

## **The complaint**

This complaint has been brought on behalf of W, a limited company, by its director (who I'll refer to as Mr W).

Mr W says Paragon appointed a receiver when W was in the process of re-mortgaging and hadn't breached the terms and conditions of the mortgage. He asks that the receiver is removed.

## **What happened**

W has had a buy to let mortgage with Paragon since 2004. The mortgage is secured on a leasehold property.

Mr W provided some background to the complaint. He says W applied for additional borrowing in 2016 to fund the purchase of the freehold. Mr W says this would have enabled a profitable sale of the property. W applied again for a further advance in 2023. Paragon declined both requests.

The mortgage fell into arrears in 2023. Paragon instructed a field agent to visit the property. The field agent reported that the property was being rented out via a short-term holiday rentals app. Paragon said this breached the mortgage terms and conditions and the mortgage was also in arrears. On 22 May 2023 it issued a formal demand for repayment of the balance within 15 days. This also said it may appoint a Law of Property Act receiver. Paragon appointed a receiver on 8 June 2023.

Mr W says he told Paragon on 7 June 2023 he intended to re-finance. He says he'd cleared the arrears, which came about due to Paragon failing to take direct debit payments.

Mr W says he had an offer from another lender in mid-June 2023 which couldn't proceed because Paragon had appointed a receiver. He says Paragon didn't provide evidence of the breaches of the mortgage terms and conditions it claims happened. Mr W says Paragon refused to remove the receiver so that he can re-mortgage the property. Mr W says the receiver locked the property, which meant it couldn't be let and he lost income as a result.

Paragon told Mr W it would consider removing the receiver for up to 12 weeks if certain conditions were met, including that the arrears were cleared and it received a copy of a mortgage offer.

Our investigator said it wasn't unreasonable for Paragon to appoint a receiver, given the property was used for short term and holiday lettings in breach of the mortgage terms and the mortgage was in arrears.

Mr W didn't agree. He said Paragon had sent emails to the previous director (who he replaced in mid-May 2023). He said he was taking legal advice as to how the re-mortgage could be restored.

## **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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Paragon appointed a receiver on 8 June 2023. Mr W says this was unfounded. I've looked carefully at the situation when Paragon appointed the receiver.

- The mortgage terms and conditions specify the types of tenancy that are permitted. This doesn't include short term or holiday lets.
- The deed of charge says W must not allow the property to be used other than for residential occupation. It says the outstanding balance is due and payable if a payment is late. It says Paragon has the right to appoint a receiver.
- Paragon tried to take direct debit payments at the end of March 2023, April 2023 and May 2023. These were returned unpaid. It wrote to W about this, asking it to make payment. By early June 2023 three payments had been missed.
- Paragon wrote to W in early May 2023 saying it had tried to contact it about the arrears. It said it may instruct a field agent to visit.
- The field agent's report says they telephoned and visited the property on 16 May 2023. The field agent found the property unoccupied, but neighbours said it was rented out via a short-term holiday rentals app. The agent checked, and the property was listed and had bookings on the app.
- Paragon issued a formal demand on 22 May 2023. It asked for repayment of the balance within 15 days. It said it reserved the right to appoint a receiver without further notice.
- Payments were made into the mortgage account in late May and early June 2023 to clear the arrears.
- Mr W sent an email to Paragon on 7 June 2023. This said as of 6 June 2023 the mortgage wasn't in arrears, the property hadn't been sublet and they'd always complied with the mortgage terms, and "we will pursue with others to the removal of your land charge in due course".

In the circumstances, I don't think it was unreasonable for Paragon to appoint a receiver.

Mr W says it was wrong for Paragon to appoint the receiver the day after he'd told it he'd re-finance. If Mr W had provided evidence to Paragon in early June 2023 that W would soon be in a position to repay the mortgage, matters might have unfolded differently. But I don't think Mr W's email of 7 June 2023 was sufficiently clear as to how and when the mortgage would be repaid for me to say it was unreasonable for Paragon to appoint the receiver.

Mr W says the receiver changed the locks so that the property couldn't be let, meaning no rent was collected. The receiver told Paragon they allowed the tenant to return. This was after the tenant provided part of an assured shorthold tenancy agreement and agreed not to sublet the property. Although the tenant was asked to pay rent to the receiver, the tenant told the receiver they'd already paid rent in advance.

W didn't make mortgage payments after the receiver was appointed – direct debits were returned unpaid until Paragon stopped trying to collect them later in 2023. The tenant didn't pay rent to the receiver. The account again fell into arrears.

In early October 2023 Paragon told Mr W it would dis-instruct the receiver for up to 12 weeks to allow the property to be sold or re-mortgaged. This was on condition the arrears were cleared and provision of a mortgage offer (addressed to M or a property purchaser) and details of the acting solicitor.

I think Paragon made a reasonable offer to allow Mr W to arrange a re-mortgage. It's entitled to take steps to protect its security and recover the debt. I don't think it's fair and reasonable to require Paragon to dis-instruct the receiver.

The receiver was appointed by Paragon. However, once appointed, the receiver acts as the borrower's agent. Paragon isn't responsible for the actions of the receiver and this isn't something we can look into.

Mr W says Paragon sent emails to the director he replaced in mid-May 2023. I can see from Paragon's notes that it was made aware of a change in W's directors and acted accordingly. I can't see that it made an error.

Mr W feels strongly that Paragon's appointment of the receiver was unfounded. He says he's taking legal advice. If W doesn't accept my decision, it will be free to raise the matter in court if it wishes to do so.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 1 July 2024.

Ruth Stevenson  
**Ombudsman**