

complaint

Mrs M and Mr S have complained about the way Paragon Finance Plc has dealt with them during a period of financial difficulties. To put the matter right, Mrs M and Mr S want Paragon to put them back in the position they'd have been in if they hadn't had any financial difficulties.

background

Mrs M and Mr S have a second charge secured loan with Paragon taken out in 2004. They borrowed £32,000 over a period of ten years. On 6 September 2005 Paragon was granted a suspended possession order.

The loan is unregulated and only became subject to the jurisdiction of the Financial Ombudsman Service on 1 April 2014. This complaint concerns events since that date.

The loan term came to an end in August 2014, but there is still around £30,000 due to be repaid to Paragon.

Mrs M and Mr S have been unhappy with Paragon for several years and raised a number of previous complaints, which were addressed in final response letters sent in 15 September 2016, 15 March 2018 and 22 June 2018 as follows:

- Paragon refused to send them a copy of a financial statement completed in 2016;
- Paragon continued to take payments after November 2017;
- Paragon proceeded with litigation action;
- interest was charged on the unpaid balance;
- dissatisfaction about the way they were spoken to when during a telephone call on 6 March 2018.
- Paragon added legal fees to the account.
- Paragon refused to accept their offer of payment.
- Paragon didn't make anyone available to speak with them on a Saturday.
- Paragon's failure to send confirmation in writing of a decision to refund interest applied to the account from July 2015.

Paragon has a possession order on the property and a warrant of eviction had been due to be executed in on 19 May 2019. On 17 May 2019 Mrs M and Mr S complained to the Financial Ombudsman Service and so matters were put on hold pending the outcome of the complaint.

Mrs M and Mr S are unhappy about the way Paragon has dealt with their arrears. They are unhappy that Paragon added charges to their account prior to 2014. Mrs M and Mr S also object to Paragon continuing to charge interest on the unpaid balance of the loan after the term ended in 2014.

An investigator looked at the complaint. He explained to Mrs M and Mr S that we could only consider events that took place after 1 April 2014, when this loan came under our jurisdiction.

He noted that Paragon didn't consent to us looking at any of the issues covered by the previous final response letters sent in September 2016, March 2018 and June 2018. The

investigator was satisfied those complaint had been brought more than six months after the final response letters, and there were no exceptional circumstances to explain the delay.

The investigator was satisfied that fees and charges added to the account after June 2018 were fair and reasonable. Paragon had needed to take legal action, and so was entitled to add the litigation costs to the account.

The investigator also noted that there had been numerous payment arrangements between Mrs M and Mr S and Paragon since the loan expired, but that these had not always been kept to. As a result, Paragon had withdrawn concessions to freeze interest and accept reduced payments.

In all the circumstances, the investigator thought Paragon had acted reasonably and so he didn't recommend the complaint should be upheld.

Mrs M and Mr S didn't accept the investigator's findings. They've made some detailed points about their circumstances since 2004. They feel aggrieved that they have paid Paragon thousands of pounds over the years, yet Paragon is still expecting them to pay £600 a month or else it will evict them. They have reiterated that they want to be put in the position they would have been in if they hadn't had any financial difficulties.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The evidence in the case is detailed, running to several hundred pages of documents and numerous telephone call recordings. I've read everything and listened to all the calls, 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.

This loan didn't come within the scope of the Financial Ombudsman Service until 1 April 2014. This means I can't look at anything that happened before that date. So although I've noted everything Mrs M and Mr S have said about their situation before then, it's not something I can take into account.

I'm also satisfied that we can't consider any of the issues (as listed above) which were addressed by Paragon in final response letters sent in September 2016, March 2018 and June 2018. Those letters explain that a complaint must be made to us within six months of the date of the letter. The complaint was first raised with us on 17 May 2019. There are no exceptional circumstances to explain the delay, so those complaints are out of time.

The issues I can consider are the administration of the account and the fees and charges added to the account after June 2018.

Account administration: I appreciate Mrs M and Mr S are in a difficult position. The term of their loan came to an end six years ago and the balance is due in full. Paragon is entitled to be repaid, and so I don't think there is anything wrong in Paragon looking to recover the debt. The court has already decided that the money is owed to Paragon, so I don't have any power to change that.

