

The complaint

Mr R has complained about a second charge loan he held with Amalgamated Finance Limited. He says he believed he'd repaid the loan in June 2015 and he wasn't told there was still £350 outstanding. He says he only found out in 2021 when he was selling his property, and by then the debt had increased significantly.

What happened

Mr R took out this loan over ten years ago with a predecessor lender. He was struggling financially and so borrowed the money to get himself back on track.

In December 2014 the loan was passed to Amalgamated Finance and Mr R continued to make his payments, with him making his last payment in June 2015. Mr R said he believed his loan was fully repaid at this point.

Mr R has said he didn't hear anything from Amalgamated Finance to the contrary and it was only when he was selling his property in 2021 that he discovered the lender still had a charge on his property with the Land Registry.

He contacted Amalgamated Finance and was told he'd missed the final payment of £350 which was due in July 2015, and that with the addition of interest since then the debt now stood at around £2,600 plus a £1,000 exit fee.

In March 2021 Mr R paid the full sum so his house sale could proceed and then raised a complaint with Amalgamated Finance in June 2021.

As he didn't receive a response from Amalgamated Finance despite chasing it up, Mr R referred his complaint to our service in August 2021.

We contacted Amalgamated Finance in August 2021 to let it know we had the complaint and to ask for a copy of its business file. This was chased in September 2021, with our case handler then receiving two voicemail messages from the lender saying that the complaint was time barred due to the events in question taking place over six years ago.

I issued a decision about our jurisdiction in August 2022. In that I said we can consider this complaint right back to the event complained of in 2015:

"We aren't free to deal with every complaint we receive. We're bound by our rules, and those rules flow from legislation, specifically the Financial Services and Markets Act 2000. The rules set out the types of complaints we can look at. Those rules are maintained by the Financial Conduct Authority ("FCA") and are published in the FCA's Handbook, under the heading "DISP".

Section 2 of DISP sets out the jurisdiction of the Financial Ombudsman Service. It covers such things as who is bringing the complaint, what it's about, which business it's about and time limits on how long after a person becomes aware of a problem they can wait before complaining about it.

Our investigator said we could only consider matters from September 2018 as that was when she believed Amalgamated Finance came under our jurisdiction. Having looked into this in some detail, I've found a record of Amalgamated Finance coming into our compulsory jurisdiction on 1 April 2014 (previously it came under a more specialist consumer credit jurisdiction).

To explain; on 1 April 2014 a regulation change meant that the FCA took over the regulation of all consumer credit activities. It became mandatory for firms wishing to continue operating what were the former consumer credit activities to be authorised by the FCA. That also resulted in complaints about those activities being included in our compulsory jurisdiction.

Bringing those businesses into our compulsory jurisdiction enabled our service to consider a wider range of complaints about regulated activities. This included being able to look at lending secured by a charge on [land] and activities ancillary to the lending from 1 April 2014.

Irrespective of what the original loan agreement was (even if it was unregulated), if it was secured by a charge on land that means we can consider events if the lender was in our compulsory jurisdiction.

Amalgamated Finance took over the debt in December 2014 and was in our compulsory jurisdiction at that time. As this was lending secured by a charge on land that means I can consider a complaint relating to the events of July 2015, and what happened since then.

For completeness, I've also considered what Amalgamated Finance said about the time limits, even though it never provided the further information we requested. Our rules say that where a business doesn't consent to us looking at a complaint, we can't consider it if it's been brought;

- more than six years after the event complained of; or, if later*
- more than three years after the consumer ought reasonably to have become aware they had cause to complain.*

If the complaint's been brought within those time limits a written acknowledgement of it needs to have been received. The rules allow me to disregard the time limits if I think exceptional circumstances prevented a consumer complaining within them. If the time limits weren't met, and there were no exceptional circumstances as to why the complaint wasn't brought in time, then we can't consider it.

Having looked at everything I'm satisfied that we can consider this complaint. The event being complained about is that Amalgamated Finance didn't notify Mr R that he needed to make a payment in July 2015 to redeem this loan. So that is the point the six-year time limit starts from, which takes us until July 2021.

Mr R has provided us with copies of the emails he sent to Amalgamated Finance and I can see one dated 17 June 2021 which states it is a complaint. I can also see from Mr R's emails before then, in March 2021, that he was clearly dissatisfied and there was reference to some phone calls. As Mr R raised the complaint within six years of the event complained of – that is, not being notified in July 2015 that he still had one payment to make – then I'm satisfied this complaint was made in time.

