

The complaint

K, a limited company, complains that when a mortgage it holds was transferred to Topaz Finance Limited trading as Hessonite Mortgages ("Hessonite") the direct debit for the mortgage was cancelled, and a payment for K's mortgage was missed.

Mr H complains on behalf of K.

What happened

Mr H told our service that K had previously held a mortgage with a different provider, and on 13 October 2023 that provider wrote to tell K the mortgage would be transferred to Hessonite on 23 October 2023. Mr H sent us this letter, and drew our attention to the section which told K, as it pays by direct debit, that it didn't need to do anything.

(Mr H also sent us a welcome letter from Hessonite, but it's not clear that this does relate to K's account. Mr H has a parallel complaint, about similar problems with a mortgage in his own name which transferred to Hessonite at the same time. There may have been some confusion here over the correspondence.)

Mr H said he checked K's bank account on 20 November, and noticed that the direct debit for this mortgage, due around 13 November, had not been taken. Mr H said Hessonite told him he'd cancelled the direct debit, but then when Mr H said he'd checked, and that wasn't the case, Hessonite said it had been cancelled by a different bank.

Mr H said K had incurred extra interest on this mortgage, because the direct debit wasn't collected in November. And Mr H was concerned his credit history may have been affected by this. Mr H said he'd also spent time trying to resolve this with Hessonite. Mr H said he'd had no response to his complaint. He wanted Hessonite to pay £5,000 in compensation.

Hessonite said that it received an instruction directly from K's bank, to cancel this direct debit. It suggested that Mr H take this up with that bank. Hessonite also responded to a data protection concern Mr H had raised, but I don't understand Mr H to have referred that issue to our service.

Hessonite said Mr H had also complained about the length of time it took to get through to someone. Hessonite said it understood that some of Mr H's calls may have dropped. It said it had recently made changes to resolve this problem.

Our investigator didn't think this complaint should be upheld. He said Hessonite had checked if it had cancelled the direct debit by mistake, and had confirmed that wasn't what had happened here. Hessonite had also shown our service that it wrote to K on 30 October, to say that the direct debit for this mortgage (which refers to more than one property) had been cancelled by K's bank.

Although Mr H said this letter wasn't received, our investigator thought it was sent, and to the right address.

Our investigator said that based on the evidence he'd seen, he wasn't persuaded that Hessonite cancelled K's direct debit. And it had apologised for the length of time it took for Mr H to speak to someone, apparently as a result of calls disconnecting. Our investigator didn't think Hessonite had to do any more.

Mr H disagreed. He said this direct debit was cancelled under a reference which related to the previous lender's bank, and he said that was done on 24 October.

Our investigator asked Hessonite about this, and it said it was sure it hadn't cancelled this direct debit. It said this was done by Mr H or his bank on 30 October, and provided evidence of this. So our investigator didn't change his mind.

Mr H said he didn't think that we'd dealt with K's complaint fairly. He mentioned a parallel complaint, raised in his own name, against Hessonite for the same problem. Mr H asked why he would cancel the direct debit for K, when he'd been told he didn't need to do anything.

Mr H also said he would expect to receive consistency from our service when dealing with complaints of a similar nature, and he didn't think that had happened here. But our investigator still didn't change his mind. Because no agreement was reached, this case then came 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 not propose to uphold it. This is what I said then:

Mr H has raised a similar complaint about a mortgage held in his own name. These complaints are being dealt with separately by our service, as K has legal personality in its own right. That means the complainants are not the same, although Mr H manages both complaints.

Mr H has said he thinks these complaints are essentially the same, and so they should be treated the same. In the interests of avoiding unnecessary inconsistency, I have considered both Mr H's and K's complaints, and I will refer here to evidence provided to our service in both these cases.

The complaint Mr H brought in his own name has been upheld. In that case Mr H was able to show our service a BACS report of the cancellation of his direct debit in favour of the previous lender, and then a second BACS report, setting up a new direct debit in favour of the new lender. These were dated 24 October 2023. Both our investigator and I found this to be persuasive evidence, and I note that when we asked Hessonite about this, and showed it this report, it decided that this problem was something it had caused, after all.

However, in this case, Hessonite says that although it does accept some things went wrong when it transferred mortgages from the old lender to the new, it doesn't think that's what happened here. It doesn't think it caused the problem with K.

If this direct debit had been cancelled as a result of some confusion at the time of the transfer of this mortgage from one lender to another, then I would expect that cancellation to happen very close to the time of the transfer. But here, the dates Hessonite has shown us for cancellation of the relevant direct debit, suggest that cancellation didn't happen in the same week as the transfer of this mortgage. And I note that the letter Hessonite issued, refers to the direct debit having been cancelled at K's request.

I also note that our service hasn't received the same persuasive evidence here, that Mr H was able to provide in the other case he asked us to look into. Mr H is welcome to submit further evidence in this case if he wishes, and I would of course review that before I finalise my decision here. But on what I've seen to date, I don't think it's clear here that what has gone wrong has been caused by Hessonite.

