

## The complaint

Mrs D's complaint is that it is unfair for Topaz Finance Limited (trading as Hyalite Mortgages) to continue to pursue her for a mortgage shortfall debt. To settle the complaint Mrs D would like the Financial Ombudsman Service to do the following:

- direct Hyalite to write off the outstanding debt;
- instruct Hyalite to close the account and cease contacting her;
- confirm that she has no further liability for the debt;
- award compensation for distress and inconvenience caused by Hyalite's handling of this matter.

The complaint has been brought – and all representations made – by Mrs D's son, Mr D. To avoid confusion, I will refer to Mrs D's late husband as Mr D1.

## What happened

The basic background to this complaint is well known to both parties so I won't repeat the details here. Our decisions are published, and it's important that I don't include any information that might result in Mrs D being identified.

Instead I'll focus on my decision and the reasons for it. No discourtesy or lack of care is intended by that. It's simply a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me.

It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Briefly, in 1989 Mrs D and Mr D1, who I am sorry to note passed away in September 2025, purchased a holiday home with a mortgage from a lender I will call B&B. The property was surrendered to B&B in 1993 and was sold, leaving a shortfall on the mortgage account of approximately £47,000 for which Mrs D and Mr D1 were jointly and severally liable. Payments of £1 per month were made to the account by Mr D1. The account was transferred to Hyalite in 2023.

After Mr D1 passed away, Mrs D asked Hyalite to write off the outstanding balance on the account, arguing that it was statute-barred under the Limitation Act 1980 ("the Act"). Hyalite explained that the payments towards the debt had acknowledged it for the purposes of the Act. The debt was therefore enforceable and Hyalite was entitled to continue to pursue it.

Dissatisfied with Hyalite's response, Mrs D, with the assistance of Mr D, brought the complaint to our service. An Investigator looked at what had happened but didn't think the complaint should be upheld. He was satisfied the debt wasn't statute-barred, and that,

notwithstanding that the debt had been outstanding since 1993, Hyalite was entitled to seek recovery of it. The Investigator acknowledged Mrs D's age and health, and said Hyalite should take this into consideration when discussing repayment proposals.

Mr D asked for an Ombudsman to review the Investigator's findings. He acknowledged that the debt was within the limitation period and that Hyalite was, legally, allowed to seek repayment of it. But he said that the role of the Financial Ombudsman Service is to decide what is fair and reasonable in all the circumstances of the case. Mr D said that his mother is vulnerable and elderly, she has no means of repaying the debt and that Hyalite's actions are disproportionate and likely to cause harm to Mrs D.

### **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.

Mrs D has acknowledged that the debt exists, that it's not statute-barred and that she is liable to repay it. The crux of this complaint is about whether it's fair and reasonable for Hyalite to ask her to make repayments, given her specific circumstances. Mr D has told us that Mrs D has serious health issues, and that she has no assets or savings, and lives only on her State Pension.

The starting point is that I don't have any power to tell Hyalite how to run its business, or make policy decisions for it. If Hyalite has a policy of recovering shortfall debts from defaulting mortgage customers, that's a matter for its commercial judgement, and isn't something I'm able to interfere with.

I've not gone into detail about Mrs D's specific situation, but I am aware she is elderly and has a serious health issue. I do not doubt what Mr D has told us – that receiving letters from Hyalite about the outstanding debt causes his mother considerable upset.

As I said above, I can't tell Hyalite that it's not allowed to pursue a shortfall debt that's legitimately owed and acknowledged by the debtor. I think it's reasonable for Hyalite to want to make enquiries about Mrs D's circumstances, and I wouldn't expect it to take at face value Mr D's contention that Mrs D has no assets without evidence of this.

I think it might be helpful for Mrs D to provide Hyalite with verifiable evidence of her financial position (bank statements) about her housing situation (e.g. whether she owns a property or if she is in rented/sheltered accommodation, with a copy of any tenancy agreement), and her current state of health (such as a letter from her GP). Hyalite can then give careful consideration as to whether there is any realistic prospect of recovering this debt from this elderly lady, and make a decision about this.

I know this isn't the outcome Mrs D and Mr D were hoping for. But I hope I've explained why I don't have any power to direct Hyalite to write off this debt in circumstances where Mrs D has accepted it is legitimately owed. It's up to Hyalite to decide whether or not to do this.

However, I would expect Hyalite to think carefully about whether the operational costs of administering a payment of £1 a month are likely to outweigh the benefit of receiving such a nominal amount towards this historic debt, given Mrs D's overall circumstances.

### **My final decision**

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 12 May 2026.

Jan O'Leary  
**Ombudsman**