

The complaint

Mr T brings this complaint on behalf of D, a limited company. He complains that Paragon Bank Plc trading as Mortgage Trust caused considerable delays to D's attempts to secure mortgages to purchase two Buy To Let ("BTL") properties, so much so the seller pulled out.

What happened

Mr T told us that he'd signed, on behalf of D, an agreement to buy two properties from the same seller. Mr T said that in the area where D operates, reputation is very important. Mr T said D secured one of the two mortgages it needed, but the second was then declined, because of adverse marks on D's credit file.

Mr T said these marks were applied by Paragon, as part of an existing mortgage D held with it. Paragon had applied a retention to that mortgage, but D had simply never applied for the additional lending. Mr T told us Paragon had registered this as a default by D, so D wasn't able to get further lending.

Mr T said Paragon accepted this was a mistake, but it wouldn't remove this from D's credit file. Mr T told us the seller then withdrew from the sale. Mr T said D had paid fees for these new mortgages and costs associated with the aborted purchases. D also lost profit on the purchases. Paragon paid D's out of pocket expenses, but not the future losses. Mr T said D would have made around £40,000 in profit on the two houses D was trying to purchase (although he has said this is before tax, and assumes perfect payment of rent).

Paragon said it accepted it had wrongly put D's mortgage account in arrears, when it processed a retention on the mortgage, and it had reported this to credit reference agencies ("CRAs"). Paragon said Mr T spoke to it on 10 November, and it confirmed then that it had contacted the CRAs, asking them to amend D's file and remove these arrears.

Paragon said Mr T had checked D's credit file on 24 November, and said the arrears were still showing, but Paragon said the CRAs had confirmed D's file had been amended. On 2 December, Mr T confirmed the report had been updated.

Paragon said it would pay D's costs of the two sales which fell through and £250 in compensation, giving a total of £3,450.

Paragon understood that Mr T also wanted it to pay the loss of projected rental income for the next 5 years. But Paragon didn't think it should pay for D's future losses.

Our investigator didn't think this complaint should be upheld. He said Paragon's offer did provide a fair and reasonable outcome to the complaint. He said the complainant in this case is D, so he couldn't award anything to Mr T for the distress and inconvenience caused to him personally.

Our investigator said that in terms of future profit, even if he was satisfied that D would have purchased the properties, he couldn't be certain what sort of profit D might have made. He said any loss of profit would be speculative.

Mr T replied. He said that he didn't see why our service couldn't award compensation to D's directors, as D was essentially like a partnership. And Mr T thought there were some clear indications on likely profit.

Mr T then wrote again in detail. He said Paragon hadn't offered D a letter or anything else which might confirm this was Paragon's error. Mr T said that had seriously impacted D's reputation in the area where D operates, and would be likely to affect future business. D wouldn't be able to deal with this seller again, and Mr T said he couldn't defend D against any of the accusations being made.

Mr T said he thought an award between £1,500 and £5,000 would be appropriate here, to reflect the impact of the mistake Paragon made. Mr T said he wanted to stress that when D took out lending, its directors needed to sign a personal guarantee, so he said he didn't agree Paragon could treat this complaint solely as one made by a limited company, when it insists on personal guarantees.

Mr T sent us a timeline, and he said this had taken roughly 40 hours to fix Paragon's mistake, which was valuable time taken away from other business matters.

He said on both properties the offers were accepted, contracts exchanged, solicitors enquiries raised and answered, searches applied for and returned, surveys completed, and the only outstanding issue for each was the final mortgage offer. Mr T said the properties were both in good condition, with longstanding tenants, so income would have started right away. Mr T said the £250 Paragon had paid as compensation wouldn't be acceptable. He thought that if Paragon hadn't reported incorrect data about D, then D would have made over £40,000.

Mr T said if we disagreed, he wanted us to explain what more D could have done to complete the purchases, and why it should be disadvantaged by Paragon's incompetence.

Our investigator didn't change his mind. Because no agreement was reached, this case was passed to me for a final 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 not propose to uphold it. This is what I said then:

Firstly, I'd like to say that it is my view that this complaint has been correctly brought by D. The intended purchaser of the properties was, Mr T has confirmed, always D. He's shown us mortgage illustrations for both these properties, obtained before the memorandum of sale was signed. And it was a problem with previous lending to D, by Paragon, which marked D's credit file. Although Mr T said that he and the other director were the only two individuals behind D, the company does have its own legal personality, so I think the complaint before me is D's complaint.

That means, as our investigator has sought to explain, that our service isn't able to compensate Mr T, or any other person associated with D, for the impact of this complaint on them personally. Mr T said he didn't think that Paragon should be able to treat this as a complaint by the company, and avoid a payment of compensation to the directors. But Paragon doesn't set the rules on this, and I'm not constrained by Paragon's response here. Rather, I am governed by the law which allows our service to make legally binding awards. And that just doesn't let us make awards in that way. I have to confine myself here to looking at how this complaint affected D.

