

The complaint

Mr and Mrs W have complained to Swift 1st Limited trading as Swift Advances about a second charge loan. The loan was originally taken out with lender W and it was transferred to lender C in May 2018. Lender C then transferred it to Swift in April 2023.

Mr and Mrs W have asked how it is possible the debt was transferred from lender W after it had gone bankrupt, and they believe the debt was dissolved when lender W closed. They also said the later transfer to Swift (after they'd raised a complaint) was obviously trying to avoid investigation by the ombudsman.

They want Swift to provide them with a letter of no further interest and for the charge to be removed from their property.

What happened

In 2008 Mr and Mrs W borrowed around £11,000 (plus PPI and fees) from lender W. The loan was set up with a term of 15 years and 6 months and it was secured on their property.

The following information is taken from the contact notes provided by Swift (which are a contemporaneous record of the contact between the parties):

- The loan fell into arrears in 2009.
- Over the years there was contact between lender W and Mr and Mrs W, with payments being missed and conversations were held between the parties about the reasons for that. I won't detail all those discussions here.
- The last payment was made in August 2016.
- In February 2017 the interest was suppressed on the account.
- In April 2017 Mr W discussed the possibility of a reduced settlement with lender W. Lender W agreed to accept £3,500 in full and final settlement of the debt (which stood at over £8,000). Unfortunately Mr and Mrs W were unable to raise the funds required and the reduced settlement agreement expired at the end of May 2017.
- In June 2017 Mr W said he'd received his account statement and he had some questions about the account. As part of that the notes indicated Mr W was disputing the balance and wanted it written off.
- In October 2018 Mrs W called as she'd received a letter about the loan. She was told it was about their secured loan that had been held with lender W, at which point the call disconnected.
- In October 2019 a field agent visited the property on three occasions and when there was no answer at the door they left letters, which weren't responded to.

- In February 2023 Mr W called to say he'd received a letter about the account. He said he wouldn't be paying and lender C should take him to court. He believed the account was statute barred, and lender W had gone bust in 2011.

Lender C dealt with that contact as a complaint and it responded by issuing a final response letter in March 2023. It didn't uphold the complaint, saying correspondence had been sent (and a field agent had visited the property, leaving further letters) and the debt wasn't statute barred. It enclosed a copy of the credit agreement and legal charge, and said the charge would only be removed once the debt was settled.

The complaint was referred to our service and our Investigator didn't uphold it. He said the terms of the loan allow it to be transferred at any point and as Mr and Mrs W had borrowed the money it was reasonable for the original or current lender to expect it to be repaid.

Mr and Mrs W said they wanted an ombudsman to look at the case as they *"believe the debt cannot be sold 8 years after [lender W] became bankrupt"*.

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.

Before I go any further I should correct a misapprehension on the part of Mr and Mrs W in relation to the position of lender W. The formal winding up of lender W didn't commence until December 2019, and the company was dissolved in November 2021. Whilst lender W went into administration in 2011, from then the administrators were running the company. That is allowed. Loans continued to run as they normally would, with the administrators periodically selling books of loans off to other lenders. That's not unusual in situations like this and is as I would expect. A loan secured against a property normally isn't just written off if the lender enters administration, instead the loan will be transferred to a new lender.

Mr and Mrs W signed the Legal Charge form when they took out the loan, clause 7 of which said:

"The Lender includes its assigns and the Owner and where applicable the Other Occupiers agree that the Lender may assign the benefit of the charge to another person at its absolute discretion."

A clause like this is normal in mortgage and second charge loan contracts, and it isn't at all unusual in the second charge loan market for loans to be transferred to different lenders during the term (sometimes multiple times).

I'm satisfied that Mr and Mrs W signed to agree that they'd be bound by the terms of the contract. I'm also satisfied that under those contract terms lender W (or latterly its administrators) was entitled to transfer the loan to lender C, and then lender C was entitled to transfer the loan onto Swift.

Mr and Mrs W have said the loan was transferred to Swift to try to avoid investigation. But that's not the case. The transfer discussions would have started long in advance of the actual transfer (and long before Mr and Mrs W complained) and a whole book of loans would have been transferred, not just Mr and Mrs W's loan.

As our Investigator has explained it isn't the role of the Financial Ombudsman Service to decide if a debt is statute barred as only the courts can decide that. We can however consider whether the lender acted fairly by asking Mr and Mrs W to repay the debt.

It seems no payments have been made to the account since August 2016. Whilst interest on the account has been suppressed since February 2017 there is still a debt in excess of £8,000 outstanding. Lender W and then lender C had been writing to, and attempting to phone, Mr and Mrs W regularly over the years. In terms of this complaint I'm satisfied a debt remains outstanding, the lenders have been actively attempting to contact Mr and Mrs W about that debt and, under the terms of the contract, the loan could be transferred to lender C and then to Swift. Therefore taking into account everything I've set out above, there are no grounds for me to order the removal of the charge from the property or for me to say Swift shouldn't pursue the debt with Mr and Mrs W.

If Mr and Mrs W feel there are legal challenges to be made here then they are free to take matters to court or to raise these arguments if Swift takes it to court, but before they do so they may wish to seek specialist professional legal advice.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 29 November 2023.

Julia Meadows
Ombudsman