

complaint

Mr Y complains that Blemain Finance Limited gave him two secured loans that he couldn't afford to repay. He's also unhappy with the actions it's taken in trying to recover the outstanding amounts.

background

In July 2014, Mr Y applied for a secured loan through a broker with Blemain. His application was approved for a total of just over £77,000 – with monthly repayments of around £668. Two months later he applied for another loan himself for around £52,000. This was granted in November 2014 – with monthly repayments of just over £458. Both loans were secured against a property Mr Y owns and rents out.

The loans fell into arrears in July 2015 and remained this way for some time. Mr Y brought them up to date briefly in October 2017, but they fell into arrears again shortly after. Because of this, Blemain decided to recover the debts by seeking possession of Mr Y's rental property the loans were secured against.

Mr Y complained to Blemain – saying that he should never have been given the loans in the first place. He says they were unaffordable and that he had a problem with gambling at the time that should have been apparent to Blemain. He also didn't think that Blemain had treated him fairly when he was in financial difficulties and was unhappy with the actions it took when trying to recover what was outstanding. In particular, that it appointed a receiver and sent an eviction notice to his tenants. Mr Y says the impact of this meant that his tenants moved out.

Blemain didn't think it had done anything wrong here. It said it had always tried to talk to Mr Y about his situation to try and help. It agreed a number of payment plans to try to help him, but Mr Y never maintained the payments that were agreed. Blemain said it only appointed a receiver as a last resort, after the loans remained in arrears for a considerable period of time. It also explained that it was required, by law, to notify the tenants of Mr Y's property about the pending eviction.

Mr Y brought his complaint to us, where our investigator looked into this for him. She didn't feel that Blemain had done anything wrong here either. She felt that the loans would've looked affordable at the time they were given and couldn't see any reason that Blemain would've thought Mr Y would've struggled to afford these.

She also felt that Blemain had acted fairly in dealing with Mr Y's financial difficulties and in how it was now trying to recover what's owed. So she didn't think that Blemain needed to do any more here.

Mr Y disagreed. He still felt that information from when the loans were agreed should've shown Blemain that these weren't affordable. He also said that the plans Blemain agreed were never affordable. So the complaint was passed to me to decide.

my findings

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 not going to tell Blemain that it needs to take any action in relation to this complaint. I know this will be a disappointment for Mr Y, given the implications my decision may have for him.

Mr Y has raised numerous complaint points about these loans. Our investigator has covered these points in some detail. But my decision will focus on the crux of the complaint here – that Blemain should never have lent to him and its handling of his financial difficulties when recovering the debt.

the lending

Ultimately it's for a business like Blemain to decide who it lends to and, if so, on what basis. But I'd expect to see that Blemain carried out checks that were sufficiently proportionate to the amount being lent here. From what I've seen, I'm satisfied that Blemain did this.

I say this because for both of the loans Mr Y provided details of his income to demonstrate these were affordable for him. He also provided the details of his rental property that the loans were to be secured against. This information showed that Mr Y's combined income from his rental property and his employment was over £4,000 a month and he confirmed he could afford the borrowing on both occasions.

Blemain has also provided evidence of checks it performed on Mr Y's credit file. I accept that these show he had a number of other unsecured debts, along with an existing mortgage. But at the time he applied for the first loan, these other accounts were generally well maintained and there were only a few missed payments on them. By the time he applied for the second loan – he had increased his unsecured borrowing and also had a few accounts where he had exceeded his credit limits. But given that part of the intention of the loans was to consolidate his existing borrowing, I think it's reasonable for Blemain to have thought that by providing the loans here, it would've helped Mr Y get these accounts back on track.

I've certainly not seen anything that could've reasonably suggested to Blemain that Mr Y would've struggled to meet the payments on the loans if they were used for debt consolidation as Mr Y told Blemain they would be. Had he consolidated all of his existing borrowing using the loans, this still would've left an amount left over for the home improvements he told Blemain he would use the loans for too. I can't see that Mr Y gave Blemain any other reasons to doubt that he could afford the payments either.

Mr Y has said that he had resorted to gambling at the time the loans were agreed to because his financial position was so bad. But I haven't seen anything to suggest that Blemain could reasonably have been aware of this. Based on the checks they did, the loans looked affordable and there was no suggestion of gambling problems. I certainly can't see that Mr Y told Blemain about these issues himself.

Mr Y has said that Blemain should've checked the spending on his current account, but it only requested a single page from his current account statement with another bank. Blemain has explained that it requested this as proof of address though, rather than as proof of affordability. Having seen this myself, I don't think there was anything about this document that means that it should've taken any further action when assessing the affordability of the loans here.