I can see that Paragon did make a mistake here, and wrongly marked D's credit file. It has accepted it did so. But that doesn't mean I can simply award what Mr T would like, a large payment representing the gross lost profit for around five years, on the properties he'd intended D would purchase.

It's my view that before I could fairly make an award of the sort Mr T would like, I'd have to be able to see two things. The first is that Paragon caused a loss to D. And the second is what that loss was.

I'm sorry to have to tell Mr T that I think there are difficulties with both of those points. Because this hasn't been set out in detail for Mr D before, this decision is provisional, and he can reply with further argument and evidence if he wishes.

I'll start with whether Paragon caused D's loss.

I can see that D did get a mortgage illustration for both properties before the memorandum of sale was signed. So at this point, D had no reason to suspect the purchases wouldn't go ahead.

The first property was surveyed on 19 October, and a mortgage offer was then received for one property, on 24 October 2022, at a rate of 4.49%. At this point, D's credit file must, presumably, have been unmarked.

The second property was surveyed slightly later, on 26 October. But D didn't then receive a second offer. Instead, Mr T has shown us an email alerting him to the problems with D's credit file, which were preventing the second mortgage offer being issued. This email was dated 28 October.

Paragon referred to the first contact from Mr T about D's credit file being in early November, but its notes suggest this was actually 31 October, when Mr T and his broker rang to ask why arrears were showing on the account.

Paragon investigated, realised what had gone wrong, and took steps to put things right. But Mr T said Paragon refused to put anything in writing, explaining what had happened. So he said he didn't have anything to show that this was Paragon's error, and he said this had seriously damaged D's reputation in the local area.

But Paragon's notes say on 10 November, Paragon sent the following email to Mr T –

"Following our telephone conversation, please accept my apologies for the error that caused the mortgage on [D's mortgaged property] to incorrectly report arrears on D's credit file. This was due to a system error and can confirm this has now been corrected and the account is showing as up to date. I have requested a correction for both October and November reporting to the Credit Reference Agency, please allow up to 10 working days for the correction to be applied."

So I think that from 10 November, Mr T did have written confirmation that the marks on D's credit file were a mistake, and Paragon had accepted responsibility for this. It had committed to putting things right.

Mr T told us it took longer than Paragon suggested, for D's credit file to be cleared. Paragon isn't entirely in control of that process, it has to ask the CRAs to make the changes for it. But I can see that Paragon did request the amendments promptly, as it

said. I can also see that it had received confirmation that these amendments were done by 24 November.

D then received a second mortgage offer on 30 November. This was conditional on a fresh credit search before completion, which would need to show that the arrears had been removed.

This offer was at a higher rate, of 5.29%, Mr T said the rate for this mortgage should have been the same as for the first mortgage. We know that 2 November saw a significant increase in the Bank of England base rate, by 0.75%. I think this is likely to explain the higher rate that D was offered for the second property.

Mr T has shown us that it was subsequent to this, on 9 December, that the seller decided to withdraw from the sale.

Mr T blamed Paragon for this, because he said he had nothing to show the seller that it was Paragon's fault the second mortgage offer was delayed. But I think D did have this evidence, and had held it since 10 November, when Paragon emailed Mr T to accept responsibility for the mistake, and confirm it had requested a correction. I don't know why Mr T didn't share that email with the seller.

So I can see Paragon caused a delay in the issuing of D's second mortgage offer, and that an offer could not have been made from 28 October, when the problem was first identified by D's prospective new lender, until 24 November, when Paragon received confirmation from the CRAs that the changes had been made.

But the point when the seller withdrew from this sale was over a fortnight after amendments were made to D's credit file, and over a week after D received its, albeit conditional, mortgage offer for the second property. So I'm not able to see that there is a causal link between the delay I can attribute to Paragon, and the seller withdrawing from the sale.

Mr T has also told us that all the other issues in the sale had already been resolved. So it isn't at all clear to me why Paragon's delay would cause the seller to restart the sale process elsewhere (with the obvious delay this would cause) after this problem had, as far as I'm able to tell, been resolved, and D was able to go ahead, although with a slightly increased monthly mortgage payment.

Publicly available information about these two properties suggests they each sold in early 2023, and that the sale price achieved for each was significantly higher than the price D had agreed to pay in August 2022. Unfortunately, it seems likely that the seller withdrew from this sale to D not because of the delay Paragon caused, but simply because he was able to obtain a higher price for the two properties elsewhere.

My provisional view is that Paragon did cause a delay in the issue of D's second mortgage, but it doesn't seem likely that Paragon was the cause of the subsequent collapse in D's two purchases. So I don't currently think it would be fair and reasonable to ask Paragon to do more than it has already done – cover all the costs of D's abortive purchases, and pay £250 in compensation.