Even if it hadn't been raised within the six-year time limit, Amalgamated Finance hasn't provided any evidence to show Mr R would have been aware of a cause to complain before 2021 as the whole basis of this complaint is that Mr R wasn't aware the payment was outstanding. Based on everything I've seen, Mr R wouldn't have known – and shouldn't ought reasonably to have known – about the July 2015 payment before 2021 and so the complaint was also raised within the three-year part of the rule.

Being raised within either part of the rule would have been enough (as the rule is the later of the two), and here I'm satisfied Mr R raised the complaint within both parts of the rule."

I then issued a provisional decision in September 2022 giving my thoughts on the outcome of the complaint, the findings of which said:

"It isn't in dispute that Mr R still owed £350 in July 2015. It also isn't in dispute that Amalgamated Finance didn't notify Mr R of that either at that time, or in the subsequent years. I'm satisfied that the first Mr R knew of the amount outstanding was in 2021 when he was selling his property and found Amalgamated Finance's charge was still secured on it.

Amalgamated Finance has a responsibility to pay due regard to the interests of its customers and to treat them fairly, and part of that would be notifying customers of outstanding sums owed, especially where interest was being incurred on the sum. Due to Amalgamated Finance not making contact with Mr R the £350 became around £2,600 with the addition of interest over the years.

I've no reason to believe Mr R wouldn't have paid the £350 in July 2015 if Amalgamated Finance had notified him that the payment was outstanding as he had no reason not to make the payment to bring the loan to an end.

Having considered everything I'm satisfied Amalgamated Finance should have notified Mr R of the outstanding payment, and had it done so Mr R would have made the payment at the time.

For that reason I'm currently minded to uphold this complaint, and order Amalgamated Finance Limited to refund to Mr R all the interest he incurred between July 2015 and when he made the payment in March 2021."

I closed by saying I was minded to order Amalgamated Finance Limited to:

- Refund to Mr R all the interest he incurred between July 2015 and the date he made the payment in March 2021 - a sum I understand to be £2,338.09; and
- add simple annual interest of 8%* on that sum from the date the payment was made in March 2021 to the date of settlement.

Mr R accepted my provisional findings. Amalgamated Finance made further submissions over a phone call and a few emails.

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.

The director of Amalgamated Finance has said that somebody has forged his signature, which he says is a criminal matter and needs to be reported to the police.

If the director of Amalgamated Finance feels a criminal offence has been committed then he is free to report that to the police himself, we wouldn't do that for him. It isn't clear what signature he feels has been forged, but if it relates to the signature on the DS1 form then an email trail has been provided to us by Mr R which indicates the form was supplied (completed and signed) to Mr R by Amalgamated Finance on 8 March 2021 upon receipt of £3,688.09 from Mr R.

Having considered everything, I've not been provided anything to indicate that Mr R didn't pay that sum to Amalgamated Finance on 5 March 2021, or that the DS1 form was forged by Mr R (or a party acting on his behalf).

Amalgamated Finance has questioned whether it is responsible for this complaint, and whether we have the correct authority to deal with it.

Unfortunately neither party was able to provide us with the loan agreement for the debt we're considering here. Mr R provided us with a copy of a different loan agreement from December 2008 which he'd taken out with a lender I'll call C. It seems that loan was taken out to repay some debts so Mr R's bankruptcy could be annulled, and the loan agreement states the repayment date to be three months after the loan was drawn down.

Whilst we can't say for sure what happened after that, it seems most likely that a replacement loan was taken out with lender C over a 16-year term as the information held by the Land Registry indicates the charge in question was placed on Mr R's property on 2 April 2009. The Land Registry also has it recorded that the Proprietor of the charge changed on 16 December 2014 to Amalgamated Finance.

Having considered everything I'm satisfied Amalgamated Finance was the lender from 16 December 2014, it was in our compulsory jurisdiction at this time, and that even if this debt wasn't a regulated credit agreement, it was still "*lending money secured by a charge on land*". For that reason, it is responsible for this complaint and any redress that flows from that.

Even if I were to agree that Amalgamated Finance was simply acting as an agent for lender C, then we'd still be able to consider this complaint against Amalgamated Finance and the outcome would remain the same. I'll explain why.

The rules which set out the complaints our service can consider are found in the Dispute Resolution (DISP) section in the FCA's handbook. DISP 2.3 says that our service can consider a complaint if it relates to an act or omission by a firm carrying on a regulated activity.

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 sets out the list of regulated activities referred to in DISP. Among the regulated activities listed is debt administration and debt collection.

