

## **The complaint**

Mr S has complained about what happened when he applied for a second charge mortgage through Loans Warehouse Ltd. He's said he's out of pocket due to legal costs he incurred for an application that could never have been successful.

## **What happened**

Mr S inherited this property a number of years ago. Whilst the title is held in his name with the Land Registry, his siblings have a beneficial interest in the property with Mr S having a 50% share, and his siblings having 25% each. In effect, as legal owner, Mr S holds the property on trust for himself and his siblings. A restriction was placed on the property title to protect the siblings' interest.

Mr S held a first charge mortgage and wanted to borrow some further funds. For reasons unconnected to this complaint his first charge lender wasn't able to agree the further advance, and so on 8 February 2024 Mr S's adviser passed him to Loans Warehouse – a broker that can arrange second charge mortgages – to see if the funds could be raised that way.

Mr S told Loans Warehouse about his siblings' interest in the property, and confirmed they were both happy for him to raise further funds against the property (just as they had been for him to take out his first charge mortgage against it).

Originally Loans Warehouse looked at this as being an application with all three parties on it, but when it came to light the property title was held in Mr S's sole name (but with a sole proprietor restriction on it) he was told a solicitor would need to remove the restriction for any lending to proceed.

The contact notes show Loans Warehouse received an email from Mr S at the end of February 2024 which quoted an email he'd received from his solicitor. That email from his solicitor said:

'Speak to your lender and explain what the restriction is protecting first and foremost. Tell them you have spoken with me briefly and I have confirmed that it can be removed to allow for the 2<sup>nd</sup> charge to be added to the title with the consent of the other beneficiaries but that a further restriction would then need to be returned to the title to reflect the fact that the beneficial interest you hold is retained at 50% out of which both of the mortgages would need to be discharged in the event of a sale. In the event that there are insufficient funds to discharge both debts on a sale of the property from your 50% equity, it is likely that you would end up owing brother and sister for any shortfall as the lender would in effect have the charge on the title and this is why it is so important that they give their consent to what you are planning. You need to be extremely careful that you are not in effect using their equity in the property to borrow against without them knowing or consenting to this!'

The original lender Loans Warehouse had approached wasn't willing to agree to the restriction being returned to the title after completion, so on 5 March 2024 Loans Warehouse approached an alternative lender which confirmed it was willing to agree to that.

At this time Mr S instructed a different solicitor to act on his behalf. The application was submitted to the lender, and the new solicitor Mr S had instructed also appeared satisfied that things could proceed if both the first charge lender and the new second charge lender confirmed they were happy for the restriction to go back on the title once the loan completed.

On 11 April 2024 Mr S's solicitor provided a letter to Loans Warehouse which said they were acting for Mr S in the removal of the restriction, saying they needed to remove the restriction temporarily to enable a further loan to be secured against the property, and asking for consent for the restriction to be placed back on the title post completion. I understand that letter was intended to be passed to the first charge lender, to seek its written consent.

The mortgage offer was issued on 12 April 2024, and Mr S's solicitor continued to pursue that course of action (that is, the removal and later reinstatement of the restriction once the new second charge loan had completed).

That seems to have remained the position up until the point Mr S sought advice from a third solicitor on 7 May 2024 who explained to Mr S that by signing the Legal Charge document he was agreeing he was the sole beneficial owner of the property, which wasn't the case. As the lender said the relevant clause on the Legal Charge document couldn't be amended, Mr S's solicitor advised him not to sign it, and because no way forward could be agreed between the parties, the application fell through.

Mr S raised complaints with both the lender and Loans Warehouse. He was unhappy with the amount of time it had taken to get to this point, as well as the legal fees he'd incurred.

Neither business upheld the complaints, and a complaint about the lender has been dealt with separately by this service. This complaint only deals with any acts or omissions of Loans Warehouse.

Our Investigator wasn't persuaded Loans Warehouse had provided the lender with sufficient information about the ownership of the property and, had it done so, he thought the lender would have said it couldn't proceed because Mr S wasn't the sole beneficial owner of the property. He said if that had happened then Mr S wouldn't have instructed his solicitor to start the process and so he felt Loans Warehouse should refund Mr S's solicitor's costs and pay £200 compensation.

Loans Warehouse didn't agree and so the case was passed to me to decide.

### **What I've decided – and why**

I issued a provisional decision in April 2025, the findings of which said:

'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.

Loans Warehouse's role in the process was to provide Mr S advice about a mortgage product, not to advise him on the legalities of registering the charge and what may or may not need to happen around that.

I can see Loans Warehouse was aware of the circumstances surrounding Mr S's ownership of the property and it notified the lender of that. That is all it needed, and would have been expected, to do. It wasn't required – nor was it in a position – to give advice to Mr S about the legalities of the proposed way forward.

