

The complaint

Miss F and Mrs F have complained about a secured (second charge) loan they took out with Together Personal Finance Limited. They've said the loan was mis sold and they were grieving, frightened and vulnerable at the time.

What happened

Miss F and Mrs F contacted a broker to discuss taking out a secured loan. They wanted to explore consolidating existing unsecured debt to reduce their outgoings and capital raising to pay for some home improvements.

The broker recommended a loan to Miss F and Mrs F, with Together as the lender. The mortgage offer issued on 28 March 2017 shows the loan was £75,000 (plus £4,950 fees) over a term of 12 years on an interest only basis, with an interest rate of 6.65% variable and a monthly payment of £443.06.

In January 2023 Miss F and Mrs F contacted Together as they were struggling with their payment. Together carried out an income and expenditure assessment and that showed Miss F and Mrs F's outgoings were more than their income, even without including this loan payment. A nil payment arrangement was put in place for one month to allow Miss F and Mrs F time to seek independent financial advice.

Miss F and Mrs F made the payment due in January 2023, paid £100 in February 2023 and then redeemed the loan in April 2023.

In the meantime Miss F and Mrs F complained to Together saying the loan was mis sold, and about how they'd been treated recently when they were struggling with their payments. Together didn't uphold the complaint, saying the advice had been given by a broker so any complaint about it being mis sold would need to be dealt with by the broker, and in terms of its decision to lend it said it conducted all the relevant checks and the loan was deemed affordable and fit its criteria. It said as the loan wasn't affordable now it could offer short term support whilst Miss F and Mrs F considered their options, and that Miss F and Mrs F should call its team with an update.

Our investigator initially thought the complaint should be upheld but upon receiving some further information she reviewed her assessment and didn't uphold the complaint. She said the suitability of the loan was a matter for the broker, and in terms of the lending decision she was satisfied the loan was affordable and wasn't irresponsibly lent.

Miss F and Mrs F didn't agree and so it was passed to me to decide.

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.

It's important to note that Together was the lender, but it didn't sell the loan or give Miss F

and Mrs F advice. That was done by the broker, and it was therefore the broker's responsibility to ensure the loan was suitable for them. It wasn't up to Together to check that the loan met their needs – but Together did need to ensure that it was responsible to lend. That means checking that Miss F and Mrs F would be able to repay the borrowing in an affordable and sustainable way.

Having considered everything very carefully, whilst I can see Together was aware of Mrs F's age and health concerns (as she was in receipt of disability benefits), I can't see it was aware of anything else Miss F and Mrs F have told us about their personal circumstances. Whilst I've a great deal of sympathy as it is clear Miss F and Mrs F had been through some traumatic events, I can only decide this complaint by way of what I can see Together was aware of at the time. And I can't see that Together was aware of those events at the time. It seems Together's reference to vulnerability only relates to the fact Mrs F was an older borrower and was in receipt of disability benefits.

Miss F has said she should have been advised to seek debt advice and enter an IVA, but again that would have been a matter for the broker, not Together. Miss F has also said that she recalled being told on the phone to make the numbers as favourable as possible, but again I can't see that was a conversation with Together. That didn't happen in the call I've listened to between Miss F and Mrs F and Together, instead in that call Together challenged Miss F on some of the figures given and it subsequently increased them from that which had been declared.

Together was required to ensure the loan was affordable for Miss F and Mrs F. It made some mistakes in its assessment, but even if looked at in the right way I'm satisfied the loan would still have been affordable for Miss F and Mrs F, and so I don't think I can fairly uphold this complaint based on that alone.

Miss F and Mrs F has said that two adults only having £300 food costs a month is not accurate, but that is the figure that Miss F and Mrs F gave (through their mortgage broker) when they applied for the loan. Together queried this with Miss F in the phone call *"I just wanted to query your shopping costs. We can see you've put about £300 a month. By shopping we do mean that to include like food, as well as toiletries and cleaning products. Are you happy that that figure is still sufficient?"* And Miss F said it was right. In any event Together increased the figure to £321 in its affordability assessment as that was the Office for National Statistics (ONS) modelled data, so as that was higher it took the more pessimistic view.

