

complaint

Miss G, represented in the complaint by Mr H, has complained about a loan granted by Paragon Finance Plc. In summary Miss G says:

- she was fraudulently sold a product that falls short of the “Treating Customers Fairly” guidelines set by the regulator;
- she has asked Paragon on numerous occasions to explain how the loan has been created and to provide her with evidence to establish the legality of the loan;
- Paragon has refused to answer the concerns she has raised about the validity of the loan;
- it is the responsibility of the Financial Ombudsman Service to adjudicate on these matters; failure to respond within the correct legal parameters will ensure that the Financial Ombudsman Service is also complicit in the deceit of banking customers.

background

In August 2008 Miss G took out a secured loan with Paragon, borrowing approx £44,000 (including arrangement fees) to be repaid over 25 years at a variable interest rate. The loan is regulated by the Consumer Credit Act 1974 and is secured by a second legal charge on Miss G's home.

In 2014 Miss G wrote to Paragon questioning the validity of the loan. Her letter was in a form copied from a template found on the internet and made various demands for documents and proof of the loan. Paragon provided a copy of the credit agreement, a statement of the account and the completion letter. Paragon offered to remove fees totalling £100 from the account as a gesture of goodwill. The account statement shows that it has done this, in February 2014.

Paragon noted that the account was in arrears and so provided Miss G with details of debt counselling services. It also told Miss G about the Financial Ombudsman Service.

Unhappy with Paragon's response, Mr H, on behalf of Miss G brought the complaint to us where it was considered by one of our adjudicators. In a detailed 3-page letter, our adjudicator set out her opinion on the complaint.

The adjudicator explained to Mr H that she was unable to recommend the complaint should be upheld. She was satisfied the debt was owed to Paragon and that Miss G had signed the loan agreement. The adjudicator's view was that the offer to remove £100 from the account was generous and that this was a fair resolution to the complaint. On the final page of her letter the adjudicator explained that if Miss G didn't agree with her findings, she could have the complaint reviewed by an ombudsman.

Mr H has now asked for the complaint to be reviewed. In summary he says that the adjudicator failed to deal with all the issues raised, so it now falls to me to issue a final decision on this complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I am satisfied that Paragon has replied to the questions put by Miss G and provided her with a copy of the relevant loan documents. That Mr H is unhappy with Paragon's response to the queries put to it does not mean that it has failed to answer the questions.

I understand Mr H believes that there isn't a binding or legally-enforceable contract between Miss G and Paragon. In support of this argument, Mr H has provided the letters sent by Miss G to Paragon - which have identical paragraphs to those contained in documents that are to be found on various 'debt avoidance' or 'debt cancelling' websites on the internet - in which Miss G has set out what appear to be legal or quasi-legal arguments in support of her complaint.

I have reviewed everything Mr H has provided and confirm that I'm familiar with the arguments put forward by him in support of his contention that there is no valid loan agreement between Paragon and Miss G. The arguments, in my view, have no basis in law, logic or common sense.

Mr H says that both we and Paragon have failed to consider the wider issues in the complaint – questions about the source of the funds Paragon loaned to Miss G and whether there is any proof that a loan was actually made. I am fully aware of the discussions on various internet forums about whether or not banks actually have any money to lend or whether all money is illusory and the rather convoluted arguments in support of these theories.

But these are not matters which are within the scope of our rules; we provide an informal dispute-resolution service for individual customers. Questions about how Paragon operates and the source of the funds it lends to its customers are operational and governance issues which fall within the remit of the regulator, the Financial Conduct Authority.

I must also explain that the Financial Ombudsman Service has no power to determine if a loan agreement is valid, void or enforceable or if there is a valid legal charge over a property; only a court or tribunal is able to do this. To my knowledge, no court or tribunal in the UK has found in favour of a borrower who has attempted to have a loan agreement written off or a legal charge set aside using the type of arguments put forward by Mr H.

What I'm required to do in accordance with the Financial Services and Markets Act 2000 and the DISP rules is to decide what's fair and reasonable in all the circumstances of this complaint. Here I see that the money borrowed by Miss G in 2008 was used to discharge debts she had incurred to seven other creditors. Miss G has had the benefit of the loan advanced by Paragon and so in my opinion it is only fair and reasonable that she should pay it back in accordance with the terms of the loan agreement.

I've seen the loan application, the loan agreement and the schedule of payments made to creditors on behalf of Miss G. From these I've seen no evidence to suggest fraud or that Miss G has not been treated fairly by Paragon. The loan was sold to Miss G by a mortgage broker, not Paragon.

In closing I will say this: in the event that the account remains in arrears Paragon has the option to seek possession of the property through the courts. Before that stage is reached, I would urge Miss G to seek advice from a legitimate debt advisory service, such as StepChange or the Money Advice Service, so that an arrangement to pay can be put in place. Paragon has already provided contact details for those organisations, but we can also provide them if Miss G would like us to do so.

If no arrangement to repay the arrears can be reached, Paragon may have no option but to take possession action. I sincerely hope that situation does not arise, but if it does, I would suggest Miss G takes legal advice from a qualified solicitor before attempting to defend any possession action using the arguments she has raised here in her complaint.

Paragon has removed £100 in fees from the account as a goodwill gesture. Because I'm satisfied Paragon has done nothing wrong in relation to the granting of the loan or the administration of the account, I don't require it to do anything else.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss G to accept or reject my decision before 23 February 2015.

Jan O'Leary
ombudsman