

The complaint

Ms C complains that Paratus AMC Limited is now asking her to pay the shortfall for a mortgage. She told us that the shortfall must date back to around 2007 or 2008, and Paratus hasn't been in touch about this debt for many years.

What happened

This decision deals only with what has happened since 2020, when Ms C was contacted by a law firm working for Paratus, and asked to pay the shortfall on her mortgage.

As part of her complaint about Paratus' recent efforts to collect a debt which dates back to 2008, Ms C wanted our service to look into what happened when she first took out this mortgage, when she then surrendered the mortgaged property, and when it was sold, leaving a shortfall. Our service has explained to her separately why we aren't able to look into that.

Ms C said she was contacted out of the blue in late 2020, and asked to pay a debt of around £105,600. Ms C said she was very distressed indeed to be told she owed so much money, and she said she did at first agree to pay. But she now describes that as an irrational decision, caused by the stress of the request. She told us that she stopped the payment at the end of October 2022.

Ms C said she wanted Paratus to justify the original debt, which I've explained I'm not looking into here. But she also said she didn't think it was fair to ask her to pay this now, after such a long time.

Ms C says she gave Paratus her new address when she first moved out of the mortgaged property, and although she has moved again since, she said she wouldn't have been difficult to find. She lived and worked in the UK throughout this time. Although Ms C had gone back to using her maiden name after she took out the mortgage, Paratus knew this. So Ms C says Paratus could have found her if it had wanted to, and she doesn't think it's fair that she's only being asked to pay this money now.

Paratus said that Ms C handed back her mortgaged property voluntarily in 2007. The sale of Ms C's property in 2008 unfortunately left a shortfall. Paratus said that it didn't think it was unfair for it to ask Ms C to pay this now.

Paratus has shown our service that Ms C was making payments towards this debt between 2008 and 2010. It has also said it tried to trace her in 2013, without success.

Our investigator didn't think this complaint should be upheld. He said that because Paratus was trying to trace Ms C in 2013, it hadn't given up on collecting this money. And he said that, whilst he appreciated that it would be upsetting for Ms C to be contacted again after such a long time, it wasn't unfair for Paratus to ask for the money back. He said this debt was always owed, and he'd encourage Ms C to talk to Paratus or its law firm about this.

Ms C challenged this decision. She still felt Paratus hadn't acted fairly back in 2008, and wanted our service to look at that. She said Paratus hadn't been in touch since 2008, and told us her recent subject access request hadn't produced any evidence of correspondence with her about the debt. Ms C said she'd lived at her current address for over a decade. She explained her profession and personal background, which she said meant she could easily have been located at any point since 2008 using a credit search and the electoral roll. And Ms C said she'd made clear at the time her initial agreement to pay wasn't an admission of fault. She'd stopped the payment because she was convinced there were discrepancies.

Ms C wanted an ombudsman to consider her complaint, so this case was passed to me for a 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:

I do understand it would have been distressing for Ms C to be contacted again, about such a large debt, after such a long period of time. So I understand why she wanted our service to look into everything that happened on this mortgage. I've explained separately why we aren't able to look over the full history of her mortgage, including the surrender and sale of her property. But I still think I'm able to reach a fair and reasonable outcome on this complaint, looking at what has happened more recently.

I'm satisfied that Ms C's property was sold in 2008, and funds received from the sale were used to clear part of her mortgage then, but there was a sizeable shortfall. It is unfortunate that Paratus hasn't kept details of the correspondence it sent to Ms C at the time, so we cannot see that she was properly notified about the extent of the shortfall and Paratus' intention to reclaim this from her. However, I do think Ms C must have been at least aware of the existence of a shortfall at the time, because I'm also satisfied that Ms C did make some payments towards the shortfall between 2008 and 2010.

Ms C's payments at the time were modest, particularly in relation to the overall debt. These payments were also sporadic. They appear to have stopped in late 2009, with only a single one-off payment then made in 2010.

Our investigator said he didn't think Paratus had given up on collecting this debt. But I've not reached quite the same conclusion there. Paratus says it had tried to trace Ms C after she stopped paying, but its only evidence of this would appear to be a single note in early 2013, which reads as follows –

Closed with DMS acct reviewed and closed - unable to locate address for debtor, this has been no trace on several occasions

There are no details of those "several occasions" when Paratus apparently couldn't trace Ms C. Indeed, there are no details of any of Paratus' efforts to trace Ms C up to and including the date of this 2013 note, and thereafter, nothing to suggest Paratus or its agents made any further efforts to find her, until 2020.

At the point in 2020 when Ms C was located, Paratus' notes say Ms C was using a different name. However, it's not clear why this is noted at that point, because the evidence Paratus has provided shows its agents were aware in 2009 Ms C had reverted to her maiden name.

Considering the limited evidence we have on the efforts to find Ms C, and the evidence she herself has offered of her personal history (including where she lived and her employment status) it does seem to me to be surprising that Paratus lost contact with Ms C for so long. I'm not able to say here that Paratus made reasonable efforts to continue to pursue this debt after 2010, before it suddenly re-established contact in 2020.

