

## The complaint

Mr and Mrs E have complained about two buy to let (“BTL”) mortgages they held with Topaz Finance Limited trading as Hyalite Mortgages.

## What happened

Mr and Mrs E applied for these two mortgages through two separate mortgage brokers. The mortgages were taken out with Mortgage Express.

The mortgage offer for the first property, which I will refer to as property M, was issued on 31 March 2006. The mortgage offer showed:

- It was to facilitate the purchase of a property with a purchase price of £128,500.
- Mr and Mrs E were borrowing £109,225 (plus fees) over a 25-year term on an interest only basis.
- The interest rate was noted to be fixed at 4.99% until 31 March 2009, after which it would revert to the BTL variable rate which was 6.25% at the time of the offer, for the rest of the mortgage term.

I understand the purchase completed in May 2006.

The mortgage offer for the second property, which I will refer to as property B, was issued on 22 May 2006. The mortgage offer showed:

- It was to facilitate the purchase of a property with a purchase price of £109,995.
- Mr and Mrs E were borrowing £93,495 (plus fees) over a 25-year term on an interest only basis.
- The interest rate was noted to be fixed at 4.99% until 30 June 2009, after which it would revert to the BTL variable rate which was 6.25% at the time of the offer, for the rest of the mortgage term.

I understand the purchase completed in June 2006. We have on file a copy of the valuation for property B that had been undertaken in March 2006 by an independent surveyor.

Mr and Mrs E have told us that soon after they bought property B it became apparent that it was part of a wide-spread fraud on the part of the developer and other third parties and the property wasn't worth the amount they'd paid for it. This has been the subject of correspondence between Mr and Mrs E, a firm of solicitors they appointed and Mortgage Express over the years. Mr and Mrs E say they have exhausted all their options in terms of taking action against – or trying to reclaim funds from – all the third parties involved.

Mr and Mrs E raised a complaint in 2015 which Mortgage Express responded to in September 2015. It summarised that complaint as ‘You have raised concerns in regard to the valuation used by Mortgage Express, during the underwriting of the mortgage we agreed to allow you to purchase the above property. You believe it may have been intentionally

overvalued...’ As part of its response, it said that, if appropriate, a full investigation will be carried out with a view to considering the validity of any professional negligence action.

Overall, Mortgage Express didn’t uphold the complaint and said Mr and Mrs E had six months from the date of the letter to refer the complaint to us, and if they didn’t refer the complaint in time it said we wouldn’t have its permission to consider the complaint.

Over the next few months Mr and Mrs E – and their solicitor acting on their behalf – continued to correspond with Mortgage Express about property B, and in March 2016 Mortgage Express confirmed it hadn’t pursued any of the third parties involved in the property purchase, and that it wasn’t obliged to do so.

In October 2018 Mr and Mrs E were looking to sell property M, but when they spoke to Mortgage Express about that they were told that the lender held the right to consolidate, and it wasn’t willing to release its charge over the title of property M unless Mr and Mrs E paid a lump sum to reduce the balance on the mortgage held over property B.

Mr and Mrs E say that led to the sale of property M falling through and then, because the property had external cladding, a sale couldn’t be achieved for a number of years until that situation had been resolved.

On 4 July 2023 Mr and Mrs E’s solicitor wrote to Mortgage Express at a Durham address. It’s letter said Mr and Mrs E can’t make a claim against the solicitor, surveyor or broker, and they wanted to sell both properties and make an arrangement with Mortgage Express in regards to the mortgage shortfall that would be left. The solicitor sent four chaser letters over the next four months; the first two – in July and August - to the same address, and then the last two – which were sent at the end of September and in mid-October - to a Skipton address. All the letters had the original mortgage account numbers on them, albeit the last letter sent in mid-October also included the current mortgage account numbers.

On 23 October 2023 Mortgage Express ceased to operate, and it transferred Mr and Mrs E’s account – along with all its other live customer accounts – to Hyalite Mortgages, which is a trading name of Topaz Finance Limited.

Mr and Mrs E wrote a letter of complaint to Mortgage Express on 17 November 2023, sending that to the Skipton address. In summary their complaint was:

- Mortgage Express hadn’t responded to the letters that had been sent by their solicitor since July 2023.
- The mortgage had been transferred to Hyalite with the minimum of notice, despite Mortgage Express being aware of the history of property B and the pleas for help.
- Property B had been overvalued, which had left them as mortgage prisoners due to the negative equity.
- The sale of property M had been blocked in 2018 (albeit the letter said, in error, that had happened in 2017).
- An approach where Mortgage Express and Mr and Mrs E shared the burden of the mortgage shortfall on property B was pragmatic.

