

The complaint

Mr P1, Mr P2, Mr P3 and Mr P4 complained that their mortgage company, Topaz Finance Limited trading as Rosinca Mortgages, cancelled a direct debit used to pay the mortgage, then made it excessively difficult to reinstate. Payments were missed as a result.

Mr P1, Mr P2, Mr P3 and Mr P4 said this affected their credit files, and they wanted the negative markers removed.

What happened

Mr P1, Mr P2, Mr P3 and Mr P4 (referred to collectively as “Messrs P” hereafter) told us that they’d been paying their interest-only mortgage with Rosinca through the same direct debit for many years. But after they tried to make an overpayment, the direct debit was cancelled without warning.

Unfortunately, our service isn’t able to consider this part of Messrs P’s complaint for them. We have written to the group separately to explain the reasons for that.

Messrs P also said Rosinca then made the process of reinstating their direct debit excessively difficult. They said that Rosinca was obstructive. It wouldn’t accept their signed authority, and it was very hard to contact Rosinca.

Messrs P said they had been charged more interest on the mortgage, because they hadn’t been able to make the overpayments they wanted. They wanted compensation for that. And they said these problems meant that two payments to the mortgage were missed. They thought that was Rosinca’s fault. They said the resulting marks on their credit files were stopping members of the group from getting a mortgage or other credit elsewhere. So they wanted the markers on their credit files removed.

Rosinca didn’t think it had done anything wrong. It said it had previously explained why an overpayment by cheque wasn’t accepted and the direct debit was then cancelled (which I cannot consider here). That was because payments were coming from a third party account.

It said it could reinstate the direct debit if the group signed a third party authority form. When that form was completed, Rosinca asked two members of the group to forward identification to it, so it could confirm that these were their signatures.

In the meantime, Rosinca had accepted two payments from the third party account. One was accepted in June 2023, because Rosinca was aware that the group was setting up a third party payment authority at the time.

Rosinca said it had also accepted a payment on 6 January 2023, which it ought not to have accepted. But it wouldn’t send this money back, because that was Rosinca’s mistake, and sending it back would cause the group detriment. Rosinca accepted this was an inconsistency (it had returned subsequent payments made later that month) and it offered £50 to say sorry for this.

Rosinca said it was having difficulty locating the company which owned the third party account at Companies House, and so it asked the group to send it the company number. Rosinca has shown our service that it has recorded missed payments for this mortgage in September 2023 and December 2023. The direct debit was cancelled in December 2022.

Our investigator didn't think this complaint should be upheld. He thought Messrs P had been paying from a company account, and that Rosinca had followed its own internal policy about who it could accept payments from, when it rejected the overpayment that was made from a company account in late 2022.

Our investigator said he couldn't look at why Rosinca then cancelled the direct debit from this account. But he could see that after the direct debit was cancelled, Rosinca accepted some payments from the same account. He said Rosinca had acknowledged it made a mistake in accepting a payment from the company account in January 2023. It didn't return that payment, to avoid further inconvenience to the group. And it paid £50 to say sorry.

Our investigator thought this was a fair outcome. He also thought it was reasonable for Rosinca to accept a payment from the company in June 2023, because it was then in the process of setting up a third party authority to allow payments from the company.

Rosinca sent the group a third party authority form and that was returned, but unfortunately Rosinca didn't hold signatures for Mr P1 and Mr P2, so had to ask for identification for them. Our investigator thought Rosinca had taken reasonable steps to confirm Mr P1 and Mr P2 had signed the form.

Our investigator said Mr P1 had told us these problems stopped the group from making overpayments, so they were paying a higher amount each month than they wanted. Our investigator said he appreciated this was frustrating, but the payments were rejected fairly, in line with Rosinca's policy. Rosinca had made a mistake previously in accepting the direct debit payment from the company. Rosinca didn't have to keep making the same mistake, once it had realised this.

Our investigator said the direct debit was cancelled in December 2022. And the problems with payment didn't crop up until September 2023. By then, the third party authority form had been completed, identification had been provided, and Rosinca just needed the company number. So he thought that between December 2022 and August 2023, the group must have maintained their payments. Although it was clear that it would have been easier to keep up with payments with a direct debit in place, our investigator didn't think he could say the reason for the two missed payments at the end of 2023, was due to the cancellation of the direct debit at the end of 2022.

