

The complaint

Miss C and Mr T complain about their second charge mortgage (secured loan), which is currently being administered by Swift 1st Limited trading as Swift Advances. They complain that the loan was irresponsibly lent. And they complain that Swift 1st is now barred from collecting any further payments from them, as well as whether there is a valid charge over their property.

What happened

Miss C and Mr T took out their loan with a lender I'll call W in 2007. They borrowed £17,000 over a term of fifteen years. They fell into financial difficulty and haven't made any payments to the loan since June 2014. Although the term has ended, there is therefore a substantial balance outstanding.

In 2018, the loan was transferred to another lender I'll call CF. And in April 2023 it was transferred again. The current lender is a firm called Swift Advances plc. Swift Advances plc has appointed Swift 1st to administer the loan on its behalf. In doing so, Swift 1st uses the trading name "Swift Advances". But to avoid confusion, in this decision when I refer to "Swift Advances" I mean Swift Advances plc, the lender. And when I refer to "Swift 1st", I mean Swift 1st Limited trading as Swift Advances, the administrator.

Miss C and Mr T first complained about this loan in 2014, when the loan was still owned by W.

This complaint was made to Swift 1st in 2024. Miss C and Mr T said that the loan was irresponsibly lent, because they were unemployed at the time of the application, so it was unaffordable – and W falsified documents so the lending could go ahead. They said that because no payment or acknowledgement of the debt had been made for many years, the debt was statute barred and Swift 1st is unable to take enforcement action. And they said it appeared that the charge over their property was still in the name of CF – meaning Swift 1st had no right to recover the loan in any case.

Swift 1st said that the complaint about the lending decision was brought out of time. It said that the debt was not statute-barred and remained enforceable, and that the charge over the property had been amended to show Swift Advances and correctly registered at the Land Registry.

Our investigator said that we couldn't consider the complaint about the original lending decision, because that wasn't something Swift 1st was responsible for. She said that it wasn't unfair for Swift 1st to continue to pursue the debt, and that Swift Advances' charge appeared to be properly registered at the Land Registry.

Miss C and Mr T didn't agree and asked for an ombudsman to review their complaint. They said they had complained to us before about the loan – they had complained about W in 2014 but never received a response. If the complaint was not progressed at the time, that was not their fault. They said that there was an unfair relationship, pursuant to section 140A of the Consumer Credit Act 1974, because of the lending decision. They said that the law

and the regulator's rules said that it wasn't fair to take recovery action now. And they said that there appears to be a gap in registration of the charge, which raises doubts about whether Swift 1st has standing to enforce the loan now.

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.

This is a complaint about a regulated second charge mortgage. The original lender, W, no longer exists. The loan was sold on to CF in 2018, and then to Swift Advances in 2023.

Swift Advances is therefore the current lender. However, Swift Advances is not a regulated firm, and so does not fall within the jurisdiction of the Financial Ombudsman Service. That means I have no power to consider a complaint about anything that is the responsibility of Swift Advances.

Where an unregulated firm acquires a regulated mortgage, it must appoint a regulated firm to administer the loan on its behalf. Swift Advances did that, by appointing Swift 1st to act as administrator. Swift 1st does fall within our jurisdiction, and so I can consider a complaint about Swift 1st – but only about things for which it is responsible.

That does not include the original lending decision. That was done by W. W no longer exists and I have no power to consider a complaint about it. If, as Miss C and Mr T suggest, that lending decision created an unfair relationship pursuant to s140A of the Consumer Credit Act, then that's not a matter I can consider either. That's because the Act says that any current unfairness in the relationship is the responsibility of the current lender – in this case, Swift Advances. And while, in principle, s140A is relevant law I can take into account when considering the merits of a complaint, I can't do so in the specific circumstances of this complaint. That's because I can only consider a complaint about the administrator, not the lender. But it's the lender, not the administrator, that's responsible for the fairness of the relationship under s140A.

That means I can't consider anything about the original lending decision here. I can only consider a complaint about the administrator, not the lender. Swift 1st was not the original lender, and is not the current lender. Therefore the lender's responsibilities under s140A are not something I can consider in this complaint. But they are a matter Miss C and Mr T may be able to raise with the court in the repossession proceedings. They may want to take legal advice about the prospects of success of that argument first.

