

The complaint

Mr and Mrs S complain that they were mis-sold a personal loan brokered by Access 4 Finance Limited.

What happened

In 2015 Mr and Mrs S obtained a personal loan from a third party, secured by a second legal charge on their home. The term of the loan was 15 years. They were introduced to the lender by Access 4 Finance. (They have made a separate complaint about the lender.) They had been introduced to Access 4 Finance by another broker, which I will call X.

The background to their decision to get a loan was that they wanted to convert their interest-only mortgage to a repayment mortgage, but they had too much unsecured debt to do that right away. They say they were advised by X to take out a secured loan as a bridging loan, and to use that loan to repay their creditors and thereby improve their credit rating, so that they would look more attractive to mortgage providers. More precisely, Mr and Mrs S say that the advice X gave them was to use the loan to repay half of their unsecured debt. They could then repay this loan within the first year, using equity released by the new mortgage. But X was unable to find them a lender, so X referred them to another broker, Access 4 Finance, which in turn introduced them to their lender, which I will call S.

Five years later, in 2020, Mr and Mrs S complained to Access 4 Finance about the loan. (They say that this delay was due to their depression, and not because it had taken them that long to realise that they had grounds to complain.) They said that the loan had failed to achieve its object. They had approached each of their creditors and offered to settle each debt by paying half of what they owed, but none of their creditors had accepted their offers, leaving them unable to remortgage. Indeed, the loan had made their credit rating even worse, because they had taken on more debt. They had been unable to repay the loan early as intended, and had instead been making monthly payments for over five years. The early repayments had consisted mostly of interest instead of capital (contrary to what Mrs S insists she was assured by the lender in a phone call she had made before signing the loan agreement), and Mrs S complains that Access 4 Finance should have warned her and her husband about that. She says that she would have declined the loan if she had known; instead, the outstanding balance had barely changed after making the first year of repayments. She alleged that Access 4 Finance had failed to carry out proper affordability checks to make sure that she and her husband could afford the loan, and that Access 4 Finance had failed to take steps to ensure that the loan was suitable for their needs.

Access 4 Finance did not agree that it had done anything wrong. It said it had collected details of Mr and Mrs S's income and expenditure and verified their income with payslips, and determined that their disposable income had exceeded the loan repayments. It had therefore been affordable. There had been a cooling-off period in which they could review the loan documents and cancel the loan if it had not met their expectations. The loan had been offered on a non-advised basis, so it had been Mr and Mrs S's responsibility to ensure that the loan really met their needs, and they had signed a document to confirm they understood this to be the case. They had also signed another document which stated: "this loan will enable us to pay all the debt back and have one monthly affordable payment to

make.” Access 4 Finance added that since the loan had been unregulated, there was no right of appeal to the Financial Ombudsman Service.

Being dissatisfied with that answer, Mr and Mrs S brought this complaint to our service anyway. (Their complaint about S was dealt with separately, and was not upheld. Both complaints were dealt with by the same investigator.)

Our investigator upheld this complaint. He said that although the loan had been unregulated, our service still had jurisdiction to consider this complaint. He said that Access 4 Finance had not provided enough evidence about what it had been told by X, and what it had discussed with Mr and Mrs S, for him to be satisfied that Mr and Mrs S had been able to make a fully informed decision about the loan. He also did not accept that Access 4 Finance had not given them advice. He noted that the lender had not accepted the loan application right away, and had pointed out to Access 4 Finance that Mr and Mrs S appeared to be trying to repay £54,000 of debt with a £30,000 loan, which was obviously not possible. He did not know what had happened after that, but he thought that Mr and Mrs S would not have proceeded with the loan if they had known that. He concluded that the loan had not been in their best interests, even though it had been affordable, because they had not needed to spread their debts over a longer term. Since Mr and Mrs S had repaid the loan early (with help from relatives), he recommended that Access 4 Finance refund half of the interest they had paid, which came to £15,000, and pay another £250 for their trouble.

Access 4 Finance did not accept that opinion. It said that it had provided everything it had, and the evidence provided proved that Mr and Mrs S had been given clear information about the loan, and enough information to make an informed decision about it. It insisted that it had not given advice, and that the evidence strongly suggested that only X had been providing advice. The email from the lender, quoted above, had been based on an error, since their clients had only intended to repay £30,000 of debt – distinguishing between their defaulted debts, which they did not intend to repay with the loan, and the non-defaulted debts – and so the loan had been for the right amount. Mr and Mrs S had asked for the longest possible loan term in order to keep the monthly payments as low as possible until the loan was fully repaid (using the new mortgage). Access 4 Finance asked for an ombudsman’s decision.

I wrote a provisional decision which read as follows.