Mortgage Express explained that Hyalite would undertake an investigation into any complaints following the mortgage transfer, albeit it did keep some issues to respond to itself. It sent a final response letter on 9 January 2024 in which it said it was allowed to transfer the mortgage to Hyalite under the terms and conditions of the mortgage.

Hyalite had separately responded to the other concerns, and the complaints were referred to our service at the end of January 2024.

Two separate complaints were dealt with by our Investigator; this one which is against Hyalite, and another which is against Mortgage Express. Although the same Investigator dealt with both complaints – and I have both complaints to reach a decision on – we have to deal with them separately as different legal entities are responsible for answering different parts of the complaint.

Our Investigator said this complaint against Hyalite would deal with the issues relating to:

- The outcome of an offer made by Mr and Mrs E in 2018 when the sale of property M was blocked due to negative equity.
- The lack of response to a proposal made by Mr and Mrs E in 2023, and the attempts to chase a response.
- The level of support over the term of the mortgage in respect of property B, with Mr and Mrs E saying they are mortgage prisoners.

The Investigator didn't uphold the main thrust of the complaint, however he did feel Hyalite should pay £250 compensation due to the delay in receiving a response to the 2023 proposal.

Hyalite agreed to pay that compensation. Mr and Mrs E didn't agree with our Investigator's findings and so the case was passed to me to decide.

### **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 trust Mr and Mrs E won't take it as a discourtesy that I've condensed their complaint in the way that I have. 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.

In 2018 Mr and Mrs E wanted to sell property M as they'd received an offer on it. They calculated the sale of that property, once the mortgage and sale costs had been taken into account, would give them a surplus of around £15,000. When a redemption statement was requested by Mr and Mrs E's solicitor the lender said it had the right, under the mortgage contracts, to insist Mr and Mrs E repay all the debts owed – that is, not just the mortgage secured on property M but also the mortgage secured on property B. But it said, as an alternative, it would accept the mortgage on property M being repaid and a lump sum of around £53,000 to reduce the debt secured against property B. Without that it wasn't willing to release the charge on property M. As Mr and Mrs E didn't have the additional funds needed to make that lump sum payment the sale of property M fell through.

I understand why Mr and Mrs E felt that potential sale in 2018 should have been allowed to go through, especially as since then any offer(s) they've received for property M have been lower than the offer received back then. But I also understand why the lender wasn't willing to release its charge over property M without a substantial payment to reduce the debt secured against property B.

As these were BTL mortgages they were treated as a commercial enterprise which is what

we would expect. And as a commercial enterprise this was a business-to-business relationship, as although Mr and Mrs E held the mortgages in their names (rather than in the names of a company) they were still acting as a business in the taking out and holding of these mortgages.

The lender had the right, under the terms of the mortgage contracts, to treat these two BTL mortgages as a portfolio. So rather than treating them as individual properties with individual debts, it instead looked at its risk exposure across the two properties combined and having done so it wasn't willing to release its charge against the property with the "good" debt (property M) without a significant reduction in the "bad" debt (property B) due to the negative equity situation that property was in. That isn't an unreasonable position for the lender to have taken as otherwise it would have been left in a worse overall position in terms of its debt to value exposure.

This is known as the right to consolidate, and the lender's right to do so was set out within the terms and conditions, at Section D (15) under the heading 'If you have more than one mortgage with us':

- a Our right to combine mortgages is not restricted in England and Wales by section 93 of the Law of Property Act 1925, (or in Northern Ireland by section 17 of the Conveyancing and Law Property Act 1881).
- b If you have more than one mortgage with us, and you want to pay off just one of those mortgages, we have the right (except where the money is owing under a regulated agreement) to stop you paying off the mortgages separately, and to insist that you pay them all off.

I understand Mr and Mrs E would have liked to have sold property M in 2018, but I don't think it was unreasonable for the lender to only agree to release the charge on property M if the lump sum payment it requested was made, and that is something the lender was allowed to do under the terms of the mortgage contracts.

It is unfortunate that a potential sale of property M then had to be put aside due to the fact it was found to have cladding issues, and that Mr and Mrs E were subsequently unable to achieve a sale price at the level as was offered in 2018. But I can't hold the lender liable for that.

Mr and Mrs E made a proposal to the lender in October 2023 in which they asked for the burden of the shortfall on property B to be shared between them and the lender. Hyalite has accepted that it made a mistake in not responding to that proposal, it has explained that the task to review and respond to the proposal was accidentally closed on its system.