Mr P1 replied to object. He said correcting their credit files was a simple request, and the marks on their files were having a massive impact. He also said correspondence Rosinca said it had sent to them, wasn't received by any of the Messrs P.

Mr P1 said Messrs P wanted an ombudsman to consider this complaint, so it was passed to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

Our service has written to Messrs P separately, to explain why I cannot consider the cancellation of their direct debit here. But I do think it is useful to set out what happened

then, as background to this complaint.

Rosinca wrote to Messrs P in November 2022 about the overpayment they had made. I've seen this letter, and it says "*We do not accept cheque payments from a third party.*" It appears that, at this point, Rosinca had reached the decision that this account was not held in the names of the mortgagors themselves, Messrs P, but was in the name of a third party, a limited company. Limited companies have their own legal "personality", so in law they are a separate entity from the people who own the company.

In December Rosinca was told the account payment had been sent from, was the same account Messrs P had been using to pay the direct debit for several years. They also said the payment was made from an account which did include the names of all of Messrs P.

Rosinca then cancelled the direct debit on 14 December 2022. It accepted payment from the third party in early January 2023, but Rosinca has subsequently said this was a mistake. It returned further payments made later in January.

One of Messrs P contacted Rosinca in late January 2023, at the same time further payments were made, and said again that the full name of the account used for payment includes their names, so he thought payments could be accepted and the direct debit could be reinstated.

In late February, Rosinca finally clarified that it would need a third party authority for what it understood to be a separate company, before it could accept payments from the company account.

Here, the mortgage is in the name of the Messrs P. So Rosinca felt Messrs P should really be paying the mortgage from an account held in one or more of their own names.

I've noted above that Rosinca wrote to Messrs P saying it will not accept cheques from a limited company, if the mortgage is not in the name of the limited company. It has shown us a payments policy which further states that it will not accept a direct debit from a third party, including authorised third parties. So it's not clear why Rosinca said it could accept payments from a company account, if Messrs P set up third party authority for that company.

But Rosinca has said a number of times that it would accept payment from the account Messrs P were previously using, if they provided a third party authority.

A third party authority form was issued on 20 February 2023. I think this should probably have been issued in December 2022. This form was returned on 23 March.

Rosinca then discovered it didn't have signatures for Mr P1 and Mr P2, so on 23 March 2023 it requested these, and details of the company address. It appears to have received these around three months later, on 22 June. Also in June, it accepted a payment from the account that Messrs P were previously using.

Rosinca doesn't seem to have done anything with the information it received, supporting its request for a third party authority, until August. It said then that it couldn't find details of the company on the register held at Companies House, and on 10 August it wrote to Messrs P asking for the company number.

By this time, I think it had become quite clear that Rosinca thinks the name on the account Messrs P have been using to pay this mortgage, is a limited company. But on

22 June, Rosinca got a letter from Mr P2, which showed the bank account details, and a cheque with the same details. These do not indicate that the account is held by a limited company. And they do include the names of all the account holders.

I think it is most likely that the name Rosinca took to indicate that the account was held by a limited company, is simply a trading name for Messrs P. And, importantly, I think at this point, Rosinca ought to have realised that what it had taken to be a company name, is simply a trading name.

I have asked Messrs P to confirm if this is the position. They have said that they are simply four joint holders of this mortgage, and four joint holders of this account. There is no limited company, or any other entity with separate legal status, involved in the payment here.

So I still think the name on this account is a trading name for Messrs P. And because I think Rosinca had all the information it needed to reach the same conclusion by 22 June 2023, I think the direct debit on this account should have been reinstated by Rosinca then.

Instead, in August, Rosinca wrote to Messrs P saying it was having difficulty locating the details of the company on the register held at Companies House. It wanted Messrs P to send it the company number. (As this isn't a limited company, the name won't appear on the register, and it won't have a company number.)

Also in August, Messrs P discovered that they could make payments by card, through Rosinca's website. So they managed to make the monthly payment for August, and lump sum payments which they had wanted to make in October 2022. The credit reporting for this mortgage shows the outstanding debt reduced from over £93,000 to just over £70,000 in August 2023.

