

## **The complaint**

Ms L and Mrs T complain about the difficulties they have experienced in trying to pay off the mortgage they had with Topaz Finance Limited trading as Rosinca Mortgages.

## **What happened**

Ms L and Mrs T wanted to pay off their mortgage with Rosinca. In July 2022 they sent a cheque to Rosinca with the account number on the reverse together with a covering letter and the address of the account holders. The cheque was drawn on an account in the name of Ms L's late partner's legacy trust. At that time Mrs T was in the process of remortgaging her own residential property for a two-year discounted rate of 3.51% but this required her not to be a party to any other mortgages. But this cheque didn't clear.

On 19 August 2022, solicitors on behalf of Ms L and Mrs T contacted Rosinca to see what happened to the redemption and were told that Rosinca was unable to cash the cheque as it had been reversed by the bank. But when Mrs T attempted to complete the remortgage in September 2022 it became clear that the Rosinca mortgage hadn't been paid off.

In mid-October Ms L contacted Rosinca about paying the mortgage off from a trust fund in the name of her late partner and Rosinca raised no issue with this on the phone. On 7 November £95,654.04 was paid by CHAPS transfer to the Rosinca account but by 16 November neither party received confirmation that the account was redeemed. Rosinca then said that the mortgage wasn't redeemed, and the money had been returned to the original account.

Rosinca said that the original cheque hadn't cleared and so didn't redeem the mortgage. It said that it returned the payment in November as the payment was received from a third-party bank account which it could not accept because of its anti-money-laundering policies ("AML"). It said that it received the payment on 7 November 2022, it went through its account closure process and recognised that the payment couldn't be accepted on 17 November 2022 but did not return it until 29 November 2022. Rosinca said that on reflection the earliest it should have returned the money was the 24 November. As the mortgage was still open at this point, it offered to refund 5 days of interest. As Mrs T's remortgage depended on the redemption of the Rosinca mortgage and this was delayed by five days, subject to the receipt of certain information, Rosinca offered to refund the difference between the interest that Mrs T was paying on her existing mortgage and that on her new mortgage for five days. It also offered Ms L and Mrs T £100 each for their distress and inconvenience.

## **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.

The background to this was that in order to remortgage her own property, Mrs T needed this mortgage with Rosinca redeemed. Ms L and Mrs T's case is that Rosinca has been obstructive in preventing them redeeming the mortgage and that has caused the mortgage to continue meaning they had to pay further interest to Rosinca until December 2022.

The first attempt to redeem the mortgage was by sending a cheque in July 2022. But the mortgage wasn't redeemed because the cheque didn't clear. That was clearly not the fault of Rosinca although Ms L and Mrs T make the case that because Rosinca didn't tell them that the cheque didn't clear that the lender misled them to believe that the mortgage had been redeemed. But we would expect that a person writing a cheque would insure that the cheque will clear before writing it but it's also fairly easy to check if the cheque had cleared by checking the account. I consider that the responsibility for the cheque clearing and monitoring whether it did or not clear lay with Ms L and Mrs T. Nor does it seem that any earlier advice from Rosinca about the cheque failing to clear would have assisted Ms L and Mrs T in redeeming the account as, although they were aware of it not clearing in August, they didn't attempt to redeem the mortgage again until November 2022.

I'm told that after a phone call in October 2022, Ms L understood that a payment from a third-party account would be acceptable, Ms L and Mrs T attempted to redeem the mortgage by payment from Ms L's late partner's legacy trust account on 7 November 2022. The payment was received on 7 November and as it was from a third-party account and contrary to Rosinca's policy, it was returned but not until 29 November. Rosinca says that it had to identify the payment first, identify from which account it came and return it. But it accepted that it identified that the payment was from a third party on 17 November and should have returned the money five days earlier than it did and offered to refund £64.26 being five days interest.

There are two issues here, whether Rosinca misled Ms L in a phone call that a payment from a third-party account would be acceptable and the delay in returning the money. In respect of the first issue, I note that in our investigator's view that he said that Rosinca had no record of a call in October 2022 and that he didn't have enough evidence to say that Ms L told Rosinca that the funds were coming from a trust account. We received no further submissions from Ms L or Mrs T on this point and I'm not persuaded that I can say that Rosinca misled Ms L to believe that payment from a third-party account would be acceptable.

On the second point, I recognise why under the AML rules that Rosinca could not retain this money and that it was operating within its internal service level agreements in relation to processing and returning the payment. I agree that on discovering that the payment was unacceptable on 17 November that it should have returned the money earlier. Ms L and Mrs T would have suffered a loss because of this as they were paying interest on the mortgage they were trying to redeem for longer. Mrs T separately would have suffered a loss as she was unable to transfer to her new mortgage as she awaited confirmation that her joint mortgage was redeemed. They should be compensated for that loss.

I note that Rosinca offered to refund to Ms L and Mrs T five days interest on the existing mortgage or £64.26 which seems appropriate. In addition, Rosinca offered to refund the difference between the interest that Mrs T paid on her existing mortgage and what she would have been paying on her replacement mortgage for the five days. That seems reasonable. So, if Mrs T could have accessed her new mortgage earlier and would have been paying less interest she should be compensated for that loss. As Rosinca doesn't hold information about Mrs T's mortgages it has asked for documentation in order to calculate and verify that figure, Rosinca has asked for what seems to me to be the relevant documentation some of which it has already received. My understanding is that Rosinca hadn't received Mrs T's mortgage statement with her previous lender and that this was required to complete the

calculation. I will leave Mrs T to liase with Rosinca to provide the relevant documentation to calculate that figure.

I recognise that the delay in returning the money would have been frustrating for Ms L and Mr T whilst they waited to get the mortgage redeemed and the difficulties they had communicating with Rosinca by phone during this period. But I agree with Rosinca that a payment of £100 each to Ms L and Mrs T seems reasonable.

### **My final decision**

Topaz Finance Limited trading as Rosinca Mortgages has already made an offer to settle this complaint and I think this offer is fair in all the circumstances. Rosinca Mortgages should pay Ms L and Mrs T £100 each and refund them £64.26 being five days interest that they paid on their mortgage in November 2022, Rosinca should pay Mrs T the five days excess interest that she paid on her mortgage in November 2022 compared to her new mortgage on a like for like basis upon Rosinca receiving evidence it requires to calculate and verify that figure.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mrs T to accept or reject my decision before 7 February 2024.

Gerard McManus  
**Ombudsman**