As Hyalite has already accepted it made a mistake when it didn't respond to the October 2023 correspondence, I don't need to make a finding on that. It said it didn't have a record of the letters from Mr and Mrs E's solicitor in the months before then, possibly due to the incorrect mortgage account numbers on them.

As our Investigator explained, the delay didn't cause a financial loss as there wasn't any significant progress on the sales of the two properties in the time in question. But it is clear that Mr and Mrs E were inconvenienced by the poor service they received, not receiving a response to the correspondence the lender received in October 2023 and needing to chase that up. I agree with our Investigator that a sum of £250 compensation is due for that delay and the service provided.

I can't consider the fact Hyalite didn't accept that proposal, or any subsequent negotiations and discussions between the parties as those issues didn't form part of the original

complaint made. Any complaint about those actions would need to be made to Hyalite first, and if Mr and Mrs E don't agree with Hyalite's response, that can then be referred to us as a new complaint at the time (subject to our usual rules).

Finally, Mr and Mrs E are unhappy about the level of support they received, and say they were mortgage prisoners.

As I've explained above, this was an unregulated commercial transaction so there were different rights and obligations than you'd get with a regulated residential mortgage. That said, I have considerable sympathy with the situation Mr and Mrs E found themselves in.

When Hyalite took over the mortgages they were both on the BTL variable rate, and that continued to be applied. Hyalite isn't an active lender and isn't trying to attract new customers through offering low rates. That was also the case with Mortgage Express as it stopped offering new interest rate products in 2009. All Mortgage Express' – and subsequently Hyalite's – BTL customers move onto and remain on the BTL variable rate once their previous interest rate products expire. To that extent, neither lender treated Mr and Mrs E any differently from any of their other customers.

Although Hyalite is a closed lender (in that it's not taking on new business) it's still regulated by the Financial Conduct Authority ("FCA") and must follow its rules, albeit these are unregulated mortgages due to them being for investment properties. But there's nothing in the FCA's rules that says a lender has to offer new interest rates to its customers once their old ones expire. The rules say that a lender has to treat its customers fairly taking account of their best interests; it has to communicate with them in a clear, fair and not misleading way; it has to notify them of changes to their monthly payments; and it mustn't take advantage of customers who can't move their mortgages elsewhere by treating them differently to other customers with similar characteristics.

The lenders notified Mr and Mrs E of changes to their payments from time to time. And the lenders didn't treat them differently from any other customers – all BTL customers must stay on the BTL variable rate once their products expire, just like Mr and Mrs E. So, I don't think either lender was in breach of any of the regulator's rules in not offering them a new rate.

I don't think either lender acted in breach of the terms of the mortgage agreements either. Nothing in the mortgage offers or the mortgage terms say that Mr and Mrs E would be entitled to another preferential interest rate after their initial preferential rates expired. I'm aware, of course, that it's common for borrowers to take a preferential rate product – and then take another rate rather than revert to the variable rate. Sometimes that's with an existing lender; sometimes it's with another lender. But as I say, there's nothing in Mr and Mrs E's mortgage agreements that say they're entitled to a new rate.

There's nothing in Mr and Mrs E's mortgage agreements that would have prevented them from remortgaging elsewhere – they were no longer liable for an early repayment charge, for example. But the reason, unfortunately, they couldn't do that was because of external changes – changes which weren't part of their mortgage contract, weren't within either lender's control, and couldn't have been foreseen by any party when they took the mortgages out.

Mr and Mrs E have said they were trapped due to the issues with property B which meant they were in negative equity, but that doesn't mean the lender needs to agree to things it wouldn't normally offer or agree to. Neither lender treated Mr and Mrs E any differently from how they treated their other customers, including those unable to remortgage elsewhere – or sell the property - due to negative equity. Neither lender had to allow Mr and Mrs E to sell property M without making a lump sum payment to the mortgage secured on property B,

they didn't have to write off half of the shortfall to share the burden with Mr and Mrs E, and they didn't offer new interest rate products.

I can only uphold a complaint and order a business to do something to put it right if I am satisfied the business did something wrong in the first place. Other than agreeing that Hyalite made a mistake when it didn't deal with the 2023 proposal in a timely manner, I don't think the lender did anything wrong here.

### **My final decision**

I uphold this complaint in part and order Topaz Finance Limited trading as Hyalite Mortgages to pay £250 compensation for the delay in dealing with the 2023 proposal.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs E to accept or reject my decision before 13 January 2025.

Julia Meadows

**Ombudsman**