

The complaint

Mr and Mrs C complain that Topaz Finance Limited trading as Hyalite Mortgages did not properly take into account they received an incentive when they bought an investment property. They believe the buy-to-let mortgage should not have been granted if the incentive had been considered by the lender.

What happened

In 2007, Mr and Mrs C took out a buy-to-let mortgage with Mortgage Express. It was an interest only mortgage for £186,107 plus fees of £4,687 that were added to the loan. The purpose of the mortgage was to buy an investment property. The purchase price stated on the mortgage offer was £218,950. The lender is now Hyalite – and I will refer to it throughout this decision.

Mr and Mrs C said they only had a 5% deposit on an agreed purchase price of £195,950, but the property developer told them that the property would go up in value between the deposit being paid and completion, which would make them eligible for an 85% loan-to-value (LTV) mortgage. They said they recently discovered that an additional deposit of £23,000 was paid towards their deposit – and that was not disclosed to them or set out in the mortgage offer.

Mr and Mrs C consider their actual LTV was over 95% and therefore they were ineligible for the mortgage they got. They say the broker and solicitor involved in the transaction were all chosen by the property developer and they have been denied independent legal and financial advice. They complain the deposit was misrepresented to them. Mr and Mrs C complain that they have been mis-sold a high-risk financial product that they did not actually qualify for. They consider the lender ought to have verified the source of the deposit.

The investigator said that the complaint had been made outside our time limits. But we could consider whether there was an unfair relationship between Mr and Mrs C and Hyalite. She did not think the complaint should be upheld.

Mr and Mrs C did not accept what the investigator said:

- They had no reason to suspect there were any problems relating to the sale of the mortgage in 2007. It was only in 2025 that he became aware of the FCA's MCOB rules, the CML guidance and the lender's obligations.
- Their relationship with the lender was unfair from the outset. The mortgage was advanced on incorrect information. The offer said the maximum LTV was 85% - but the true LTV was 95% because they'd only paid £9,797.50 from their own funds.
- The 85% LTV only works if the £23,000 was treated as the borrower's genuine savings or equity.
- The unfairness arose because the agreement was based on an LTV that was ineligible for the product.

- There was also unfairness because the lender did not assess the interest only repayment strategy based on the true deposit and LTV.
- If the solicitor did not confirm if there were incentives or if its confirmation was inadequate then the lender should be responsible for that. Hyalite has not showed that it carried out adequate checks.
- The unfair lending decision has led to them being trapped on the standard variable rate (SVR), having to make top up payments to the mortgage and not being able to leave the mortgage without incurring a loss and/or shortfall.
- The property has always been in negative equity because of the way the mortgage was structured. As a result, they have been unable to remortgage or switch to a more affordable product.
- The lender had unfairly exercised its rights by applying an unreasonably high SVR.
- If the lender had identified the £23,000 deposit contribution it would either have not lent or would have advanced on different terms.
- Hyalite should produce the certificate of title, report in title, any incentive or gifted deposit confirmation, "LTV calculation worksheets and product eligibility assessments, and any internal notes on how the deposit contribution was understood. If it can't produce those documents, then we should find the relevant checks were not done or were not done properly.

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 agree with the investigator that Mr and Mrs C ought reasonably to have had cause for complaint about this matter more than three years ago. They accept the original completion documents set out that a deposit top-up had been made by a third party. This was a significant financial commitment for Mr and Mrs C and there was a reasonable expectation that they would read those documents.

If they did not know about the deposit contribution, I think that alone was enough to make them aware that there was a problem at the time in question and the information submitted to the lender was not a true reflection of their contribution to the property purchase – and therefore the lender had agreed the mortgage on incomplete information. They would not need to know about the mortgage rules to know there was a problem. So I consider they ought reasonably to have been aware they had cause for complaint at the time in question.

Mr and Mrs C have later told us that they did, in fact, query the deposit contribution with the developer in 2007 and were reassured that there was nothing to worry about and that it was simply how the transaction was documented. First, it is not clear why they did not raise that at an earlier point in their complaint. Second, that contradicts their earlier submissions that they did not know about the deposit contribution at all. Third, I am not sure that it would be reasonable to accept the reassurance they were given by the developer. The way the entry was titled was not connected to the value of the property at all. Lastly, even if they had received that assurance and initially relied on it, it might have been reasonable for them to question the accuracy of the developer's reassurance more than three years before they

made this complaint, bearing in mind they knew the property went into negative equity soon after they bought it – and the difficulties that has caused to them.

Therefore, the complaint has been made outside our time limits. The event is more than six years before this complaint was made. I've found Mr and Mrs C ought reasonably to have been aware they had cause for complaint more than three years before they made this complaint and there are no exceptional circumstances that prevented Mr and Mrs C complying with our time limits.

But that doesn't really make a great deal of difference here. As the investigator said, we can consider whether there is currently an unfair relationship between Mr and Mrs C and Hyalite - taking into account all matters relevant to the fairness of that relationship, whenever they occurred. We are therefore considering many – if not all – of the same things we would if the complaint had been brought within our time limits.

I have, therefore, considered whether the relationship between Hyalite and Mr and Mrs C is unfair due to the decision made to lend to them and the ongoing administration of the account. This was an unregulated mortgage – MCOB did not apply to the sale or administration of the mortgage.

There were a number of different parties involved in this transaction, including the property developer, the broker and the solicitor. The lender would not be responsible for any acts or omissions by the developer or the broker. The solicitor was acting for both Mr and Mrs C and the lender. So it was doing things on behalf of Mr and Mrs C, the lender, and both Mr and Mrs C and the lender. The lender would only be responsible for things the solicitor did solely on its behalf. I am only considering whether there were any acts or omissions by the lender that gave rise to an unfair relationship.

The application form submitted to the lender stated that Mr and Mrs C were paying a deposit of £32,843 from their own savings. The application was signed by Mr and Mrs C – they declared that the information in the application was “true, accurate and complete”. It was reasonable for the lender to accept that information and to understand that Mr and Mrs C were paying the full deposit.

A mortgage valuation was carried out by an independent surveyor. They confirmed a valuation of £218,950, that the property was suitable for letting and the expected rental income.

We are considering events from more than 18 years ago. Looking at the information that has been submitted as part of this complaint and the information likely available to the lender at the time in question, I don't consider it was an unfair or unreasonable decision to approve the mortgage. I can't see that the lender had any reason to suspect that the deposit was not being paid in full by Mr and Mrs C from their own resources. And it was reasonable for the lender to decide that the property offered suitable security and that the rental income was sufficient to cover the monthly payments.

If Mr and Mrs C believe information was withheld from them or the lender – or they were misled – by other parties connected to the sale of the property, then that is something they'd need to raise with those parties.

The mortgage offer said that Mr and Mrs C had an interest rate product that was discounted by 2.11% from a variable rate which is 1.75% above the Bank of England base rate for two years, followed by the variable rate for the remainder of the term. The mortgage has operated in line with the offer that Mr and Mrs C accepted. There was no contractual, legal or regulatory requirement for the lender to offer Mr and Mrs C another interest rate product.

I was sorry to hear about the difficult position that Mr and Mrs C have found themselves in. But I do not consider that the lending decision or the way the lender has administered the account has created an unfair relationship. Therefore, I don't consider Hyalite needs to do anything.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 16 March 2026.

Ken Rose
Ombudsman