I think it's also relevant to this complaint that K, through Mr H, was aware of a potential problem with direct debits before K's mortgage payment was missed. When Mr H became aware of problems with the mortgage in his personal name, he spoke to Hessonite on 1 November. Mr H was adamant then that the problem had been caused by Hessonite, at the time of the transfer. K's mortgage account had been subject to the same transfer, at the same time. So it's not clear why Mr H didn't check the position of K's direct debit at this time, or indeed, before K's payment was due in mid-November.

There is a further difference between the two cases Mr H asked us to look into, which is that here, the complainant is K, not Mr H. And our service is only able to provide compensation for issues experienced by the complainant in the case. I could only ask Hessonite to pay compensation for any losses experienced by K. A business cannot experience distress.

Whilst K may be able to show some losses due to additional interest charged for November's missed payment, I do not think it would be fair and reasonable to ask Hessonite to make a payment to cover those. That's for two reasons. The first is that, on the evidence I have seen to date, and weighing up the balance of probabilities, I don't currently think it's most likely that Hessonite is at fault. And a secondary factor is that Mr H has not sought to mitigate the losses of K, by checking that K's direct debit remained in place after the transfer once he realised that his own personal direct debit had been cancelled.

I know that Mr H, on behalf of K, will be disappointed by my decision, but I don't think this complaint should be upheld.

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.

Hessonite said it had nothing to add to the provisional decision.

Mr H replied to object. He has sent our service further evidence from K's bank, which suggests this direct debit was cancelled earlier than Hessonite said, and in the same week as the mortgage transferred from the previous lender to Hessonite. Mr H said he thought that, on the basis of this evidence, his complaint should be upheld.

I wrote to Mr H at this point, to say that this evidence wasn't quite the same as that supplied in the other case, and to ask about the difference. I also said that Mr H hadn't commented on why he didn't check K's direct debit, when he found out that the direct debit for his own mortgage with Hessonite had been cancelled in error.

Mr H replied to say K's bank wasn't able to supply identical evidence in this case, and he forwarded an email from the bank confirming this. Mr H also said he had a large number of

buy to let mortgages in his sole name, so his personal bank accounts are balanced on a weekly basis. K only has one buy to let mortgage, so these bank accounts are balanced on a monthly basis.

I can see that when Mr H contacted Hessonite about his own mortgage, the next direct debit payment wasn't yet due. Mr H told us he did this because he received a letter telling him the direct debit for that mortgage had been cancelled. So I don't think Mr H contacted Hessonite about his own mortgage because he was reconciling payments, and noticed one had been missed. I think he contacted it in response to the letter it sent.

The address Hessonite holds for K is different to Mr H's personal address. So I think it's more likely that Mr H didn't receive the correspondence from Hessonite about the cancellation of K's direct debit as promptly as he received correspondence about his own mortgage, because of this difference in address. I don't think that's Hessonite's fault.

Because Mr H has now shown us that the direct debit was cancelled rather earlier than Hessonite suggested, and in the same week as the mortgage transfer was done, on balance, I now think it's most likely Hessonite did cancel this direct debit. But I said that my provisional decision rested on two points. Firstly, who I thought cancelled the direct debit. And secondly, that Mr H had not sought to mitigate the losses of K, by checking that K's direct debit remained in place after the transfer once he realised that his own personal direct debit had been cancelled.

I have to add to this second point, that Hessonite did write to K to tell it about the direct debit cancellation, at the address it holds for K. This letter was sent around a fortnight before K's direct debit was due to be taken, so in good time to trigger the same checks for K that Mr H made for his own mortgage.

I still think it would have been prudent for Mr H to check K's direct debit remained in place after it had been subject to the same transfer as his own mortgage. Particularly as Mr H was adamant from the outset that his own direct debit had been cancelled by Hessonite in error.

I also note that Mr H then contacted Hessonite about K's missed payment in the same month the direct debit was missed, but he said he preferred to wait until the direct debit was reinstated to make K's payment. Mr H told Hessonite he thought this would affect K's credit file, so it's not clear why Mr H wouldn't make this missed payment right away, to avoid arrears.

So I do now think this direct debit was cancelled in error by Hessonite. But, given that I think Mr H ought to have been alerted to this by a letter sent to K in late October, or by the similar letter sent to him personally at the same time (which we know he acted on) and given that Mr H then chose not to make up the payment right away, I think Mr H has missed opportunities to significantly reduce the impact this mistake had on K.

We know that Mr H spoke to Hessonite on 1 November. If he had simply enquired about K's mortgage then, the subsequent problems would have been avoided. I don't think the issues that Hessonite caused here, needed to cause K any additional inconvenience, over and above that experienced by Mr H in his personal capacity as a result of the cancellation of the direct debit for his personal mortgage.

Because of that, I haven't changed my mind about this case. I still don't think it should be upheld. I'll now make the decision I originally proposed.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 25 July 2024.

Esther Absalom-Gough

Ombudsman