

The complaint

Mr and Mrs G have raised a number of complaints about Paratus AMC Limited trading as Foundation Home Loans (and referred to here as Paratus). In summary the complaint is:

- the mortgage was mis-sold in 2005;
- because the mortgage hadn't been properly executed, it was null and void;
- they want evidence Paratus had money to lend at mortgage application stage;
- the solicitor who dealt with the mortgage is no longer in practice and so they believe the mortgage was fraudulent;
- selling the mortgage to another business was in breach of the regulator's principles on Treating Customers Fairly (TCF);
- they are unhappy that Paratus is pursuing them for the shortfall debt after the property was repossessed and sold in 2008, as this is outside the Limitation Act;
- Paratus' decision to withdraw court proceedings to pursue the debt is unfair;
- Paratus hasn't acted fairly in relation to putting in place a payment plan for the shortfall debt.

What happened

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's 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, what happened is this. In June 2007 Mr and Mrs G took out a mortgage on their home with Paratus. The mortgage was used to repay their existing mortgage to another lender. Unfortunately the mortgage account fell into arrears.

For a short period between September 2007 and June 2008 the mortgage was owned by another business before being transferred back to Paratus.

On 11 September 2008 a possession order was granted. On 22 September 2008 the property was voluntarily surrendered by Mr and Mrs G. and was sold on 19 December 2007, leaving a shortfall debt of almost £61,000.

On 30 May 2019 Paratus issued court proceedings to obtain a money judgment for the shortfall debt. Mr and Mrs G issued a defence to the proceedings. After reviewing what

Mr and Mrs G had said about their financial circumstances, Paratus took the commercial decision to withdraw the proceedings.

Mr and Mrs G then raised their complaint, as detailed above. Paratus didn't uphold the complaint and so it was brought to us, where an investigator looked at it. He didn't think Paratus had done anything wrong. He was also satisfied Paratus was entitled to pursue the shortfall debt.

Mr and Mrs G asked for an ombudsman to review the complaint.

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 will take the complaint issues in order as listed above.

Mis-sale of the mortgage: Paratus didn't sell the mortgage. It was arranged by an independent broker, which is no longer in business. I note Paratus has already given Mr and Mrs G details of the Financial Services Compensation Scheme, to which they can refer, should they wish to do so.

Void mortgage: I have no power to determine whether or not a mortgage is void – only a court is able to do this. The mortgage was used to pay off Mr and Mrs G's previous mortgage to another lender, so there is no dispute that Mr and Mrs G had the benefit of the money loaned by Paratus. If the court had thought there was no valid mortgage, it would not have granted a possession order.

Evidence of the funds Paratus lent: Paratus is under no obligation to disclose information about where it raises funds to lend to mortgage borrowers. This is part of its wider commercial operations and so is not something which falls within the scope of a complaint about an individual mortgage account. As I have said above, Mr and Mrs G used the funds from Paratus to pay off another mortgage. It follows that they must have been satisfied at the time that there was nothing wrong with this.

Their solicitor is no longer in practice: The solicitor who acted for Mr and Mrs G and Paratus was struck off the Roll of Solicitors on 20 October 2008, for reasons unconnected with Mr and Mrs G's mortgage. Given this, I find no relevance to their argument that this in some way affected their mortgage to Paratus.

Sale of the mortgage in 2007: The account terms and conditions allow Paratus to transfer the mortgage to another business, which then assumes all the rights and obligations under the mortgage contract – including allowing that business to transfer the mortgage back to Paratus (which is what happened in 2008). This is not a breach of TCF, and Mr and Mrs G's consent to a transfer of ownership of the mortgage is not required.

Court proceedings to recover the shortfall debt: Mr and Mrs G say that Paratus' claim against them is statute-barred. They are also unhappy that Paratus withdrew its court proceedings against them.

The Limitation Act 1980 sets out the rules on how long a Paratus has to take certain action against Mr and Mrs G to recover the debt. There has been some confusion in the past about mortgage shortfalls and the Limitation Act. However, the Court of Appeal has now decided that the following limitation periods apply to mortgage shortfall debts.

Where the amount is capital, Paratus has 12 years to recover the debt. In relation to interest, Paratus has six years to recover the debt. As this is a mortgage shortfall debt, and the mortgage was interest-only, I think it is more likely than not that the outstanding balance of £60,000 is unpaid capital.

The FCA's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB), says that a lender 'must deal fairly with any customer who has a mortgage shortfall debt'. A lender does not have to recover a shortfall debt, but if they do, they must tell the borrower in writing, within six years of the date the home was sold.

I'm satisfied Paratus contacted Mr and Mrs G about the shortfall debt within six years of the date the property was sold. The last payment received towards the debt was on 14 January 2011. Mr and Mrs G have also acknowledged the debt by discussing it with a field agent in 2017, and with Paratus in 2018. Given this, the time limits which apply to recovery of the debt have been re-set.

Ultimately it would be for a court to decide whether or not any claim for the debt by Paratus is statute-barred. But given the contact between Mr and Mrs G and Paratus since 2008, I'm satisfied Paratus is entitled to pursue the debt.

Paratus decided, for commercial reasons, to withdraw the court proceedings for recovery of the debt, after noting what Mr and Mrs G had said about their financial circumstances. That's a business decision Paratus is entitled to make. The conduct of litigation doesn't fall within the scope of our rules, so I can't comment any further on this.

I appreciate Mr and Mrs G are disappointed that they will not now "have their day in court" to argue all their points about why they believe the mortgage is void and why Paratus can't chase them for the debt. But I can't force Paratus to take legal action if it doesn't want to do so.

Unsympathetic treatment by Paratus: I appreciate Mr and Mrs G have found Paratus' contact about the shortfall debt to be unwelcome. Lenders are required to keep borrowers informed of how much they owe. I can see how Mr and Mrs G thought these letters were unsympathetic to their circumstances, but they were factual and explained how much was owed. I don't think a field agent visit was intrusive, as it was necessary for Paratus to have up-to-date information about Mr and Mrs G's situation. I acknowledge they found this distressing.

I think Paratus has tried to work with Mr and Mrs G to agree a payment plan and even offered to reduce the debt by more than 50%. I don't think Paratus has been unsympathetic or unfair to Mr and Mrs G in this respect, although I do understand why Mr and Mrs G might think otherwise. I would remind Paratus of its obligation to treat Mr and Mrs G fairly and sympathetically when considering any payment proposals.

I don't underestimate the effect these events have had on Mr and Mrs G, and I appreciate this isn't the outcome they wanted, but after taking everything into consideration, I don't think Paratus has done anything wrong.

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 Mr G and Mrs G to accept or reject my decision before 4 January 2021.

Jan O'Leary
Ombudsman