I anticipate that Mr T may wish to respond on the above points, so I think I should also comment on the losses he said Paragon should pay for.

Mr T has argued those losses are considerable. He says D would have made around £40,000 in the first five years, from these two properties. That figure appears to be

around the amount suggested by the valuation rental income, minus the mortgage interest payable on both purchases as suggested on the mortgage illustrations for each. As it doesn't seem to allow for any purchase costs, running costs, or tax, I don't think this is likely to be an estimate I would be able to rely on.

If Mr T wanted me to reconsider, then he may wish to be aware that I think, even if I were to decide Paragon was responsible for the two purchases falling through, I think it would only likely to be reasonable to consider an award of net profit, and also that I would expect D to seek to mitigate its loss. So, for example, if these purchases which were intended to complete in December 2022, didn't complete then, D wouldn't start earning income on those purchases then. But I would, without other explanation, expect that D could mitigate its losses by making other property purchases instead, and that this would happen well within the five year period that Mr T seems to be suggesting for his losses.

I should also reiterate here that before I could award any loss of profit here, I'd first have to be satisfied it was fair and reasonable to hold Paragon responsible for D's losses. And at the moment, I haven't been able to reach that conclusion. I know Mr T, on D's behalf, is likely to be disappointed, but my provisional decision is that this complaint shouldn't be upheld.

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.

Paragon replied to say it had no further comments. Mr T replied on behalf of D, with further argument. I'll set those arguments out here, and reply to each point in turn.

Mr T said he felt he'd clearly demonstrated that D had been financially disadvantaged by what he thought was Paragon's gross negligence. Mr T said he would strongly refute the suggestion that these properties were sold later for more money, and that this was likely to be the reason for the seller's change of heart. Mr T said it certainly wasn't. He asserted that it was the negligent actions of Paragon that caused this.

I understand it's Mr T's firm belief that things went wrong with these two purchases, because of what Paragon did. However, I noted two points here.

The first was that the seller pulled out of this sale at a point when Mr T had told us all of the outstanding issues appeared to be resolved, and D had mortgage offers in hand to allow it to purchase each of the properties. So it seemed surprising that the seller would choose to, effectively, entirely restart the sale process at this point, with the inevitable additional delay.

The second was that the publicly available records of property sales, do suggest that these two properties sold for considerably more than the price agreed for a sale to D.

Those two points together led me to conclude that it was simply more likely that the seller had decided to sell elsewhere, for more money. I note Mr T's strong view to the contrary, but I do still think that.

Mr T said he thought this complaint hinged on whether the complainant was him personally, or D, the limited company. Mr T repeated that he and the other director had given a

guarantee which made them personally responsible for lending made to D. He said that meant what Paragon had done also put him at risk.

I set out in my provisional decision why I thought this complaint was correctly brought by D. The rules of our service do restrict the awards we are able to make, in some circumstances. However, in this particular case I am able to say that my decision would not have been different, if this lending had been made to Mr T and his fellow director personally, and the same scenario had unfolded.

Mr T said he understood I'd seen the email Paragon sent confirming it was responsible, but he said the seller understandably would not accept an email. He said he'd asked Paragon to communicate with the seller's solicitor, or the seller direct, and Mr T thought that might have helped, but Paragon refused.

I haven't been able to see that Paragon did refuse to email the seller directly, and Mr T has offered no evidence to support that. I can only see that Paragon was asked by D's broker to email the borrower, which I understand it did. I don't think I'm able to conclude that it's most likely that Paragon was asked to contact the seller directly, and it refused.

Mr T said he was very disappointed. Mr T said he'd also evidenced actual lost income. He thought that was irrefutable. He said he understood he'd given gross figures for D's loss, but said that £250 was a derisory offer.

When Paragon wrote to D about this complaint, it paid £250 in compensation, but it also reimbursed D for all of the costs of its two abortive purchases. So Paragon has paid D a total of £3,450, in circumstances where I haven't been able to see that Paragon was directly responsible for these sales falling through. I don't think Paragon has to do more, to provide a fair and reasonable outcome to this complaint.

Mr T said this was a massive data breach and our service should be making sure this hasn't happened to any other person or company.

I understand that Mr T thinks this is a serious matter, but on the wider impact, I should note that our service isn't a regulator. What we look at, is the circumstances of each individual complaint, and we seek to assess the impact of that on the complainant. We don't make awards for the purpose of punishing businesses, or deterring future wrongdoing.

I'm sorry to have to tell Mr T that for the reasons set out above, I haven't changed my mind. I'll now make the decision I originally proposed.

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 D to accept or reject my decision before 31 January 2024.

Esther Absalom-Gough
Ombudsman