Miss F and Mrs F have also said that £100 for gas and electric was unrealistic as their fuel bills recently were around £500 a month. But fuel bills have increased exponentially since 2021 so Miss F and Mrs F's costs in 2023 can't be compared to the information they declared in 2017. A figure of £105 was used in the affordability assessment, which was slightly higher than the ONS modelled data figure of £102 a month. And whilst Together didn't have copies of Miss F's bank statements at the time, I can see from copies Miss F has provided now that they were paying £114 a month in the run up to this application (£59 for gas and £55 for electricity) so not a notable difference such that their declared figure of £105 a month should have raised concerns so that evidence should have been required.

The information that had been provided to Together didn't include any car expenses for Miss F, nor did it include any council tax payments. Together included both these in its finalised affordability assessment.

Miss F and Mrs F's combined monthly income (as demonstrated by Miss F's payslips, and Mrs F's letters from the DWP) was £2,894, and their total outgoings (including remaining credit commitments and this new loan payment) came to £2,445. A stress test on Mrs F's

first charge mortgage and this new loan (that is, what the payments would increase to if the rates increase by 3%) came to £388, so even with that added to Miss F and Mrs F's outgoings the loan still would have passed the affordability assessment.

Responsible lending is not just about whether the loan appears immediately affordable, though. I'd also expect Together to consider whether the loan was affordable – and sustainable – for Miss F and Mrs F in the long term.

Together reviewed Miss F and Mrs F's credit file and noted that they didn't have apparent problems with credit. Mrs F had two defaults showing, but they were from 2012 and 2013, and the worst status on their accounts in the 24 months running up to the application was one missed payment.

Whilst our Investigator asked for copies of Miss F and Mrs F's bank statements, those weren't requested by or provided to Together at the time the loan was taken out.

The rules of mortgage regulation don't require a lender to obtain evidence of expenditure in the same way they do of income. They require it to obtain information about expenditure – and a lender can rely on what a borrower says unless there are common sense grounds for doubting it.

So Together was entitled to rely on the information Miss F and Mrs F had given it about their expenditure, and didn't need to ask for supporting information such as bank statements – unless there were common sense grounds for doubting what they'd said.

With hindsight, knowing what the bank statements showed, I agree with our Investigator that there were real questions about whether this loan was sustainable for Miss F and Mrs F, because the information on the bank statements would have led Together to question whether Miss F and Mrs F had given accurate information about their expenditure, and whether they would be able to afford the repayments from their income once their inheritance had run out without making substantial changes to their spending.

However, I can only say that Together ought to have taken this into account if there are grounds for saying that, acting fairly and reasonably, it ought to have asked for more information about Miss F and Mrs F's expenditure based on what it knew or ought to have known at the time of the application.

I'm not persuaded of this. There was nothing in what Miss F and Mrs F had said about their expenditure which was a cause for concern or presented common sense grounds for doubting what they had said. And I don't think their credit history ought to have prompted further investigation of their expenditure either. While Miss F held multiple unsecured borrowing streams the purpose of this loan was to consolidate that debt and reduce their monthly outgoings. It also consolidated an already secured loan that Mrs F held, which accounted for around £15,400 of the £42,400 debt consolidation. And the remainder of the money being requested for home improvements again wouldn't have been a concern.

Whether or not that was a suitable course of action is a matter for the broker, not the lender. But as far as the lender's obligations are concerned, I don't think the fact that Miss F and Mrs F were applying to consolidate debts was enough to raise concerns about their level of expenditure or the sustainability of how they managed their credit commitments.

On balance, therefore, I'm not persuaded that anything in the expenditure Miss F and Mrs F declared on this application, or in their past credit record, ought to have led Together to question the expenditure they'd declared on common sense grounds. It follows that I don't think I can fairly find that it ought to have known about and taken into account the pattern of

spending shown on their bank statements as part of its lending decision. It was entitled to rely on what Miss F and Mrs F had told it.