Having considered Amalgamated Finance's arguments that it was simply acting as an agent of lender C, and the activities that Amalgamated would have been carrying out in relation to this debt in that capacity, I'm satisfied that the event Mr R has complained about is an activity that forms part of administering the loan or collecting payments, and therefore is a matter we can consider against Amalgamated Finance. It doesn't matter that lender C is unregulated, or that the loan may be unregulated – the regulated activities of debt administration and debt collection include all situations where a firm administers a loan on behalf of the lender, regulated or not.

Amalgamated Finance has suggested that because Mr R's wife jointly owns the property that we need her to be a party to this complaint. It's also suggested that we may not have the correct authority to deal with this complaint from Mr R either (as his son has been representing him). It is up to this service to satisfy ourselves that a complaint has been brought by an eligible complainant, and to decide whether we need another party to join, or proof that the third-party authority is valid.

Our rules only require a complaint to be made by an eligible complainant. It is a matter for the ombudsman's discretion whether they choose to proceed with just one eligible complainant where there might possibly be more. And I say 'possibly' here because that's all it is.

It isn't in dispute that Mr R's wife jointly owns the property, but that doesn't – in itself – make her an eligible complainant under our rules. The eligible complainant is the one that was a customer in this transaction (that is, the one that held the loan), and the only loan agreement we have a copy of was in Mr R's sole name, so we've no evidence to support that Mr R's wife would be an eligible complainant in any event. And even if she is, I'm satisfied I can fairly decide this complaint without her joining it, and therefore I am not invoking my discretionary power to choose to dismiss this complaint.

I'm also satisfied that Mr R's son is acting on behalf of Mr R, with his knowledge and agreement, and I've no reason to order that any further checks be completed, or a letter of authority from a solicitor be provided.

I now turn to the arguments Amalgamated Finance has made in respect of the underlying merits of this complaint. It has said, in summary:

- Mr R would have been notified there was a sum outstanding.
- If Mr R objected to the payment, why did he make it? Mr R made the payment on the basis it was in full and final settlement of the debt and Amalgamated Finance wouldn't have accepted payment with any reservations attached to it. Mr R's solicitor could have held the money pending resolution of the dispute.
- Mr R stopped paying without asking for a certificate of satisfaction, a redemption statement, or confirmation of the removal of the charge.

Amalgamated Finance has said that Mr R would have been notified there was a sum outstanding, but unfortunately it has provided no evidence to support that, which is why this complaint was upheld. As I said in my provisional decision, I've no reason to believe Mr R wouldn't have paid the outstanding sum at the time if he'd been notified there was a sum outstanding. Amalgamated Finance has had since March 2021 when Mr R first queried this to provide something to show he was notified of the outstanding debt, and it hasn't done so.

Mr R made the payment because Amalgamated Finance wouldn't release the charge unless he paid the full amount it said was due, and the charge needed to be released because he was selling the property. Mr R's solicitor couldn't have held the money pending the resolution of this dispute as the charge wouldn't have been removed, so the property sale would have fallen through. There's no evidence that Amalgamated Finance offered to release the charge in return for the funds being held by the solicitor at the time.

It isn't in dispute that Mr R didn't make the final payment, but the reason why this complaint has been upheld is that there's no evidence to show that Mr R knew he hadn't paid in full, that Amalgamated Finance contacted Mr R about the remaining debt, and instead it simply added on interest until Mr R got in touch.

Under the Financial Conduct Authority's high level principles, Amalgamated Finance must *"pay due regard to the interests of its customers and treat them fairly"* and *"pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."* These apply to all activities of a regulated firm, whether or not the product – the loan in this case – is itself regulated.

I don't think Amalgamated Finance treated Mr R fairly, or met his information needs, when it didn't notify him of the outstanding debt and instead simply continued to add interest onto that sum. I'm satisfied that if Amalgamated Finance had communicated with him as it should have done in 2015 he would have repaid the remaining balance at that time, and subsequent interest would not have been added.

Putting things right

For all the reasons given, I uphold this complaint and order Amalgamated Finance Limited to:

- Refund to Mr R all the interest he incurred between July 2015 and the date he made the payment in March 2021 - a sum I understand to be £2,338.09; and
- add simple annual interest of 8%* on that sum from the date the payment was made in March 2021 to the date of settlement.

* Amalgamated Finance may deduct income tax from this element of my award, if it considers it should do so. But it should give Mr R the necessary paperwork for him to reclaim the tax from HMRC if he's entitled to do so, if he asks for it.

My final decision

I uphold this complaint and order Amalgamated Finance Limited to pay redress as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 March 2023.

Julia Meadows
Ombudsman