter caused me a great deal of distress and anxiety and forced me into a position whereby I had no option but to ring them on the 12th of March and make a payment for threat of further legal action. Once I had completed the income and expenditure I asked the agent about the CCJ. Her response left me in pieces. She candidly stated no action was taken; its just a way of getting people to call in and pay. I was left absolutely devastated that I had been tricked and taken advantage of. For me the company has a duty of care to act with integrity and to treat all their supposed customers fairly.’

And;

'On this call I put in an offer to clear the debt and offered £10 000.00 as full and final settlement. I've had to borrow this money so that I do not have to deal with this company again. I did so as I cannot deal with the stress, anxiety, sleepless nights and the sheer pressure this has put on my body and my loved ones. I feel like I've been tricked into paying a debt that cannot legally be enforced due to the time passed.'

Mr O has said the debt can't be legally enforced due to the time passed, but that's not correct.

The Limitation Act 1980 says that a lender has 12 years to use court action to recover a principal sum of money secured by a mortgage. The 12 years starts from the date the property is sold – when the amount of the shortfall is known. Here that was September 2013, so the 12 years would run until September 2025. The court action doesn't have to be an actual court application, a form of pre-action would be sufficient – for example notification that the borrower needs to pay or the lender would start court proceedings, which is what the letter from February 2025 said. The Limitation Act says the period during which the lender can recover arrears of interest is six years. However, generally mortgage payments are applied first to interest arrears, then interest due, then costs and lastly to the principal amount. On this basis, the shortfall debt owed by Mr O would likely be of principal so the lender had 12 years to start action to recover it.

But that's not the end of the matter for me. Because as well as the legal time limits I need to consider whether Hyalite acted fairly and in accordance with relevant regulations and good industry practice when trying to recover the shortfall. It's likely this was a regulated mortgage. So the rules set out in the part of the Financial Conduct Authority's handbook related to mortgages (known as MCOB) applied. The rules in force in 2013 say the lender should inform the borrower as soon as possible of any shortfall debt. And, if it intends to recover the debt, it must notify the borrower of this within six years of the date of sale.

The Council of Mortgage Lenders (now UK Finance) also said its members should begin recovery action within six years. The intention is to ensure that borrowers are treated fairly – it wouldn't be fair for a lender to leave a long period before contacting a borrower about a debt.

As Mr O made payments towards the shortfall between November 2014 and November 2015, I'm satisfied that he was both notified of the shortfall debt, and that the lender intended to recover it, within six years of the property being sold. By making those payments he acknowledged that he owed the debt which would also have reset the 12-year timeframe allowed. This wasn't a case where a property was sold in possession and a consumer hears nothing more for nearly 12 years without any awareness of the shortfall debt, or acknowledgement that they owe it.

Considering all the evidence, I'm satisfied that Hyalite was entitled to collect the outstanding principal sum that was secured by the mortgage – as the relevant law says it has 12 years in which to do so, and the amounts fell due within the 12 years before the issue I'm considering from early 2025.

I agree with Mr O that the letter was misleading as Hyalite has been unable to provide the evidence to show a CCJ had been obtained, and some compensation is due for that. But as the shortfall was fairly due I think, if Mr O hadn't responded to the February 2025 letter, then Hyalite may have commenced legal action as it said it might do in that letter so the overall position would have been the same in that he paid a lump sum to settle the account. I don't think Mr O would ever have been in the position where Hyalite decided to not pursue the debt and he wouldn't have needed to make that payment. In fact, if Mr O hadn't contacted Hyalite in response to that letter, then he may have been caused extra

distress due to the fact there would have been further chases and then perhaps legal action started.

Mr O has had around £22,000 of his debt written off by Hyalite agreeing to accept £10,000 in full and final settlement, and that isn't something I would necessarily have ordered Hyalite to do had the complaint come to me without that settlement already having been made. So I do need to keep in mind that there has already been a significant concession by Hyalite in this matter. However, as I've said, I do agree that the letter was misleading in that it said 'you now have a county court judgement (CCJ) against you' which Hyalite hasn't been able to prove was true. For that I consider a payment of compensation is due, and I will come back to that at the end of this provisional decision.

