

## The complaint

Mr and Mrs S complain about secured loans they hold with Handelsbanken plc. They believe these loans should have been treated as regulated mortgage contracts and Handelsbanken is in breach of its regulatory obligations by not providing the facilities in a manner compliant with the rules that govern regulated mortgages. Their overarching concerns are that Handelsbanken didn't complete a proper assessment of their financial circumstances, and it agreed to loans that were unaffordable for Mr and Mrs S with no suitable repayment strategy.

Mr and Mrs S are represented here by Mr HS.

## What happened

Mr HS has provided extensive submissions about this complaint, along with supporting documents. Handelsbanken has also provided detailed evidence. I've considered all of the available information carefully. I'll set out below a brief summary of the relevant facts and the parties' submissions. But I want to reassure both parties that I have fully considered everything they've said – though in the interest of brevity and anonymisation, I haven't set out everything in full. This reflects the informal nature of this Service. Instead, I'll focus on giving the reasons for my decision.

In or around August 2015, Handelsbanken agreed to three loan facilities for the purpose of Mr and Mrs S refinancing loans with another lender. The loan facilities were made up of three parts:

- £1,500,000 for a term of ten years on an interest-only basis linked to London Interbank Offered Rate (LIBOR). Only £1,200,000 was drawn down.
- £1,600,000 for a term of two years on an interest-only basis linked to LIBOR. Handelsbanken's records indicate Mr and Mrs S intended to repay this loan after the sale of two other properties they owned.
- £300,000 for a term of ten years (offset) on an interest-only basis.

In 2016, Handelsbanken agreed to a further loan of £250,000 so that Mr and Mrs S could repay an existing loan with another lender. This was agreed on the same basis as the previous £1,200,000 loan, for a ten-year term on an interest-only basis linked to LIBOR.

In October 2016, Handelsbanken agreed to combine the £1,200,000 loan and the £250,000 loan into one interest-only loan at a fixed interest rate of 2.92% for a term expiring in August 2025.

In 2017, with the £1,600,000 loan approaching the end of its two-year term and Mr and Mrs S deciding not to sell other properties to repay the loan, Handelsbanken agreed to restructure the interest-only loan for a ten-year term, at a fixed interest rate.

In 2020, Handelsbanken provided Mr and Mrs S with a £300,000 overdraft facility, which its records indicate was required to assist Mr and Mrs S with a cash flow timing issue.

In October 2024, Mr HS complained to Handelsbanken on Mr and Mrs S's behalf that it should have treated the loans as regulated mortgage contracts, and it acted in breach of its regulatory obligations by not providing the facilities in a manner compliant with the rules that govern mortgages. Their key concerns were that Handelsbanken didn't complete a proper assessment of their financial position, and it agreed to loans that were unaffordable with no suitable repayment strategy.

Handelsbanken issued its final response on 21 November 2024 which rejected the complaint. In summary, it didn't agree that the loans should have been issued on a regulated basis or that the loans were unaffordable. It said Mr and Mrs S had a clear repayment strategy, this being the sale of investment properties and the security property, which it felt was acceptable.

When the complaint was referred to this Service, our Investigator agreed that the loans should be treated as regulated mortgage contracts, but she didn't agree that Handelsbanken had failed to complete proper affordability assessments, or that the repayment strategy was inappropriate in the circumstances.

Mr HS didn't agree and asked for an ombudsman review. His key reasons were:

- Mr and Mrs S didn't intend to sell other properties they owned as it was their plan to give them away to their children.
- Handelsbanken didn't consider Mr and Mrs S's credit card usage or other costs associated with maintaining the security property. It also didn't consider income and revenue on a net basis as he feels it should have done.
- Mr and Mrs S never wanted to sell the security property, which is their residence, and there will be insufficient equity remaining in the property for Mr and Mrs S to purchase a new home after repaying the loans.

### **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.

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

I've firstly considered whether the loans are regulated mortgage contracts. Having done that, I've taken into account the rules of mortgage regulation. The rules are set out in the Mortgages and Home Finance: Conduct of Business Sourcebook – usually known as MCOB – which is issued by the Financial Conduct Authority (FCA).