I realise that Mr Y thinks that Blemain should've checked that the loans were in fact used for the home improvements and consolidation he said they would be. But it was for Mr Y to choose how to spend the money the loans made available to him. I know that Mr Y thinks Blemain should've checked that the home improvements had been carried out when it performed a valuation of his property before the second loan was granted. But that wasn't the purpose of the valuation. This was only for Blemain to make sure it had adequate security before agreeing to lend – not for the benefit of Mr Y.

I don't think the fact that Mr Y asked for another loan only a few months after the first loan was a reason for Blemain not to lend either. I've seen the valuation of Mr Y's property and given this, I think the amounts Mr Y borrowed were within what could be considered reasonable to consolidate Mr Y's debts and make home improvements. Even if Blemain did ask Mr Y more questions around this – I don't think it's likely this would've made a difference. Mr Y clearly wanted the lending at the time and given the affordability he demonstrated I think it's likely he would've made efforts and been able to satisfy Blemain that there was little risk in lending to him.

So the loans looked affordable to Blemain, based on the information he gave it. It performed the proportionate checks I'd expect to see of a lender when assessing borrowing like this here. The interest and charges applicable to the loans were also made clear to Mr Y before he agreed to these. Mr Y made several months of payments to the loans, before beginning to miss payments in July 2015, so it would've looked to Blemain like these were affordable after they were agreed. Mr Y clearly started struggling with his payments in July 2015, but I can't see that's because Blemain lent to him irresponsibly. I've also taken into account that the loans were secured against a rental property and the majority of the payments to the loans should've been covered by Mr Y's rental income.

financial difficulties

I've no doubt that the last few years have been a very difficult time for Mr Y and that trying to manage his finances has been tough. When someone is experiencing financial difficulties like this, we'd expect to see that a lender treats them fairly. I think Blemain has shown that it's done that here.

I say this because Blemain's records show that it has frequently tried to get in touch with Mr Y and, where it's been able to speak to him, it's agreed various plans to try and help him make payments that are affordable. Mr Y says he felt he had no alternative other than accepting these plans. I can understand why he feels that way, but the notes Blemain has provided show that it was always willing to discuss his financial situation with him to try and reach affordable plans – it agreed a total of 15 payment arrangements with him before finally seeking possession. It doesn't look like Mr Y was able to stick to the plans that were agreed, but after that, Blemain still continued to renegotiate plans even where they failed.

I think it's also important to note that it's Blemain's policy not to agree informal concessionary arrangements on loans like these – where they're secured on buy-to-let properties. However Blemain has gone against its policy here in an effort to try and help Mr Y, even agreeing to further plans like this after Blemain went to court to agree a plan that he didn't stick to. It also agreed several refunds of charges that were legitimately applied to his account to try and help him. The charges it refunded were applied correctly and Blemain was under no obligation to refund these. So I think all of this demonstrates a sympathetic attitude to his financial difficulties.

Mr Y has said that the letters he received from Blemain during this time were threatening. But letters notifying customers of their arrears and formal demands will be strongly worded, as they need to remind customers of the consequences of not complying with the terms of loans like these. I haven't seen anything in these letters, or indeed, in any of Blemain's record of contact with Mr Y which makes me think it's threatened him or been confrontational with him.

Blemain agreed a number of different payment plans over several months in an effort to help Mr Y. But when the majority of these failed over a considerable period of time, it appointed a receiver and instigated court action to seek possession of the property the loans were secured against. I realise what a huge impact that will have on Mr Y – but Blemain is entitled to do that in line with the terms of the loans that he agreed to. I also think it's doing so fairly here. Seeking to recover a debt in this way should only ever be a last resort, when all other avenues of trying to recover what's owed are exhausted. Having looked at everything that's happened – I can see why Blemain thinks that's the case here.

As a part of taking this action, Blemain sent the tenants of Mr Y's property an eviction notice. But it was obliged to do that as a part of the recovery actions it was taking. Mr Y has said that this was responsible for the tenants moving out. But that's not something that I think it's fair to hold Blemain liable for. Ultimately it was just doing what it had to before seeking possession of the property. If it didn't send this notice, it wouldn't have acted correctly in relation to the tenants' rights. While the consequences of this have been unfortunate for Mr Y, it's not something Blemain did wrongly.

So overall here I can't see that Blemain was irresponsible in giving Mr Y the loans, or that it treated him unfairly when he was in financial difficulties. I realise that this will be upsetting for Mr Y as Blemain has already explained what it intends to do to recover what's owed and seek possession of his property. But I don't think that Blemain is taking these actions unfairly. Our investigator has given Mr Y the details of organisations that might be able to help him. I can only urge Mr Y to speak to these organisations and to work with Blemain or the agents it may appoint to work out the best way forward here.

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 Mr Y to accept or reject my decision before 16 August 2018.

James Staples
ombudsman