Mr O has also complained about the credit searches that Hyalite carried out, with those being a hard search in October 2024 and a soft search in February 2025. Hyalite has said that up until the end of December 2024 it used hard credit searches in cases like this (where there is an outstanding shortfall debt), but since January 2025 it only carries out soft credit searches.

The letter of February 2025 said a credit check would be completed to verify the information Mr O provided about his income and expenditure, and other companies will be able to see that credit check had been conducted. That is what is known as a hard credit search. But the letter was incorrect because since January 2025 Hyalite only carried out soft credit searches in cases like this. Whilst that information was incorrect, there was no detriment to Mr O because the credit search that was carried out had less impact on him than the hard credit search would have had.

The letter also implied the credit search would be carried out after Mr O provided his income and expenditure information, at the point there was a discussion about a repayment plan, but instead the search was carried out on the day the letter was issued. Again, I'm satisfied there was no detriment to Mr O in the credit search being carried out slightly sooner than the letter implied it would as that credit search would always have been required (for either a repayment plan or a reduced settlement agreement to be reached) and being a soft credit search it had no impact on Mr O's credit file anyway, as other lenders would be unable to see it.

All that said, whilst I'm satisfied there was no detriment to Mr O on these two points, I do think the mistakes made by Hyalite have compounded the poor customer journey Mr O had experienced and for that I consider a payment of compensation is due which I will come back to at the end of this provisional decision.

Finally, I can see that a hard credit search had been carried out in October 2024 but I can't see that Hyalite told Mr O that would be happening or what the basis for it was. Hyalite has said its shortfall debt recovery policy allows it to review a credit file "...to verify the information provided by the customer, negating the need for them to provide any further supporting information." But I can't see Mr O had supplied any information that needed to be verified in October 2024, and there seems no reason for two credit searches – especially with one being a hard credit search – to be carried out so close together.

Having considered everything very carefully I'm currently minded to order Hyalite to remove the October 2024 hard credit search from Mr O's credit records.

I now turn to what I feel is fair compensation for this complaint. I'm satisfied an award of compensation is justified in this case. I've already set out what I think Hyalite did wrong here, with the February 2025 letter being misleading in saying a CCJ had been obtained when Hyalite has been unable to evidence that is the case. Mr O has told us about his

vulnerability, and I have taken that into account when considering what compensation is due. I've taken note of everything Mr O and Hyalite have said, and having done so I'm satisfied total compensation of £300 is fair and reasonable, and proportionate to the errors made by Hyalite."

Hyalite accepted my provisional decision. Mr O didn't provide any further arguments; however he did provide a copy of the extended search he obtained saying that showed no CCJs ever being issued in his name.

I thank Mr O for providing a copy of the search he obtained, but I don't agree that proves he's never had a CCJ issued in his name. I say this because the website of the company he used says "All records are kept on the Registers for a period of six-years from their date of judgment..." so this is just an alternative way of searching for the information that we already know; that is, that Mr O hasn't been issued with a CCJ in the last six years. It doesn't prove he didn't receive a CCJ before that point.

But all that said, as I explained in my provisional decision, the outcome doesn't turn on this point anyway and I approached the complaint as if Mr O hadn't ever received a CCJ in respect of this mortgage:

"As Hyalite has been unable to provide evidence to prove a CCJ was obtained after the property was sold in possession, that means I must approach this complaint from the viewpoint that a CCJ wasn't obtained."

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, and having considered the full file afresh, I see no reason to depart from the findings I reached in my provisional decision.

My final decision

I uphold this complaint and direct Topaz Finance Limited trading as Hyalite Mortgages to;

- Remove the October 2024 hard credit search from Mr O's credit file, and
- Pay a total of £300 compensation (less any amount already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 5 January 2026.

Julia Meadows
Ombudsman