Given this, although Mrs M and Mr S want to be put in the position they were in before they were in financial difficulties, the court has already made a ruling on how much they owe Paragon. If Mrs M and Mr S think this isn't fair, they'll need to refer it back to court.

Paragon is required to treat customers in financial difficulty positively and sympathetically. But this doesn't mean allowing unlimited forbearance where a substantial debt is owed or where the loan term has come to an end. That's because any payment arrangements are intended to be short-term measures to allow borrowers to recover from financial difficulties which are not permanent or long-term.

Where a reduced payment is accepted, it can provide some short-term breathing space for a borrower in financial difficulty. But the unpaid interest and capital will still have to be paid back at some point in the future.

But where borrowers are in long-term financial difficulties, it can be irresponsible for lenders to agree to accept reduced payments over an indefinite period, because this simply increases the debt owed by the borrowers, making their financial difficulties worse.

I'm satisfied payment arrangements have been made between Mrs M and Mr S and Paragon which haven't been adhered to. As a result, Paragon has sought to recover possession of the property.

I don't think Paragon has done anything wrong here. The debt is due and payable in full. Paragon isn't under any obligation to continue to agree to payment arrangements in these circumstances, particularly where Mrs M and Mr S aren't able to make the minimum payment required by Paragon to cover the interest on the loan.

In all the circumstances, I don't think Paragon has acted unfairly in its handling of this account. I think Paragon has given Mrs M and Mr S sufficient time to make alternative arrangements to repay the outstanding balance on the loan.

Legal costs added to the account: I'm satisfied Paragon is entitled to recover its reasonable legal fees by adding these to the account balance. I appreciate Mrs M and Mr S think this is unfair, but where reasonable legal fees have been legitimately incurred by Paragon as a result of recovery action which Paragon is entitled to take, those charges are payable by the borrowers.

Other matters: I note this complaint was referred to us on 17 May 2019, two days before the eviction on 19 May 2019. I also note that the court has previously suspended warrants of eviction.

The Financial Ombudsman Service isn't a court, and we don't have any power to interfere in legal proceedings. Paragon agreed to put matters on hold while we were looking at this

complaint, but I must make it clear that we can't order Paragon to do so. The correct process for stopping an eviction is by making an application to the court – which Mrs M and Mr S have done in the past.

I would be remiss if I did not make it explicitly clear to Mrs M and Mr S that if the court issues another warrant of eviction and Mrs M and Mr S bring a complaint to us in the hope that we will ask Paragon to put matters on hold, we are unlikely to be able to interfere with the legal proceedings. I wouldn't want Mrs M and Mr S to be under any misunderstanding that we are an alternative avenue to suspending a warrant of eviction without them having to go to court.

Taking possession of the property is a last resort, but it's not unreasonable for Paragon to expect the debt to be repaid. This debt is six years overdue. At the present time, all mortgage lenders have put recovery action on hold, as the Financial Conduct Authority (FCA) has ordered this until at least 31 October 2020, and possibly later than that if the FCA issues further directives due to the pandemic.

But this gives Mrs M and Mr S several months of breathing space, during which time they can seek advice about their options. They may want to see an independent financial adviser, to discuss ways of raising alternative finance to repay the debt to Paragon. They might decide to sell their property and will have time to do this without the threat of eviction.

Or they may want to take advice about their debts from Citizens Advice, StepChange or Shelter, which are agencies providing free debt advice. We can provide contact details for those agencies, if Mrs M and Mr S would like us to.

But, as I've said above, I would not want Mrs M and Mr S to be under the misapprehension that the Financial Ombudsman Service will necessarily be able to stop any future eviction, once the point is reached where lenders are once again permitted to take this course of action.

Conclusion: I know this isn't the outcome Mrs M and Mr S were hoping for, but after taking everything they've said into account, I'm unable to uphold the complaint.

I appreciate Mrs M and Mr S's options are limited, but this doesn't mean that Paragon is under any obligation to continue to agree to payment arrangements when the entire debt is outstanding. So in all the circumstances – although I appreciate Mrs M and Mr S will not agree – I'm satisfied Paragon hasn't done anything wrong.

my final decision

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr S to accept or reject my decision before 13 September 2020.

Jan O'Leary
Ombudsman