Towards the end of August 2023, Messrs P also made a further smaller card payment, of a little more than the amount due each month. It seems likely that this was intended to cover the payment due for September. But there was then no payment made in September. And in September 2023, Rosinca reported a missed payment for this mortgage.

In October and November, Messrs P managed again to make a card payment. No payment was made in December, and Rosinca again recorded a missed payment for this mortgage then. What looks to have been a double payment was made on 1 January 2024, and after this, Messrs P put a monthly bank payment in place, presumably by standing order. Rosinca says that the direct debit for this mortgage still hasn't been reinstated.

I've explained separately why I cannot consider here what Rosinca did when it cancelled the direct debit on this mortgage. But Messrs P have also complained that Rosinca made it unnecessarily difficult to reinstate that mortgage. And my provisional decision is that their complaint about that should be at least partly upheld.

Because I think this direct debit should have been reinstated in June 2023, I think that it is unfair for Rosinca to have marked the credit files of Messrs P with arrears after this. I think it is particularly unfair that Rosinca would do this in September 2023, when Messrs P had just made a very sizeable overpayment, and two monthly payments, the month before. But I also think it remains unfair to record a missed payment for December 2023, when Messrs P ought already to have been able to rely on a reinstated direct debit to pay their mortgage.

For those reasons, I think Rosinca should now remove the arrears markers it has placed on the credit files of each of the Messrs P for September 2023 and December 2023.

I do have to bear in mind that Messrs P do not appear to have responded very promptly to Rosinca's request for additional information, and they do not seem to have clearly clarified the legal status of their collective account to Rosinca during the time they were trying to have their direct debit reinstated. But I still think that Rosinca has caused considerable inconvenience to Messrs P. So I think that Rosinca ought to make a payment of £500 in compensation to Messrs P. Rosinca can count towards that amount the offer it previously made of £50, if that sum has since been paid.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

Rosinca said it agreed with my provisional decision. For Messrs P, Mr P2 replied, to tell us Mr P1 had been unwell. He said that Mr P4 had been affected by not being able to remortgage, as a result of the missed payment markers on his credit file. Mr P4 then wrote to us, to say he'd needed to remortgage in December 2023, and hadn't been able to do that, because of the negative entries on his credit file. He said his mortgage payments had been almost double during this time, and he said he would like to get some of that money back.

My provisional decision set out that I thought Rosinca's service to Messrs P could have been much better here. So I asked Rosinca to make a payment of compensation for that. And I didn't think it would be fair and reasonable, in circumstances where I could see that Messrs P had made efforts to make payments to this mortgage, for their credit files to show missed payments on this mortgage for the next six years. Although that is an accurate reflection of the payment history on this account, I didn't think that fit well with the purpose of reporting arrears, which is *"...to indicate at the earliest reasonable opportunity that a customer is showing signs of potential financial difficulty or inability to manage his/her finances."* I didn't think that was the case here.

So I did think Rosinca had done something wrong here, and it needed to take some steps to put things right. But I also noted that Messrs P could have done more to avoid, or indeed to resolve, the problems they were experiencing here. I said that Messrs P did not appear to have responded promptly to Rosinca's requests for additional information. I also said that they didn't seem to have clearly clarified the legal status of their collective account to Rosinca during the time they were trying to have their direct debit reinstated. Messrs P haven't explained why these things happened. I also think that Messrs P did have a way to make payment on this mortgage, and if, as Mr P4 has now told us, he had an upcoming remortgage for a sizeable mortgage debt, it may have been prudent to keep a closer eye on the repayments for this mortgage.

I'm sorry to have to tell Messrs P, and Mr P4 in particular, that I don't think it would be fair and reasonable, in all the circumstances of this case, to ask Rosinca to reimburse him for the additional £2,000 per month that Mr P4 says he's had to pay for his other mortgage, while these negative markers have been on his credit file.

For the above reasons, I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Topaz Finance Limited trading as Rosinca Mortgages must remove the arrears markers it has placed on the credit files of each of the Messrs P for September 2023 and December 2023, and make a payment of £500 in compensation to Messrs P. Topaz Finance Limited trading as Rosinca Mortgages can count towards that amount the offer it previously made of £50, if that sum has since been paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P2, Mr P1, Mr P3 and Mr P4 to accept or reject my decision before 23 October 2024.

Esther Absalom-Gough
Ombudsman