As I've set out above, the contact notes show Loans Warehouse received an email from Mr S at the end of February 2024 which quoted an email he'd received from his solicitor indicating the solicitor was satisfied the lending could be achieved by removing and then reinstating the restriction to the title. So I don't think it was unreasonable for Loans Warehouse to submit an application to the lender on that basis.

Our Investigator felt Loans Warehouse hadn't provided the lender with sufficient information about the ownership of the property and, had it done so, he thought the lender would have said it couldn't proceed because Mr S wasn't the sole beneficial owner of the property, but I don't agree.

Having reviewed the contact notes, which includes correspondence between the parties, I'm satisfied the lender was aware of the nature of the ownership of the property and it agreed to proceed on the basis put forward by Mr S's first and second solicitors (that is, that the restriction would be removed and then reinstated once the loan had completed). The fact an agreement couldn't be reached between Mr S's final solicitor and the lender on how to proceed due to a clause in the Legal Charge document doesn't mean Loans Warehouse did something wrong in putting forward this application for lending.

Mr S has commented on conversations he had with Loans Warehouse which he said were excessive in trying to persuade him to sign the Legal Charge document. Having considered everything very carefully, I'm satisfied, in respect of the earlier calls, that Loans Warehouse was trying to help Mr S to get the loan he wanted. There were a lot of calls due to the tight timeframes (with the mortgage offer only being valid for a month, albeit the lender later agreed to extend that) so it wasn't unreasonable that Loans Warehouse was in regular contact with Mr S to check how things were progressing.

Mr S has provided us with his recollections of a later conversation he had with Loans Warehouse in which he says he was told he could sign the Legal Charge document once the restriction was removed as, at that time, he would be the only legal owner of the property. Unfortunately, there isn't a copy of the call for me to listen to so I can hear exactly what was said, and Loans Warehouse's notes don't represent the call in the same way. In any event, this complaint doesn't turn on what Mr S was told in that call as he didn't act on that information and so, even if he was given misinformation, he didn't act on it to his detriment.

Whilst it is clear Mr S feels very strongly about this, as I've said, it isn't the role of a mortgage broker to provide legal advice and whilst the outcome was that Mr S incurred legal costs without being able to obtain the loan, I can't hold Loans Warehouse liable for that.'

Both sides responded to my provisional decision. Loans Warehouse said it accepted my provisional findings and had nothing further to add. Mr S said, in summary:

- He read the decision as ‘has the Ombudsman taken a bribe?’ as it is so clear and obvious that Loans Warehouse had acted incorrectly. If I was impartial, I wouldn’t have come up with the provisional findings I reached.
- My decision was woefully wide of the mark and shows a complete lack of understanding of what happened. The fact I said I can’t hold Loans Warehouse liable for his legal costs, when it had caused them, is an outrage and shows that I either hadn’t read the file or that I didn’t understand the gravity of Loans Warehouse’s conduct. His normal broker now won’t deal with Loans Warehouse because of this.
- I had failed to grasp a key element which was that Loans Warehouse, and the lender, placed him and his solicitor in an impossible position. Loans Warehouse knew about the restriction from the start, and that was all discussed in a vetting call when the application was placed with the lender. He only instructed a solicitor because he’d been told he’d passed the vetting and an offer would be issued.
- Whilst he’d said he would sign the document, he hadn’t seen it at that stage and when it came through he, legally, couldn’t sign it. And then on top of that they wouldn’t change the document wording. They issued the document knowing he couldn’t sign it. He was not legally allowed to sign the Legal Charge document with the clause remaining, and the lender wasn’t willing to remove it. The onus was on Loans Warehouse to work with its lender in order to resolve the situation.
- Loans Warehouse’s calls weren’t to help him, they were with a clear purpose which was to get its commission. It behaved in a disgracefully pushy manner, and I’d disregarded that conduct in my decision.
- A manager at Loans Warehouse suggested he sign the Legal Charge document anyway, which was not only immoral, but unethical and most importantly illegal. In plain language Loans Warehouse asked him to act illegally, which is an absolute disgrace and can’t be condoned. Mr S said my decision showed I was happy with that conduct.
- To remove the blame from Loans Warehouse is to accept and condone its outrageous behaviour. He, on the other hand, had done nothing wrong, not acted illegally and not tried to dupe someone into signing a finance deal in order to claim commission. Mr S questioned whether I could see the difference.

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 won’t be going into as much detail as Mr S used in responding to my provisional decision, as much of what has been argued in response I’d already taken into consideration when reaching – and dealt with in – those provisional findings.

It is not the case that I don’t understand what happened or have sided with the business, it is simply that I don’t agree with Mr S’s view and don’t agree Loans Warehouse is at fault as Mr S believes. That’s not a lack of understanding or bias, as Mr S has claimed. I’m sorry to see that he feels that way and I would seek to reassure him that’s not the case at all.