Miss F and Mrs F have also commented on the fact this was interest only lending, and that the property was only held in Mrs F's name. The responsible lending rules for entering into interest only mortgages are set out in the *Mortgages and Home Finance: Conduct of Business Sourcebook*. These state:

“Acceptance by a mortgage lender of any of the following repayment strategies [...] may be relied upon as tending to show contravention of that rule:

- (1) an expectation that the value of the property which is the subject of the regulated mortgage contract will increase over its term sufficiently to enable the customer to sell the property to repay the capital borrowed and, where applicable, pay the interest accrued under the interest-only mortgage;*
- (2) an intention on the part of the customer to utilise an expected, but uncertain, inheritance to repay the capital borrowed and, where applicable, pay the interest accrued under the interest-only mortgage; and*
- (3) the sale of the property which is the subject of the regulated mortgage contract, where that is the customer's main residence and the mortgage lender does not consider whether the property will have the potential to:*
 - (a) provide sufficient funds for the customer to repay the capital borrowed and, where applicable, the interest accrued under the interest-only mortgage; and*
 - (b) allow the customer to purchase a cheaper property to reside in or execute any other associated strategy.*

The above list is not exhaustive.”

Here Miss F and Mrs F were intending to sell the property which was the subject of the regulated mortgage contract, and it was their main residence. However Together had considered whether the property had the potential to provide sufficient funds to repay the capital borrowed, plus interest, and allow Miss F and Mrs F to purchase a cheaper property to live in.

Together looked at the equity that would be available upon the sale of the property, based on the total mortgage debt and the value of the property at the time of the application (so it didn't consider any speculative potential future value) and then looked at properties that were available of the size and in the area Miss F and Mrs F had specified. Having done so Together was satisfied there was sufficient equity available to allow Miss F and Mrs F to repay both the first charge mortgage and this new second charge loan and then buy a suitable property outright for them to live in. Having considered everything very carefully I'm satisfied Together did nothing wrong in agreeing to lend to Miss F and Mrs F on an interest only basis. Again, if Miss F and Mrs F feel that was unsuitable advice for them, that would be a matter for the broker, not Together. Together just had to lend responsibly – it didn't have to ensure the loan was suitable for them and met their needs.

There's no reason why a lender can't lend in joint names where the property is only owned by one of the borrowers. Together required Miss F and Mrs F to get independent legal advice due to the nature of the arrangement. That is, that Miss F was agreeing to jointly repay a debt but she didn't own the asset (the property), and that Mrs F was agreeing to jointly repay a debt when some of the money was being used to repay Miss F's solely owed unsecured debts. A solicitor acting for Miss F and Mrs F provided a signed certificate to Together to show they'd provided independent legal advice to both of them, and I think that was enough. Again, it was for the broker to give advice about the suitability of this

arrangement for Miss F and Mrs F's individual needs, and there was no reason why Together couldn't (and shouldn't) have lent on this basis.

Miss F and Mrs F have also complained about how Together treated them in January 2023 when Miss F phoned to say they were struggling. Miss F had left her employment in January 2020 due to ill health and was in receipt of PIP and ESA, and as this was variable rate loan their payments had been increasing. Whilst I can understand what a hard message it would have been to receive, Together was right that as Miss F and Mrs F had a negative disposable income even without this loan being included, and there was no prospect of their circumstances changing, then there was nothing Together could do other than give Miss F and Mrs F time to work out how to exit this loan, whether that be by refinancing in some way (which is what Miss F and Mrs F said they did to repay the loan in April 2023) or by selling the property (which was the original plan to repay the loan).

I'm sorry to hear of the difficulties Miss F and Mrs F have had. If they hadn't taken this loan, but instead had kept the unsecured debt that was consolidated, their circumstances might have been different – the debt could have been included in an IVA, for example. But because I haven't upheld this complaint about Together's lending decision, I can't hold it responsible for the situation Miss F and Mrs F found themselves in.

Whilst I've a great deal of sympathy for Miss F and Mrs F's position, I don't think Together did anything wrong in either its lending decision or in being unable to offer any ongoing forbearance measures in 2023. Having considered all the submissions very carefully, for all the reasons given I can't uphold this complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F and Mrs F to accept or reject my decision before 22 April 2024.

Julia Meadows
Ombudsman