I think the outcome of this for Ms C has been particularly harsh, in this case. She's told us she lives on a modest income, in rented accommodation. She's now being asked to pay a debt of over £100,000, and has been threatened with legal action to enforce this. This is around ten years after all contact from Paratus had stopped, and must appear to Ms C, after all this time, to be somewhat out of the blue. Considering all the circumstances of this case, but particularly that I think it's likely that diligent efforts to trace Ms C by Paratus or its agents would have meant contact was not lost throughout this considerable period of time, I don't think that's a fair and reasonable outcome.

My provisional decision is therefore that it is simply unfair, in the particular circumstances of this case, for Paratus to seek to enforce this debt now. So my provisional decision is that Paratus may not seek, either directly or through agents, to contact Ms C again about this matter, or make any other efforts to enforce or to obtain value from this debt.

I should caution Ms C that this decision is provisional, and will be reviewed in the light of any further evidence or argument from either side, so it could change. However, my current view is that asking Paratus not to enforce this debt would provide a fair and reasonable outcome to this complaint.

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.

Ms C replied, and told me about the effect Paratus' attempts to get her to pay this debt had on her health and wellbeing over the last three years. She thanked me profusely for my provisional decision, and said she hoped Paratus would also accept this outcome. But Paratus didn't accept. It wanted to make a number of points in response.

Firstly, Paratus said that Ms C had been aware of the shortfall since 2008, as shown by the payments she made from 2008 to 2010, then again from 2021 to 2022. So Paratus said this debt shouldn't have come as a surprise to her.

Paratus said after it had re-established contact with Ms C in late 2020, it gave her time to take advice, then set up a payment arrangement with her. She made 19 payments towards the shortfall from May 2021 to November 2022. Paratus said it couldn't understand why Ms C would only complain about the gap in contact, well after seeking advice on her position, and setting up but then breaking a payment arrangement.

Whilst I understand Paratus' wish to set this case firmly against its background, I don't think this assists with my decision, which focussed on the time between Ms C's first payments towards this debt, and the re-establishment of contact in 2020.

Paratus then turned to this period. It said that attempts were made to contact Ms C during this time, by its recovery agents. Paratus said its agents were attempting to contact Ms C after she stopped payments in 2011 until 2013. (I think this is an error, and Ms C's payments stopped earlier than 2011. Regular payments stopped in 2009, and there are no payments at all after late 2010, until much more recently.)

Paratus said its agents did close their file for a period in 2013 when contact with Ms C could not be established, but Paratus said the agents were then reinstructed and continued to make attempts to engage with Ms C until September 2016.

Paratus said it couldn't evidence this, because of the length of time since the agents had closed their files. But it said a periodical report from 2016 showed the agents had traced Ms C to an address, which Paratus gave. Paratus said the agents would have been writing to Ms C at the time. Paratus also said that recent searches showed this was Ms C's address from 2007 to 2017, and it was the address that Ms C confirmed she had moved to, when she left the repossessed property, in June 2007.

Paratus thought Ms C would just have been ignoring its letters in this time.

Paratus repeated that Ms C was aware of the debt, and that it was willing to enter into a payment arrangement. It said it had been disadvantaged, due to the passage of time and the complaint being raised at this late stage, so it couldn't show letters were sent by its recovery agents. But Paratus said it still thought that it remains able to pursue Ms C for the shortfall.

I haven't reached the same conclusions that Paratus has reached here. The document Paratus has sent us, which it says comes from 2016, is no more than a note of Ms C's previous name, with an address that she herself gave Paratus in 2007. By 2016, Ms C appears to have been using her current name, which I understand is simply her maiden name, for several years. The note doesn't show this, although we know Paratus was aware of this as early as 2009. So this 2016 note apparently only records the information Paratus had held since 2007. I don't think this provides compelling evidence that Paratus' agents had traced Ms C in 2016, or that it was taking active steps to recover the debt then.

I do think it's also relevant to question why, if Paratus' agents had traced Ms C in 2016 and were confident then that she was simply ignoring its letters, they didn't take further steps to enforce what is a very sizeable debt. It is surprising that Paratus didn't then take steps such as the court proceedings which Paratus' lawyers threatened in 2020.

I understand Paratus' concerns about its lack of access to supporting evidence in this case, given the passage of time, but I think this disadvantage has arisen at least partly for the same reasons that this case has been upheld, which is that Paratus simply doesn't appear to have been taking proactive steps to enforce this debt for a considerable period.

For the reasons set out above, I haven't changed my mind in this case. I still don't think, in the circumstances of this case, that it's fair for Paratus to seek to enforce this debt now. So I'll now make the decision I originally proposed.

My final decision

My final decision is that Paratus AMC Limited may not seek, either directly or through agents, to contact Ms C again about this matter, or make any other efforts to enforce or to obtain value from this debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 18 March 2024.

Esther Absalom-Gough
Ombudsman