Miss C and Mr T also say there was PPI attached to the loan agreement. The copy of the loan agreement I've seen does not include any provision for PPI. But if a policy was taken out separately, and Miss C and Mr T consider they had or have a valid claim, that's something they'll need to contact the insurer about.

Miss C and Mr T refer back to a previous complaint about W. As our investigator explained, the letter they have is not evidence that they made a *complaint* to us about W. It's evidence that they made an *enquiry* to us, we told them they would need to complain to W first, and that they could then come back to us if they were unhappy with W's response.

Our files from 2014 have since been deleted in accordance with our data retention policies. So I have no way of checking from our records whether Miss C and Mr T did in fact come back to us to make a complaint after first complaining to W, and they've not provided any evidence to suggest they did either. In any case, that doesn't make a difference here. W still existed at the time. But it no longer exists. So even if that complaint was referred to us in

2014 and not considered by us (and there's no evidence that was the case), we wouldn't be able to consider a complaint against W now. We can consider a complaint against Swift 1st – but as I've explained, it isn't responsible either for the original lending decision, or for the fairness of the lending relationship now.

I've reviewed the records of the account. They show that Miss C and Mr T last made a payment in June 2014. The Limitation Act governs time limits for court cases. Section 20 of the Act says that "no foreclosure [repossession] action in respect of mortgaged personal property shall be brought after the expiration of twelve years from the date on which the right to foreclose accrued".

The date the "right to foreclose accrued" is not the date of the last payment made. It's the date on which the failure to make payments became a breach of the terms and conditions entitling the lender to take repossession. I don't have a copy of the terms and conditions, but that will likely have been a few months (two months is usual in mortgage agreements) after payments were missed. In other words, that is some time after June 2014 – and is therefore within the last twelve years.

But the Limitation Act is about the powers of a lender to repossess a property to recover a loan via court proceedings. And it's for the court, not the Financial Ombudsman Service, to regulate court proceedings – including limitation periods. Based on my understanding of the law as set out above, it doesn't appear to me to be unfair or unreasonable – taking into account the law – for Swift 1st to be taking action on behalf of Swift Advances to recover the mortgage balance less than twelve years after the right to do so accrued. But ultimately that's something for the court to decide, and something Miss C and Mr T will be able to raise in the repossession proceedings. Again, that's a matter they should consider obtaining legal advice about before doing so.

Miss C and Mr T also referred to CONC – which is the part of the Financial Conduct Authority's Handbook dealing with regulated consumer credit lending. That's not relevant to this loan, because it's a mortgage, and so comes within the MCOB section instead. There is nothing in MCOB that prevents a lender taking repossession action within the applicable limitation period. MCOB 13.6.4 says that lender must notify a customer of intention to recover a sale shortfall within six years – but that's not relevant here. A sale shortfall arises where a lender has already repossessed and sold the property, and the proceeds of sale were not enough to repay the full balance. That's not the case here. So there is nothing in MCOB that prevents Swift 1st taking repossession action.

Finally, I've reviewed the official copy of the Land Registry title entry. It shows that there was a charge registered to W in November 2007, that the charge was varied to replace W with CF on 30 April 2018, and varied again to replace CF with Swift Advances plc on 20 July 2023. It therefore appears to me that the charge securing this loan was correctly registered and is currently held by the current lender, Swift Advances plc. I don't therefore think it is unfair that Swift 1st, as the administrator acting on behalf of Swift Advances, has sought repayment from Miss C and Mr T. But if there is something about the registration of the charge which Miss C and Mr T consider makes the mortgage technically unenforceable as a matter of law, that's something they'll be able to raise with the court in the repossession proceedings. Again, they might want to seek legal advice before making legal arguments that, if not successful, would increase costs.

As I say, many of the arguments Miss C and Mr T have made are legal matters concerning the right of Swift Advances to take legal action against them. I have no power to consider a complaint about action Swift Advances is taking, because that firm does not fall within my jurisdiction. But nothing I've seen suggests that Swift 1st has not acted fairly and reasonably in seeking to recover payment from Miss C and Mr T.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr T to accept or reject my decision before 10 November 2025.

Simon Pugh
Ombudsman