What I’ve provisionally 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 am not minded to uphold it. I will explain why, but before I do that, I will first confirm that I do have power to deal with this complaint. The jurisdiction of the Financial Ombudsman Service is not confined to complaints about regulated activities. The relevant regulation states that we can also consider a complaint about “lending money secured by a charge on land” (whether that is regulated or not).¹

I cannot agree with my colleague’s opinion that Access 4 Finance failed to provide sufficient evidence to clearly show what happened. I will set out my findings below.

There is no evidence that Access 4 Finance provided Mr and Mrs S with any advice, and I don’t agree that the evidence provided supports an inference that it did. Rather, it appears that the advice Mr and Mrs S have described was given to them by X, and their complaint

¹ See DISP 2.3.1(3) at <https://www.handbook.fca.org.uk/handbook/DISP/2/3.html?date=2014-04-01&timeline=True> on the Financial Conduct Authority’s website.

letter and complaint form explicitly say so. However, since a large part of this complaint appears to have been based on a serious misunderstanding about the loan, I think it will still be relevant to describe what the loan was intended to achieve, and why it failed to achieve it, even though this will unavoidably involve discussing some of the advice X gave. (That does not mean that Access 4 Finance is responsible for that advice, I just think it would be helpful to clarify it.)

Mr and Mrs S were in contact with X by February 2015 at the latest. On 6 March 2015, Access 4 Finance sent them copies of their proposed loan agreement for them to check, prior to signing. These documents were not to be signed; the original was to be sent later for their signature, and this was sent on 31 March. They finally signed the loan agreement on 17 April. So they had had six weeks in which to study it, and to change their minds or to object to or ask about anything.

Also signed by both Mr and Mrs S on the same day, 17 April 2015, was another document entitled "Consolidation Form" (with the lender's logo on it). This consists of two tables, with the signatures immediately underneath. The table on the left is headed with the text "Credit to be redeemed from the Loan," and the table on the right is headed "Credit to remain Outstanding." In each table there is a list of debts, which I have compared with Mr and Mrs S's credit reports from the same month. All of these debts appear on both documents.

The table on the left, listing debts to be repaid from the loan, lists the details of six credit card debts and two overdraft balances, none of which had yet defaulted, and on which Mr and Mrs S had still been making regular payments up to that time. The total outstanding balance of these eight debts comes to £28,893, which of course is less than the new loan. The loan was therefore more than enough to pay back all of these eight loans *in full* and immediately.

(The total monthly payments towards the debts listed in this table comes to £895, a larger figure than the monthly repayments on the loan brokered by Access 4 Finance (£486.28). So the monthly repayments on the new loan were to be about half of what Mr and Mrs S had been paying previously.)

The table on the right lists the debts which were expressly stated *not* to be repaid from the loan (except the mortgage). Here there are six debts which had all been defaulted in 2014, and one other debt which was not defaulted (a credit card which I can see was within its credit limit and had a reasonably good credit history). The total outstanding balance of all these debts came to £39,948 (or a bit less than £35,000 without the credit card).

In their complaint letter to Access 4 Finance in September 2020, Mr and Mrs S said that X had advised them that the loan would "pay creditors offering 50% credit which would be a loan of approximately £30k." But I think they must have misunderstood what X told them. As I've said, £30,000 was enough money to repay all of the creditors in the left hand table in full. That is eight creditors out of fifteen, and a little less than half of their total unsecured debt.

So I don't think that X ever meant, as Mr and Mrs S unfortunately took X to mean, that they should use the loan to offer all of their creditors a settlement offer of 50% each. The idea was that they should repay 100% of the debts in the left table, and not use the loan to repay any of the debts in the right table, all but one of which had already defaulted. If they had done that, then their credit score would have improved, and they would have been in a better position to re-mortgage. So I cannot agree that the loan was not suitable for their needs, or that it was unaffordable, or that Access 4 Finance should have warned them not to take it or given them any other advice about it.

The lender's email, which I quoted earlier, needs to be understood in this context. It was sent on 13 April, or four days before the consolidation form was signed, which was enough time

for X (or Access 4 Finance) to explain to the lender what was intended. So I don't think that email has the evidential value which was attributed to it by my colleague.

There is no evidence of the phone call which Mrs S says she made to find out the breakdown of each loan repayment (between interest and capital), other than her own recollection of it over five years later. But assuming that phone call did happen, it's unlikely that she made it to Access 4 Finance, the broker; I think the business to ask about that would have been the lender. Access 4 Finance would not be liable for whatever the lender told her. Nor did it have a duty to pro-actively tell her and her husband that the first payments would consist mainly of interest, since it was providing its services on a non-advised basis and made this clear to them at the time (I've seen the form they signed to that effect).

