

The complaint

Mrs W has complained about a loan she holds with Blemain Finance Limited, which trades as Together.

What happened

Mrs W took out this loan in November 2007 through a mortgage broker. She borrowed £22,000 (plus fees) over an 18-year term at an interest rate of 13.20% (variable). Mrs W signed the loan agreement on 11 November 2007, and it was “*signed on behalf of Blemain Finance Ltd*” on 19 November 2007.

Whilst Mrs W has raised previous complaints about this loan, this complaint just relates to the following points:

- Who signed the loan agreement in the section “*signed on behalf of Blemain Finance Ltd*” as Mrs W feels the agreement may not be enforceable.
- The loan was rebranded as Together but Mrs W didn’t sign a new loan agreement.
- Mrs W didn’t make her monthly payments when she raised her complaint, thinking that the account could be put on hold, and she wants those missed payments to be shown as an agreed payment holiday.

Our Investigator didn’t uphold the complaint. He said, in summary:

- Only a court can decide if an agreement is legally enforceable, and as Mrs W had borrowed the money it doesn’t seem unreasonable for Together to expect Mrs W to repay it.
- The lender changed its branding but was the same legal entity as she had originally borrowed the money from. There was no reason why Mrs W would need to sign a loan agreement.
- He wouldn’t expect a lender to put a payment holiday in place just because a customer raised a complaint, and he’d dealt with the forbearance measures Together had offered around that time under a previous complaint Mrs W had referred to our service.

Mrs W didn’t agree and asked for her complaint to be passed to an ombudsman 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.

I’ll only be considering the three points I’ve detailed above. I won’t be commenting on anything that was either decided – or excluded – under Mrs W’s previous complaint.

Although I’ve read and considered the whole file, I’ll keep my comments to what I think is relevant. If I don’t comment on any specific point it’s not because I’ve not considered it but because I don’t think I need to comment on it in order to reach the right outcome. This service is impartial between, and independent from, consumers and businesses. So I’ve

focussed on what I consider to be the relevant evidence necessary for me to reach a fair outcome.

We're not the regulator, and I've no power under our terms of reference to comment on, or otherwise determine, how financial businesses operate in general terms. I have to consider this individual complaint by reference to what is fair and reasonable. When I do that, I don't uphold this complaint. I'll explain why below.

Mrs W has placed a great deal of weight on her arguments about whether the loan agreement was signed by an authorised party at the lender, saying that she thinks it might have been signed by the broker, and also asking Together for evidence of the person's signature that it said signed the agreement.

But as our Investigator explained, that isn't a matter for the Financial Ombudsman Service. If Mrs W feels there are legal grounds for the loan to be deemed unenforceable then that is something she would need to test in court but, having read her submissions on these points, I would encourage her to get specialist legal advice first, showing them the information she has provided here, rather than just asking a solicitor in theory based on her assertion that the agreement wasn't signed by an authorised representative of the lender.

I appreciate Mrs W doubts Together's entitlement to claim a debt from her due to the questions she's asked about who, at the lender, signed the loan agreement. Together is equally firm that Mrs W has an obligation to repay the sum of money she borrowed (plus interest and any charges, in line with the loan agreement). As I said, if Mrs W wishes to dispute the validity of the loan agreement or challenge whether any debt is owed by her to Together, then she will need to do so through the courts.

As far as my considerations are concerned, it isn't in dispute that the lender (formally known as Blemain and now known as Together) issued a loan agreement, Mrs W signed to accept it, and Mrs W received the benefit of the money that she'd asked it to lend to her (most of which went to repay an existing secured loan that she owed to a different lender, and the rest was released to Mrs W to pay for some home improvements). In the circumstances, it seems to me to be fair and reasonable for Together to expect Mrs W to repay the debt in accordance with the loan agreement and the legal charge. I appreciate that Mrs W feels differently, and wants her loan declared null and void. However, I don't have any power to decide whether or not a loan agreement is legally enforceable or not; only a court can do so.

Mrs W raised some points in her response to our Investigator, in effect she thinks the Blemain Finance that lent her the money isn't the same Blemain Finance that is now regulated by the Financial Conduct Authority ("FCA"). I can reassure her that it is the same entity now as that lent her the money.

The firm with the FCA reference number 414372 can't be the right entity here, as Mrs W has suggested, as the FCA database says it was an 'introducer'. By that it means the firm just introduced business to another company, in effect acting as an intermediary/broker. That record doesn't relate to a firm that lent money to customers.

The loan agreement shows Blemain Finance held a consumer credit licence with the Office of Fair Trading ("OFT") under reference 032328. And a letter sent to Mrs W in 2008 says the company number at Companies House is 1185052.

The firm with the FCA reference number 719121 is the right entity. The FCA record for that firm shows the Companies House company number 1185052. Whilst the FCA database only shows the lender as being authorised since 21 March 2016, that's the date the lender obtained its full FCA authorisation.

The regulatory requirements for consumer credit lenders have changed over the years. At the time Mrs W's loan was taken out the lender held a consumer credit licence (number 032328) issued by the OFT, and on 1 April 2014 the regulation of consumer credit was transferred from the OFT to the FCA, but at that time lenders only needed what was referred to as 'Interim Permission' with the FCA. Full authorisation wasn't required until 21 March 2016. Whilst the interim permission doesn't show on the FCA's external database, it does show on our internal firms database and I'm satisfied this was the same lender throughout; that is, a lender registered at Companies House under company number 1185052, that held the OFT licence number 032328 and holds the FCA reference number 719121.

Blemain rebranded to Together in 2015. There was no change in legal entity and so there was no requirement for Mrs W to sign a new loan agreement. Her lender remained as Blemain Finance Limited, albeit it now trades under the name Together.

Finally, Mrs W didn't make a payment for a couple of months when she raised her complaint. She says she thought the account would be put on hold. But that isn't what happens as that would be open to abuse, with complaints being raised just to stop payments needing to be made.

We'd always expect a lender to speak to its customer to discuss potential forbearance measures if the customer is struggling with their payments, but that isn't part of this complaint as our Investigator explained. All I'm looking at here is whether Together should have marked Mrs W's missed payments as payment holidays. There's no indication that Together led Mrs W to believe she could miss those payments, or that it would register them as payment holidays instead of arrears. Having considered everything very carefully I don't think Together has done anything wrong here as I don't think marking those missed payments as payment holidays is something it needed to – or should have – done.

I appreciate Mrs W's beliefs are strongly held, but having considered everything very carefully I don't uphold any part of this complaint. Mrs W doesn't have to accept my conclusions, and if she doesn't, then neither she nor Together will be bound by my final decision. Subject to any time limits or other restrictions a court might impose, Mrs W's right to take legal action against Together over the subject matter of this complaint won't have been prejudiced by our consideration of it.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 25 April 2024.

Julia Meadows
Ombudsman