## Should the loans be treated as regulated mortgage contracts?

Handelsbanken issued the loans on an unregulated basis. However, Mr HS has argued that the loans should be treated as being regulated mortgage contracts and therefore subject to relevant mortgage regulations such as MCOB 11.6.

The definition of a regulated mortgage contract is set out in Article 61 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 as amended (the RAO). It says a contract is a regulated mortgage contract if, at the time it is entered into, the following conditions are met, unless one of the exemptions in Article 61A(1) or (2) apply:

“(1) the contact is one under which a person (“the lender”) provides credit to an individual or to trustees (the ‘borrower’);

(2) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land;

(3) at least 40% of that land is used, or is intended to be used ... as or in connection with a dwelling.”

None of the exemptions in Article 61A(1) or (2) apply here – they are concerned with things like buy to let mortgages, certain types of second charge lending, and so on. The key question here is whether the third condition – that at least 40% of the land subject to the mortgage is used as or in connection with a dwelling.

The security property concerns extensive land including a large dwelling, other buildings, gardens, woodland and arable and pasture land.

“In connection with a dwelling” is generally considered to mean land used for residential purposes, which would include gardens and parkland attached to the house, but not land used for commercial purposes such as a working farm – see PERG 4.4.7 in the FCA’s Handbook.

Mr HS says at least 40% of the land was used in direct connection with Mr and Mrs S’s dwelling, for example for keeping domestic horses, walking dogs, sitting in the garden to read books, and for hobby gardening, and that none of the land was used for commercial purposes.

The examples Mr HS has given for Mr and Mrs S’s use of the land fit with my understanding of what is considered to be “in connection with a dwelling”. Also, Handelsbanken’s record of its introductory meeting with Mr S dated April 2015 refers to Mrs S’s passion for horses which supports what Mr HS has told us about land being used to keep domestic horses.

Handelsbanken has told us that it believes land was used for alternative purposes, such as a working farm. It says it has seen evidence of income generated from a farm on the land and it has seen photos of sheep grazing on the land.

However, Handelsbanken hasn’t provided this Service with corroborating or persuasive evidence to show that more than 60% of the land was used, or was intended to be used, as a working farm or for alternative activities not in connection the dwelling when the loans were agreed. So, I’m not persuaded that it was. On balance, the evidence that I’ve seen indicates that at least 40% of that land was used, or was intended to be used, as or in connection with a dwelling when the loans were agreed.

Considering this, I'm satisfied the loans should be treated as being regulated mortgage agreements, even if Handelsbanken hasn't treated them as such. I'm therefore treating the relevant loans as if they were regulated for the purpose of this complaint and I will take into consideration the relevant mortgage regulation rules (MCOB).

Did Handelsbanken properly assess Mr and Mrs S's financial circumstances, and did it correctly conclude the loans were affordable?

## 2015

In or around August 2015, Handelsbanken agreed to three loan facilities for the purpose of refinancing debt with another lender. The loan facilities were made up of three parts:

- £1,500,000 for a term of ten years on an interest-only basis linked to London Interbank Offered Rate (LIBOR). Only £1,200,000 was drawn down.
- £1,600,000 for a term of two years on an interest-only basis linked to LIBOR. Handelsbanken's records indicate Mr and Mrs S intended to repay this loan after the sale of two other properties they owned.
- £300,000 for a term of ten years (offset) on an interest-only basis.

Mr HS feels strongly that Handelsbanken didn't conduct a satisfactory assessment of Mr and Mrs S's financial circumstances, so I've thought very carefully about what happened at that time. I've considered Mr and Mrs S's recollections of what happened, as well as Handelsbanken's records from that time, including the income and expenditure assessment it completed dated June 2015. Handelsbanken's records are contemporaneous, so I'm satisfied I can rely on them as an accurate record of what was discussed at that time.

The security property is Mr and Mrs S's residence and includes extensive land. Handelsbanken's records detail the property had been valued at around £9,000,000 by an independent surveyor who is registered by the Royal Institution of Chartered Surveyors (RICS). This meant the loan to value ratio (LTV) was 38%. Further, Handelsbanken's records detail the LTV was expected to reduce to 20% after the first two years as the result of Mr and Mrs S's intended sale of two other properties they owned which weren't part of the security property. Mr HS strongly refutes that it was ever Mr and Mrs S's intention to sell these properties to repay part of the lending. However, Handelsbanken's records indicate this is what Mr and Mrs S had discussed with it on several occasions. I find Handelsbanken's contemporaneous records of what was discussed at that time more persuasive than Mr HS's testimony.

