

## **The complaint**

Mr L and Ms C, as partners of N, argue that Swan Digital Limited mis-sold them two hire purchase agreements.

## **What happened**

Mr L and Ms C were two partners of an unincorporated partnership I'll call "N".

In May 2017 Mr L and Ms C, trading as N, entered a hire agreement for office equipment. In July 2019 a second hire agreement was entered into. The second agreement lists both Mr L and Ms C trading as N, however only Mr L has signed this agreement.

For context, in February 2016 Mr L, Ms C and two other individuals created a limited liability partnership (I'll call "H"). After this time Mr L and Ms C have provided evidence to demonstrate that N continued to trade as an unincorporated partnership. They have explained this occurred because the partners found it difficult to transfer their business to H.

The hire agreements were arranged by Swan Digital with a separate creditor I'll call "C". Mr L subsequently retired from both N and H, and the remaining partners defaulted on both agreements. So, C pursued the named partners on the agreements to recover the funds owed. C obtained a judgement in default against Ms C and the court proceedings against Mr L resulted in an agreed full and final settlement by way of a Tomlin order.

Mr L and Ms C have complained that Swan Digital mistakenly put the agreements in their names trading as N, rather than H (as the LLP). As a result of this, they had personal liability for the agreements. H traded under two names, one of which was the same as N, so Mr L and Ms C say they thought the agreements were in H's name. And as such that they weren't aware they would have personal liability for repaying the agreement. Furthermore, Mr L argues he wasn't aware this liability would continue after he retired.

Mr L and Ms C are being represented by Mr L's wife, Mrs L. On behalf of Mr L and Ms C, Mrs L has also explained how distressing this has been for them, as they have been pursued for sums of money they say they had no awareness they were liable for. And for the additional distress and cost which the legal action against them has caused. So they would like compensating by Swan Digital for this.

Swan Digital didn't uphold their complaint. In its response to our service, it said that it was clear on the agreements that Mr L and Ms C had entered into them trading as N and not H. At the time of leaving the business it argues it would have been for Mr L to contact C and inform it of this. The agreements are with C and any changes to the agreements, such as the removal of Mr L and Ms C (which they requested in their complaint), would be for C to consider and not Swan Digital. Finally, it has said that these were business to business agreements which was set up for business purposes. It argues Mr L confirmed this when he signed in his capacity as a partner of N.

I issued a provisional decision explaining why I didn't think our rules allowed our service to consider this complaint. Mrs L on behalf of Mr L and Ms C responded with a number of



points to dispute this.

I sent a further provisional decision explaining that I now agreed the complaint was one we could consider. I also addressed the merits of the complaint, concluding that I wasn't minded to uphold this complaint. In my provisional decision I said:

*"Mr L and Ms C argue that Swan Digital mistakenly put the two hire agreements in the name of N rather than H, giving them personal liability for the agreements. Had the agreements been put in the name of H, as an LLP they wouldn't have had personal liability for the agreements (subject to the terms of the LLP). They argue that as one of the trading names of H is the same as N, they thought the agreements were in H's name.*

*Having reviewed the hire agreements, I don't find this argument persuasive. In the section entitled "Details of the hirer" it states Mr L and Ms C trading as N. Whilst this is the same name as one of the trading names of the LLP, it does not state "LLP", so I think it was clear the agreement was in N's name and not H. Furthermore, as H was a separate legal entity, the agreements were unlikely to have featured Mr L and Ms C's names on them. So, this again should have demonstrated to Mr L and Ms C that the agreement wasn't in H's name.*

*I've also considered the argument that Swan Digital failed to inform Mr L and Ms C of their personal liability under the hire agreements. To support this, Mrs L has further argued that had Swan Digital made Mr L aware of his personal liabilities under the hire agreements, he would have taken steps to try and limit his liability when retiring as a partner in January 2020.*

*I don't know what was discussed and whether or not Swan Digital explained they would have personal liability under the hire agreements. However, I do know that the partners created an LLP in 2016 and a key benefit of creating this separate legal entity would have been to limit their liability. So, I think it's likely that this was a factor in creating H. At this time Mr L and Ms C were also (and remained) partners of N which was an unincorporated partnership. Given that limiting personal liability is a key factor in creating an LLP, I think it's likely that they knew they would have personal liability under their existing partnership (N). I also think, as explained above, it's clear the agreements weren't in the name of H and were in the name of Mr L and Ms C as partners of N. So, on balance, I think it's most likely that Mr L and Ms C were aware that this would create personal liability for repayment of the two hire agreements.*