Even if I took a different view about that, I would still not be persuaded that Mrs S would have declined the loan for that reason. The front-loading of interest is standard industry practice, and given that she and her husband had six recent defaults between them, it is unlikely that they could have got a loan on better terms elsewhere. Indeed, two brokers had only managed to find one lender who was willing to offer them anything. (Also, the loan was expected to be settled early within its first year, so most of the interest would still have been avoided.)

For these reasons, I do not think that the loan was mis-sold.

My provisional decision is that I currently do not intend to uphold this complaint.

Responses to my provisional decision

Access 4 Finance accepted my decision. Mr and Mrs S did not. They made detailed submissions in which they set out numerous points in support of their case.

Mr and Mrs S still insist that the purpose of the loan was to consolidate all of their debts, not just half of them. In support of this, they say that *all* of the debts listed on the consolidation form had already defaulted, or were about to be defaulted because they had not been paying them, and that half of them had just not been reported as defaulted on their credit files yet. They say that the two lists on the form were, on the left, the debts which had not yet been defaulted or reported as defaulted but were about to be, and on the right, the debts which had already been so reported. They added: "Nowhere on the consolidation form does it say that only the accounts on the left were to be presented for the loan."

They also provided some emails from X to support their case about how the loan money was supposed to be used. And they provided phone bills which they say prove that Mrs S phoned Access 4 Finance on 23 April 2015 to ask about the breakdown of interest and capital in the loan repayments.

My findings

In light of what Mr and Mrs S have told me, I have looked again at the consolidation form and at their credit files. The credit files were printed on 23 April 2015, the same month as the loan was taken out.

On the consolidation form it says, above the left hand list, "*Credit to be redeemed from the Loan,*" and above the right hand list it says "*Credit to remain Outstanding.*" Mr and Mrs S have described these headings as "very small" (which suggests that they have seen them), but in fact they are the same size font as the other text on the rest of the page. So I cannot accept that the form does not say that the loan was only to consolidate the debts listed in the left hand column. It plainly does say that, and says so clearly.

As I have said, the eight debts on the left hand list were all undefaulted debts. I have found each of them on the credit files, and I cannot see that any of them were close to defaulting. Four of them are reported as completely up to date. Three of them (all Barclaycards) each had missed the last two monthly payments; it would take longer than that to get to the point when they would be defaulted, and they had had good payment histories previously. There was one debt (for £113) where no recent information had been reported at all, so I cannot absolutely rule out the possibility that it was about to be defaulted, but on balance I don't think that's likely, because the other seven weren't.

As I said in my provisional decision, the right hand list has six defaulted debts and one other debt which was not defaulted. So it's clearly not just a list of defaulted debts.

Mr and Mrs S have provided some emails from X, which were sent to them shortly after the loan, and their replies. I agree that these emails lend support to their case that X expected them to negotiate part settlements with their creditors (which would have been necessary if all of their debts were supposed to be consolidated by the loan). But I think that this evidence is outweighed by the clear evidence in the lender's consolidation form which I've just described. So these emails may instead suggest that the notion of only repaying some of the debts was arrived at by the lender rather than by X, between 13 and 17 April. I don't think that these emails are enough to support an inference that Access 4 Finance came up with the idea by itself, contrary to its contemporaneously documented record that it was providing its services on a non-advised basis.

For all of these reasons, I do not accept that the consolidation form had two lists just to show in one list which debts were already defaulted, and in the other list which ones were not defaulted yet but were about to be. The evidence simply does not support that contention. And so while I accept that Mr and Mrs S believed that all of these debts were to be consolidated by the loan, I remain of the view that they were not, and that it is unlikely that this is what Access 4 Finance advised them. And I still remain of the view that Access 4 Finance is not responsible for any advice that either X or the lender gave.

The phone bills show the phone numbers which were called on 23 April 2015, but there is no evidence that any of these numbers belong to Access 4 Finance. However, assuming that Mrs S's recollection is correct and that she did call Access 4 Finance about that matter, and even assuming that the wrong information was given to her, I still remain of the view that no alternative loan was available. (Mrs and Mrs S have told me that they were offered another loan by another lender, but have provided no evidence of that.) So the choice was to take it or leave it (during the cooling-off period), when leaving it would have left them with an interest-only mortgage which was due to mature in only four years. Since their priority was to avoid losing their home, I think that on the balance of probabilities they would still have accepted the loan even if they had known that the first payments would consist mainly of interest rather than capital. It would have been a worthwhile expense if it had resulted in the remortgage going ahead as planned.

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 Mr and Mrs S to accept or reject my decision before 29 December 2021. But this final decision concludes our service's jurisdiction over this case, and so we will be unable to enter into any further discussion about the merits of this complaint.

Richard Wood
Ombudsman