MCOB 11 allows for tailored provisions for high-net-worth customers, which means lenders can use alternative, less stringent affordability assessments than usual. Instead of solely focussing on income and expenditure, lenders can consider a customer's net assets or income, allowing for a more complex financial picture to be considered.

Here, "high net worth" is defined as:

"A customer with an annual net income of no less than £300,000 or net assets of no less than £3,000,000."

I'm satisfied that this applied to Mr and Mrs S here as I'm satisfied they had net assets of at least £3,000,000. I can see that in 2015 Handelsbanken calculated Mr and Mrs S had net assets totalling more than £9,000,000. This included other properties owned by Mr and Mrs S. While Mr HS doesn't agree this represented the true net asset position of Mr and Mrs S, I'm persuaded from the information available that Mr and Mrs S had net assets of at least £3,000,000 – which is the minimum amount required, so Handelsbanken was entitled to treat Mr and Mrs S as being high-net-worth customers and apply the tailored provisions when assessing the affordability of the loans.

Handelsbanken didn't in fact do that, because it treated the loans as unregulated. But that's not enough for me to uphold this complaint. I also need to think about what it would have taken into account had it approached the lending decision as if it were regulated. If, approached properly, the lending would have been considered affordable then it wouldn't be fair and reasonable to uphold this complaint. So, I've thought about what Handelsbanken ought to have taken into account as it treated these loans as regulated high net worth lending.

At the time, the tailored provisions were set out in MCOB 11.6.34 R to 11.6.38. These required Handelsbanken to consider, among other things, Mr and Mrs S's income or net assets (or both) and basic essential expenditure and basic quality-of-living costs, alongside whether factors such as interest rates and income were likely to change within the agreed mortgage terms.

In addition to calculating net assets totalling over £9,000,000, Handelsbanken carried out an income and expenditure assessment which indicated Mr and Mrs S would have a net disposable monthly surplus of £2,081. This took into account loan repayments, basic essential expenditure and basic quality of living expenditure in line with MCOB requirements.

Mr HS says Handelsbanken failed to take into account Mr and Mrs S's credit card usage and costs associated with running and maintaining the large security property when completing its assessment, and had it taken this into account, it would have been apparent that Mr and Mrs S couldn't afford the monthly payments.

The income and expenditure document dated June 2015 doesn't show Mr and Mrs S provided a figure for the specific category "Property Maintenance", but it does show Handelsbanken factored in other relevant expenses including domestic help and insurance. The document also doesn't show any credit card related debt or expenditure, so it doesn't appear Mr and Mrs S disclosed this to Handelsbanken at that time if that was the position. I also haven't seen any evidence to show these additional outgoings would have been apparent to Handelsbanken. Importantly, I can see that Mr and Mrs S signed the income and expenditure document to confirm that "...all of the information contained in this document is true and complete" which I wouldn't have expected them to have done if the document was missing material information about their outgoings. A lender is entitled to rely on the information it is given unless there are common sense reasons to doubt it – and I don't think there were here.

It is clear from Handelsbanken's records from that time that a key consideration when agreeing to the lending was that Mr and Mrs S intended to sell other properties that they owned within the first two years to repay the loan of £1,600,000, and this would significantly reduce the interest burden and monthly payments on the remaining lending.

Handelsbanken's records also show it considered possible changes in Mr and Mrs S's income. Mr S was the main earner, and while Handelsbanken's records indicate he intended to work throughout the term of the loans, it considered how Mr and Mrs S would be able to make the payments if he was unable to work. Having done so, it felt the risk of financial strain was low for the following reasons:

- Mr S held a pension valued at £900,000 which he could start drawing income from.
- If the other properties weren't sold, they could be rented out to generate yearly income of around £144,000.
- Significant other property could be sold.
- Mr and Mrs S had savings of £120,000.
- In the event of Mr S passing away, there was a life cover provision of £2,500,000.

