

## **The complaint**

Ms S complains that she's been treated unfairly because Paragon Bank Plc (Paragon) have declined her request to be released from a personal guarantee.

## **What happened**

The background to this case is not in dispute so, I won't repeat it in detail.

Briefly:

- Ms S together with her husband are directors of a property company which I'll refer to as D.
- In December 2021 D applied to Paragon for a £268,000 mortgage to buy a property to add to its existing portfolio.
- Paragon offered the mortgage on a five-year fixed rate. They also made it a condition that Ms S and her husband gave Paragon a personal guarantee as additional security for the mortgage. Ms S and her husband signed the personal guarantee (the Guarantee) in March 2022 and the mortgage was completed a month later in April 2022.
- Subsequently, Ms S and her husband agreed to become divorced. According to Ms S, it was also agreed that they would separate their assets and reorganise the way that D would operate going forward. To that end, it was intended that Ms S would cease being a director of D. And so, given this change in her relationship with D, in October 2022 Ms S approached Paragon and asked to be released from the Guarantee.
- But Paragon declined her request. They told Ms S that anyone who's given the bank a personal guarantee in support of a mortgage has to remain as a guarantor until the mortgage is repaid.
- Ms S didn't think that was fair because she said D's other lenders had agreed to a similar request. She referred Paragon to the terms and conditions of the Guarantee – including clause 5 which she argued envisaged circumstances where a release by the bank is permissible subject to the guarantors covering relevant costs and expenses. Ms S believed therefore, that Paragon ought to take a more sensible and pragmatic approach in the same way the other lenders did and agree to release her from the Guarantee.

Paragon, however, maintained their position that they were under no obligation to agree to Ms S' request until D's lending is repaid in full. They said in circumstances where that is not the case, their policy is to decline such release.

As Ms S' complaint remained unresolved, she referred it to this service to investigate.

Our investigator didn't uphold the complaint because he too didn't think Paragon were obliged to release Ms S from the Guarantee. In particular, he said because the consequence of doing so would be that Paragon's security over D's borrowing would be compromised. He didn't think it was unfair for Paragon to set conditions for such release. In other words, the requirement that D's mortgage needed to be redeemed albeit, he acknowledged that would likely incur an early redemption charge in light of the fixed rate arrangement.

Ms S didn't accept the investigator's conclusions and has asked for an ombudsman to review her case. She said – in summary:

- Although the investigator has said Paragon is under no obligation to release her from the Guarantee, he's nonetheless failed to address why in that case there are provisions in the terms and condition of the Guarantee that allows that to happen.
- On the question of Paragon's security being potentially compromised in the event of her release from the Guarantee, she didn't believe Paragon conducted any due diligence to determine the accuracy of that position. That might have included for example having regard to D's payment history in relation to its other mortgages.

### **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.

Having done so, I agree with the investigator's conclusions and for broadly the same reasons.

But I start by saying I recognise this has been a difficult time for Ms S personally. And I understand she is frustrated by the decision that Paragon have made.

But for me to require Paragon to release her from the Guarantee, I'd need to find it had made an error or acted unreasonably – and I don't think they did. I'll explain why.

Lenders are entitled to determine for themselves the level of risks to which they're willing to become exposed. And sometimes such lenders and their customers disagree about the extent of those risks. I wouldn't criticise Paragon if, as Ms S believes, they didn't carry out the type of due diligence she believed they should. Paragon is unprepared to compromise their security for D's borrowing by releasing Ms S from the Guarantee. The decision whether or not to lessen that security is a matter for Paragon's commercial discretion. As ombudsman, I would only interfere if I were persuaded that that discretion has been exercised illegitimately. And in the circumstances of this case, I do not.

I don't think Paragon made the decision that they did in this case on an unfair basis. The Guarantee was given by way of additional security on a joint and several basis. And Paragon took what in my opinion is not an unreasonable view that releasing Ms S from the Guarantee leaving her husband alone as guarantor, presented too much of a commercial risk.

I've looked at the terms and conditions of the Guarantee and I've thought about Ms S' argument that the statement that Paragon has no obligation to release her from the Guarantee seem at odds with its provisions. Clause 5 to which Ms S has referred. says:

“5. *Costs*

5.1 *The Guarantors shall on a full indemnity basis pay to the lender on demand the amount of all costs and expenses (including legal and out of pocket expenses and any Valued Added Tax on those costs and expenses) which the Lender incurs in connection with :*

*(c ) any discharge or release of this Guarantee”*

I'm not persuaded this clause demonstrates a contradiction in Paragon's position as Ms S believes. The bank isn't obliged to release the Guarantee in circumstances where by doing so it is exposed to increased risk. Here, Paragon hasn't declined to release Ms S from the Guarantee. The Guarantee is joint and several as I've already alluded to. What Paragon is unprepared to do is to release one party – Ms S from her obligations under it. But they have said release is possible subject to their mortgage to D being redeemed and cost provisions referred to in Clause 5 being met.

I do understand that complying with the bank's condition will come at a financial cost to Ms S. In particular, by way of a possible early repayment charge given that D's borrowing would have to be released before the five-year fixed term ends. And I'm also aware Ms S perceived unfairness of Paragon's decision is further amplified when set against the decision made by D's other lenders in similar circumstances.

But different lenders have different criteria for lending and therefore the security they're comfortable to have in place to support that lending will inevitably vary. So, although I anticipate Ms S will be disappointed by this conclusion, I wouldn't criticise Paragon for taking an approach based on its own risk appetite which is the case here.

### **My final decision**

For the reasons I've explained above, my final decision is that I do not uphold this complaint.

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

Asher Gordon  
**Ombudsman**