*I appreciate Mrs L's comments that Mr L would have acted differently when he retired had he known he could be personally liable for the two hire agreements. However, as a partner of both N and H, I would have expected Mr L to have explored his liabilities when he retired and taken advice in any event. And I note, I've not seen anything to suggest Swan Digital was providing any advice, such as retirement advice, to Mr L and Ms C at any point. So, I don't think it's fair or reasonable to hold Swan Digital accountable for Mr L's actions when he retired. (Particularly as I think it's most likely that Mr L was aware he could be held personally liable for both hire agreements).*

*I note that there have been arguments raised about the affordability assessment completed in relation to these agreements. However, if Mr L and Ms C, as partners of N, wanted to raise a complaint about this, it would need to be against the lender, C, and not Swan Digital.*

*I appreciate that this provisional decision will be very disappointing for Mr and Mrs L and Ms C. The events surrounding the pursuit of the funds owed by C will undoubtedly have been very distressing for Mr and Mrs L and Ms C and I genuinely do sympathise with the circumstances they have since found themselves in. However, having explored the matter thoroughly, I don't think I can hold Swan Digital accountable for this.*

Mrs L, on Mr L and Ms C's behalf, has made a number of points in response, which I will consider below. Swan Digital didn't provide any further arguments in response.



## **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.

Having done so, I'm still persuaded to reach the same conclusions as I reached in my provisional decision (which forms part of this decision). I appreciate this will be extremely disappointing for Mr and Mrs L and Ms C. I'll explain why below.

I've read everything that the parties have said, but I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

As I detailed in my provisional decision, I can't know what was discussed at the time the agreements were taken out. Neither party has been able to provide specific details which isn't unreasonable given how long ago the sales took place. So, I have reviewed the supporting documentation, specifically the two hire agreements. I think it was clear on both hire agreements that they were being taken out by Mr L and Ms C trading as N. This is because, whilst one of H's trading names was the same as N, the agreements don't specify "LLP" making it clear the agreement wasn't in the name of H. As explained in my provisional decision, the year prior to the first agreement Mr L and Ms C (together with two other partners) had created the LLP. A key factor in creating a limited liability partnership is to limit personal liability. So, I think Mr L and Ms C would have been aware about how these agreements had been taken out and that they would be personally liable.

I've considered the detailed submissions Mrs L has made about the responsibilities of the broker (with the exception of commission arguments which I will respond to separately). Ultimately, I've not seen anything that suggests to me that the sales took place on an advised basis. I think the agreements made clear the basis with which they were being entered into. And in all likelihood, I think Mr L and Ms C were aware of the distinction between N and H having previously set up the LLP.

I accept I can't know what was discussed during the sales. However, I also can't conclude that it's reasonable for Mr L and Ms C to have believed that the LLP was entering these agreements when that isn't what the agreements stated. Mrs L has highlighted the potential confusion caused by the same trading names being used, however Mr L and Ms C would have clearly been aware of this. And I think the presence of their names and the absence of "LLP", was sufficient to make it clear the basis for which the agreements were being entered into. Mr L and Ms C have also said that they had difficulties in transferring their business to H, which again undermines their argument that they thought H was contracting in relation to these two agreements. And so, taking everything into consideration, I'm not persuaded that I can conclude Swan Digital breached its responsibilities. So, I'm not upholding this complaint.

I've noted the arguments raised in respect of the Consumer Duty but as Mrs L has outlined, the Consumer Duty doesn't apply to these hire agreements as the agreements predate this. In addition, I can see Mrs L has made arguments about the disclosure of commission. As she's highlighted this is an independent complaint point. Having reviewed the initial complaint made to Swan Digital and which was referred to our service, I can't see this was raised as part of the complaint. So, I can't now consider it when it's never been previously raised.

Furthermore, I note the argument that Swan Digital breached the Dispute Handling rules set out in the Financial Conduct Authority's Handbook (DISP). However, this is with respect to



complaint handling and so falls outside of my jurisdiction to consider.

### **My final decision**

For the reasons explained above and in my provisional decision, I don't uphold this complaint about Swan Digital Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Ms C to accept or reject my decision before 29 December 2025.

Claire Lisle  
**Ombudsman**