While I accept exact net figures weren't recorded, I'm satisfied Handelsbanken identified several realistic options that could support Mr and Mrs S to make the monthly payments should Mr S's income reduce during the term of the loans.

I can see Handelsbanken also considered whether the loans would be affordable if interest rates increased by 2.5%. It acknowledged this would result in a significant monthly shortfall, but it felt Mr and Mrs S had sufficient "liquid resources" (which I consider to be a reference to savings/money in bank accounts) to cover the shortfall for two years – but by this time they were expected to have sold other properties, significantly reducing the debt and the monthly payments.

Considering everything, I'm satisfied Handelsbanken completed a satisfactory assessment of Mr and Mrs S's financial circumstances at that time and I'm not persuaded that it ought to have concluded the repayments would have been unaffordable in the circumstances, or that the outcome of the assessment would have been any different had it treated this as regulated lending.

I can see Handelsbanken relied on the repayment of the loans being justified by Mr and Mrs S's ultimate repayment vehicle which was the sale of property, which it was confirmed would be sold as part of Mr S's retirement plan at the end of the 10-year term.

Mr HS has argued that it wasn't reasonable for Handelsbanken to rely on the sale of Mr and Mrs S's residence to repay the loans. The relevant part of MCOB here is 11.6. At the relevant time, MCOB 11.6.41 set out when a lender could enter into an interest only mortgage. This says:

"A mortgage lender may only enter into an interest only mortgage, or switch a repayment mortgage onto an interest only basis for all or part of the term if:

- (a) It has evidence that the customer will have in place a clearly understood and credible repayment strategy; and
- (b) As far as it is reasonably able to assess at the time, the repayment strategy has the potential to repay the capital borrowed and any interest reasonably expected to be accrued under the interest only mortgage."

MCOB 11.6.46 (3) E says that relying on sale of the property may be a breach of MCOB 11.6.41R(1) – if the property is the borrowers' 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”.

It is clear from Handelsbanken's records that it had considered the remaining equity in the security property after the repayment of the loans when calculating the LTV. Based on the property valuation of around £9,000,000, there was potential of there being around £5,000,000 of equity left in the property after the repayment of the loans – and this would be even more if Mr and Mrs S sold other property to repay part of the loan after two years as they intended. Considering this, it appears Mr and Mrs S would be left with sufficient funds to buy a cheaper property to reside in after repaying the loans.

It follows, that I don't consider it was inappropriate for Handelsbanken to consider the sale of the security property to be an acceptable strategy for the repayment of the loans in the circumstances, or that the outcome of the lending decision would have been any different had it treated the lending as regulated.

## **2016**

At annual review, Mr and Mrs S asked to borrow a further £250,000 to refinance an existing loan with another lender, which Handelsbanken agreed to. The other loans remained unaffected. However, later in 2016, Mr and Mrs S asked for the £1,200,000 loan and £250,000 loan to be combined and a fixed interest rate applied.

Handelsbanken's records from 2016 show Mr S's income position had improved, and after completing another income and expenditure assessment, it found Mr and Mrs S had a net disposable monthly surplus of £16,030. Handelsbanken also determined that if interest rates increased by 2.5%, Mr and Mrs S would have a monthly disposable surplus of £8,600.

Handelsbanken's records also show it felt the risk of financial strain remained low, for many of the same reasons it had considered in 2015, including Mr S' pension provision and savings. Considering this, I don't think it was unreasonable for Handelsbanken to conclude the increase in borrowing was affordable for Mr and Mrs S in the circumstances.

Handelsbanken's records also show it considered there would be significant equity remaining in the security property after the total increased borrowing was repaid. So, there was still potential for Mr and Mrs S to buy a cheaper property to reside in after repaying the loans.

For the same reasons as above, therefore, I'm not persuaded that the lending was unaffordable or irresponsible, or that the outcome would have been any different if Handelsbanken had treated it as regulated lending.

## 2017

In 2017, with the £1,600,000 loan approaching the end of its two-year term, Handelsbanken agreed to restructure the interest-only loan for a ten-year term, at a fixed interest rate.