I understand my provisional findings were disappointing for Mr S. It’s the nature of what we do that we generally have to find in favour of one party or the other. Our findings are based

on a consideration of all the facts and all the submissions made by both parties. We look at what happened and decide whether we think a business has acted fairly and reasonably.

It seems from his response to my provisional decision that Mr S may have conflated the roles of the lender and the broker (Loans Warehouse). This complaint is against Loans Warehouse so I can only consider what it did and didn't do. I can't consider what the lender did and didn't do.

Mr S said that whilst he'd said he would sign the document, he hadn't seen it at that stage and when it came through, he, legally, couldn't sign it, and then on top of that they wouldn't change the document wording. But the "they" here is the lender, not Loans Warehouse; that is, it was the lender that wouldn't change the wording of the document and Loans Warehouse had nothing to do with that. And Loans Warehouse also hadn't seen the document so it also wouldn't have been aware of what the particular clause said and that it would cause a problem.

Loans Warehouse was in the same position as Mr S. I'll explain why.

Both Mr S and Loans Warehouse:

- knew about the restriction,
- discussed it with the lender, and
- had seen the initial guidance Mr S had sent from a solicitor at the end of February 2024.

And neither Mr S nor Loans Warehouse;

- had seen the Legal Charge document, and so
- knew that there would be a clause that would cause a problem and that the lender wasn't willing to amend or remove.

Loans Warehouse had no information that Mr S didn't have, and it simply had no way of knowing that the deal would fall apart due to a clause in the Legal Charge document. Loans Warehouse told the lender about the restriction, and what it meant, from the start and the lender proceeded to offer on that basis.

Mr S has said the onus was on Loans Warehouse to work with the lender to resolve the situation but that isn't the case. And even if it was, there was nothing Loans Warehouse could have done to resolve things, as Mr S has said things were stuck with his solicitor's guidance being that he wasn't legally allowed to sign it, and the lender's solicitor not being willing to remove or amend the clause. Even if Loans Warehouse should have got involved, it couldn't have changed that situation. The solicitors were instructed by, and working for, the lender and Mr S respectively. They were nothing to do with Loans Warehouse.

I understand Mr S feels very strongly about the calls from Loans Warehouse, but as I explained in my provisional decision I'm satisfied the initial calls were to try to get things moved forward before the offer expired. It's not in dispute that Loans Warehouse made a number of calls to Mr S, but I don't agree that it behaved in a disgracefully pushy manner as Mr S has said. Whether you see the chaser calls as being for Mr S's benefit (so that he would get the loan he wanted) or for Loans Warehouse's benefit (so it could get its commission) is moot; arguably those are the same thing. Mr S clearly wanted the loan because he applied for it, and Loans Warehouse would receive its commission if the loan went through, so it was to the benefit of both parties that things complete.

Mr S has said that I was happy with the conduct of Loans Warehouse in respect of the call he said he received telling him to sign the Legal Charge document anyway. But that isn't what my provisional decision said. In my provisional decision I said I hadn't been able to listen to the call in question and Loans Warehouse's call notes don't represent the call in the same way, but even if things did happen exactly as Mr S said, he didn't act on that to his detriment so there would be nothing to put right.

So it isn't that I've condoned anything or chosen to ignore Mr S's submissions on that point. Instead, it is that the parties have given me differing records of what was said, and I don't have a copy of the call to listen to. And even if I did have a copy of the call to listen to, and Loans Warehouse did say Mr S should sign the Legal Charge document anyway, Mr S didn't act on that suggestion and so there is nothing to put right.

It is clear Mr S feels very strongly about this, but he's not suffered any financial loss due to Loans Warehouse making all those calls to him or due to it telling him to sign the document when his solicitor had told him he couldn't do so. Our role is to put right financial loss, but there has been no financial loss that can be directly attributable to those phone calls. Mr S didn't incur his legal costs due to those calls.

We're not the regulator and I've no power to fine or punish a business. We don't make punitive awards, and I can't sanction a business. All I can do is look at an individual dispute and decide what needs to be done to put it right (if anything). Here Mr S didn't sign the document, so there is nothing to put right as I can't make an award based on what a business might have tried to encourage a customer to do (but the customer didn't).

Whilst Mr S didn't get the loan he applied for, I'm satisfied that wasn't due to any act or omission on the part of Loans Warehouse, and I'm also satisfied that Loans Warehouse wouldn't have known (just like Mr S didn't) what would later happen in respect of the Legal Charge document.

I've read everything Mr S has said in response to my provisional decision and considered the entire file afresh. I understand how strongly Mr S feels about it, and I've a great deal of sympathy for his situation but having considered everything very carefully I see no reason to depart from my provisional findings.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 June 2025.

Julia Meadows  
**Ombudsman**