

complaint

Mr and Mrs A complain about charges which they say were wrongly applied to their secured loan account. The lender has appointed Acenden Limited to administer the loan and authorised it to respond on its behalf. Mr and Mrs A ask that the charges are refunded so that they can settle the account.

background

Mr and Mrs A took out a secured 10 year loan in 2006. The loan is secured by a second charge on their property. The loan was sold by the original lender in 2010. The loan term ended in late 2016 with an unpaid balance.

Mr and Mrs A say charges have been wrongly applied to their account. They say Acenden agreed some of the charges were incorrect and said it would refund them and send a settlement figure. They say this hasn't happened.

Mr and Mrs A raised a complaint in late 2016 about poor service, that the payment history and loan balance were incorrect and fees and charges had been wrongly applied. Acenden sent a final response letter in December 2016. Mr and Mrs A agreed that we won't consider the matters raised in that complaint, which they brought to us too late.

Mr and Mrs A raised a new complaint about the loan balance and the fees and charges in mid-2017. Acenden sent a final response letter in August 2017. It refunded charges of £162.11 and said the other charges applied from December 2016 were correct. As a gesture of goodwill, it refunded £125 of arrears management fees applied in January to March 2017. Mr and Mrs A aren't satisfied. They say they've been making payments since mid-2017 but the amount to settle the loan has increased due to unfair charges and interest. Mr and Mrs A both have health problems.

The investigator recommended that the complaint should be upheld, saying:

- We can look at charges applied since 20 December 2016. While Acenden refunded some charges as a gesture of goodwill, this didn't mean they'd been applied incorrectly.
- Acenden says it waives arrears charges if a payment plan is agreed and maintained. No plan was agreed. Mr A said this is because he was waiting for a refund of charges.
- In September 2017 Acenden spoke to Mr A. It completed an income and expenditure form and this showed Mr and Mrs A couldn't afford to make payments. When Acenden became aware of Mr and Mrs A's financial difficulties it should have frozen charges. Arrears management fees shouldn't be applied from September 2017 onwards.

Acenden didn't agree. It said the loan term ended with an unpaid balance. Acenden said it's open to discussion with Mr and Mrs A. But the information they'd provided suggests they aren't able to make repayments to clear the debt.

my provisional findings

I didn't agree with all of the investigator's recommendations. So I sent a provisional decision to the parties to explain why and to allow them to send any further comments and evidence. In my provisional decision, I set out the following provisional findings.

Mr and Mrs A have been in dispute with Acenden about the balance of their account and the fees and charges applied for some time. Here, I've only look into the matters raised in Mr and Mrs A's complaint in August 2017. Mr and Mrs A agreed that I won't consider the matters raised in their previous complaint in late 2016.

The term of Mr and Mrs A's account ended in November 2016 with an unpaid balance. There's no agreement between Acenden and Mr and Mrs A about how this will be repaid. While the debt remains outstanding additional interest is being applied, increasing the amount Mr and Mrs A owe. So the parties need to make every effort to reach agreement on how the debt will be repaid.

settlement offers since December 2016

Mr and Mrs A made two proposals to settle the debt in mid-2017. They said if charges of about £1,500 were refunded they'd arrange a payment plan to pay the remaining balance. They said if about £4,500 was refunded they'd clear the balance immediately. They said they had the means to do this. Mr A had previously told Acenden they'd borrow money from a family member to repay the loan.

Acenden is entitled to use its commercial judgement to decide whether to accept proposals to settle the debt. But I haven't seen evidence it responded to Mr and Mrs A's proposals to settle the loan. It's not clear though that Mr and Mrs A did have the means to settle the debt within a timescale that Acenden would have found acceptable. Or that Acenden would have agreed to refund the amount of charges suggested by Mr and Mrs A. So on balance I don't think its failure to respond to their proposals changed the outcome here.

fees and charges applied since 20 December 2016

Acenden continued to apply arrears management fees and alternative payment method fees after the loan term ended. It refunded some of these.

Acenden was entitled, under the loan agreement, to apply fees and charges during the loan term. The agreement allowed it to apply arrears management fees when Mr and Mrs A missed a contractual monthly payment without prior agreement. Acenden was also entitled to apply alternative payment method fees if payments were made other than in certain ways. These fees are intended to cover Acenden's additional administrative costs.

I don't think it was reasonable for Acenden to apply charges to Mr and Mrs A's account after 20 December 2016. I've explained why below.

When the loan term ended there was an outstanding balance of about £20,000. While this remains unpaid additional interest will be applied, increasing the amount owed by Mr and Mrs A. About £15,000 of the outstanding balance is payment arrears. I think Acenden should have been alerted to the possibility that Mr and Mrs A's financial circumstances mean they're unable to repay the outstanding balance. I don't think Acenden should have waited until September 2017 to discuss Mr and Mrs A's financial circumstances and discover that they can't repay the debt within a timeframe it finds acceptable.

I don't think Acenden has shown that it took suitable steps to ensure the debt was repaid as soon as reasonably possible, to minimise interest and other costs to Mr and Mrs A.

When the loan term ended, the outstanding balance became due. The aim of the parties should have been for the whole debt to be repaid as soon as possible. Contractual monthly payments were no longer due. There was no agreement to repay the debt through monthly payments. I don't think it's reasonable for Acenden to apply administrative fees – such as arrears management fees and alternative payment method fees – as if contractual monthly payments are still due. This is not the basis on which it now administers the debt.

what should happen now?

I think Acenden should refund the fees and charges (and related interest) applied to Mr and Mrs A's account since 20 December 2016. I think it should give Mr and Mrs A a final opportunity to repay the debt, if they can raise the money. It should consider and respond to any settlement proposals they put forward. If this doesn't result in the debt being repaid Acenden should take steps to recover the debt without further delay. I appreciate that this might mean it taking action for possession.

Mr and Mrs A agreed. Their representative said he had no further comments or information to provide. Acenden didn't agree. It referred to its comments made after the investigator sent her view.

my findings

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, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I haven't received any comments or evidence from the parties that would persuade me to change my findings from those set out in my provisional decision. So, for the reasons set out in my provisional decision, I think Acenden should refund the fees and charges (and related interest) applied to Mr and Mrs A's account since 20 December 2016. I think it should give Mr and Mrs A a final opportunity to repay the debt, if they can raise the money. It should consider and respond to any settlement proposals they put forward. If this doesn't result in the debt being repaid Acenden should take steps to recover the debt without further delay.

my final decision

My decision is that I uphold this complaint. I order Acenden Limited to refund the fees and charges (and related interest) applied to Mr and Mrs A's account since 20 December 2016.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 24 June 2018.

Ruth Stevenson
ombudsman