Handelsbanken's records detail Mr and Mrs S had previously intended to sell two other properties to their children as part of inheritance tax planning and to repay the loan, but their children weren't in a position to purchase the properties at that time. There was also reference to some volatility in the property market at that time which meant Mr and Mrs S wanted to extend the term of the loan until the end of Mr S's working career.

Handelsbanken's records show it completed another income and expenditure assessment. Mr S's income had reduced resulting in a reduced monthly disposable surplus of £1,500 being calculated.

Handelsbanken's records show it still continued to think the risk of financial strain was low. This was for the following reasons:

- Mr S held a pension valued at £900,000 which he could start drawing income from.
- Mr and Mrs S had cash reserves of £106,000.
- Mr and Mrs S could still sell other properties or generate £25,000 of rental income.
- Mr and Mrs S could sell other property they owned valued at £600,000 in 2015 and/or farmland.
- In the event of Mr S passing away, there was a life cover provision.
- Early sale of Mr and Mrs S's residence as part of a downsizing exercise.

It follows that I'm satisfied Handelsbanken identified several realistic options to support Mr and Mrs S to make the monthly payments should Mr and Mrs S face difficulty maintaining the payments based on Mr S's current income or if this was to reduce further.

Further, Handelsbanken's records show that In 2017, the property was valued at £8,400,000 by an independent surveyor who was accredited with the RICS, so it still appeared as though there was potential to be a significant amount of equity (around £5,000,000) left in the property after repaying the loans – even if the two other properties weren't sold to repay some of the debt, for Mr and Mrs S to be able purchase a cheaper property to reside in.

Considering everything, I'm not persuaded Handelsbanken acted inappropriately by agreeing to restructure the interest-only loan for a ten-year term at a fixed interest rate in the circumstances.

## 2020

In 2020, Handelsbanken agreed to a secured overdraft of £300,000 for a period of twelve months to be used on an "as needed" basis.

Mr HS says Handelsbanken agreed to the facility so funds could be used by Mr and Mrs S to make the monthly payments. However, Handelsbanken's records show Mr and Mrs S asked for this facility to fund timing differences between collection of fees against income tax obligations, and Handelsbanken's records show specific details were provided by Mr S about this - so I'm not persuaded that this facility was agreed for Mr and Mrs S to use to make the monthly payments.

Handelsbanken's records also show it reviewed Mr and Mrs S's financial circumstances at that time. It details Mr S told it they'd rented out one of their other properties for £750 per week providing an additional income source, and there had been no other material changes to his finances. He also anticipated income levels to remain the same for the foreseeable future.

Handelsbanken's records show it completed another income and expenditure assessment which calculated a net disposable monthly surplus of £2,785. It also considered the risk of financial strain was low for many of the reasons it had considered previously, including the potential for Mr and Mrs S to sell other properties they owned. Its records also show the overdraft facility was provided on a variable rate of interest, and it felt the impact of any increases in the interest rate would be relatively small and could be covered from available cash balances Mr and Mrs S had.

Handelsbanken's records show that it considered the value of the security property to be around £6,000,000 in 2020, resulting in an increased LTV of around 60%. However, there still appeared to be potential for sufficient equity (around £2,000,000) left in the property for Mr and Mrs S to purchase a cheaper property to reside in after repaying the loans.

### Conclusion

In summary, for the reasons that I've set out above, I'm satisfied Handelsbanken completed satisfactory assessments of Mr and Mrs S's financial circumstances at each review point that I've considered, and I'm not persuaded that it ought to have concluded the monthly payments for the loans agreed would have been unaffordable for Mr and Mrs S in the circumstances.

Although it didn't treat them as such at the time, I'm satisfied that on each occasion this ought to have been considered as regulated lending – but that the outcome of the lending assessments would still have been the same.

As far as I'm aware, Mr and Mrs S haven't missed any monthly payments, and I've seen no evidence of them experiencing any difficulty making these payments.

Further, for the reasons that I've already explained, I don't consider it was inappropriate for Handelsbanken to consider the sale of the security property to be an acceptable strategy for the repayment of the loans in the circumstances.

While I appreciate this isn't the outcome Mr and Mrs S were hoping for, I'm unable to conclude Handelsbanken has acted unfairly or unreasonably in the circumstances of their complaint.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 12 January 2026.

Michelle Griffiths  
**Ombudsman**