

The complaint

Mr F and Miss H complain that United Trust Bank Limited (UTB) irresponsibly lent them a second charge mortgage (secured loan) that was unaffordable and caused them further financial difficulties.

Mr F and Miss H have also brought a complaint against the broker that sold them the loan, which I'll deal with separately. In this decision I'll refer to the broker as A.

What happened

Mr F and Miss H took out their loan in February 2019. They borrowed around £21,560 including fees, over ten years at an interest rate of 6.15% fixed for five years followed by the Bank of England base rate plus 5.05%. Although the loan is in joint names, it was secured over property that belonged solely to Miss H. The purpose of the loan was debt consolidation and it was sold to them by a broker, A.

A is a separate company to UTB. In giving mortgage advice, it was A's responsibility to understand Mr F and Miss H's needs and circumstances and then make a recommendation to them. That recommendation should be the most suitable loan for their needs and circumstances – or, if there are no suitable loans, a recommendation not to proceed. A recommended this loan with UTB and submitted an application on Mr F and Miss H's behalf.

As the lender, UTB is responsible for the decision to lend to them. That includes considering whether the loan is affordable and is likely to be repaid.

Mr F and Miss H are represented in this complaint by a friend I'll call Mr R. Mr R says that at the time of the loan Mr F and Miss H had been in a relationship for under two years. Mr F had moved into Miss H's property. Prior to the relationship, Miss H had not had substantial debts (other than the mortgage). But since then her indebtedness had substantially increased because Mr F did not contribute to household expenditure, spent heavily himself and also spent on Miss H's credit cards as an additional cardholder. Mr R says that the level of debt was getting out of control, so Miss H applied for this loan to simplify and reduce expenditure and "buy some time".

This loan was used to pay off five credit cards in Miss H's name and a personal loan in Mr F's name. But it did not clear all their unsecured debt and Mr R says this loan, together with the remaining debt, proved unaffordable. Ultimately Mr F is contemplating entering bankruptcy and Miss H is seeking arrangements with her creditors – Mr R says that without this loan they could have taken action to deal with their unsecured debts much sooner.

Mr R therefore complained to the lender, which responded itself in respect of the lending decision, and forwarded his complaint to A to address whether the loan was suitable. In respect of UTB's role, Mr R says that the loan was irresponsibly lent for a number of reasons. In summary he says:

- The loan application significantly understated Mr F and Miss H's expenditure. While it's true Miss H gave unrealistically low figures to A, this was because she was

desperate. UTB ought to have realised they were unrealistic and challenged what it was told.

- UTB told Mr R it didn't use the information given to A in assessing expenditure, it used typical modelled household expenditure. Mr R isn't satisfied by UTB's explanations or what it's said about the figures it used.
- Mr R says that UTB ought to have used what Mr F and Miss H were actually spending – if it had done so, and made proper enquiries about that, it would have been obvious the loan was unaffordable.
- The loan may have reduced their monthly expenditure by around £350 – but that does not make it affordable. And it has not reduced their overall debt burden, since large fees were added and the borrowing was over an extended term. As well as that the debts are now secured over Miss H's property, putting her home at risk. Even after the loan, Mr F and Miss H continued to use credit cards to fund daily expenditure so their unsecured debts continued to increase.
- When she applied for the loan, Miss H intended only to consolidate her debts and apply for a loan in her sole name. But it was necessary to include Mr F's income to make the loan affordable and Miss H was pressured into including some of Mr F's debt rather than more of hers to avoid the need for Mr F to take independent legal advice at extra cost. An interest free loan of Mr F's was included in place of high-interest credit card debt in Miss H's name.
- UTB ought to have protected Mr F and Miss H from A's questionable practices.

UTB said that the loan was affordable based on its affordability criteria – it had used modelled rather than actual expenditure, but this was something that was allowed under the rules of mortgage regulation. There was no reason to think this wasn't appropriate. It didn't think it had lent irresponsibly.

Our investigator thought the complaint shouldn't be upheld. I reached the same conclusion. But because my reasons weren't the same, and because I had provisionally decided to uphold the complaint against A, I decided to issue a provisional decision inviting further comment on this complaint before I make a final decision.

My provisional decision

I said:

“In considering whether to lend, a lender must take into account whether the loan will be affordable and sustainable over the whole term of the loan. The rules of mortgage regulation – found in the MCOB section of the Financial Conduct Authority Handbook – set out the minimum requirements for the affordability assessment.

The rules say that in carrying out an affordability assessment, a lender must take full account of:

- Income, net of tax and national insurance
- Committed expenditure (that is, expenditure on credit and other commitments)
- Basic essential expenditure (that is, basic household expenses such as food

and housekeeping, utilities, council tax, buildings insurance, essential travel, and so on)

- Basic quality of living costs (defined as expenditure which is hard to reduce and gives a basic quality of life beyond the essentials – such as clothing, household goods, repairs, personal items and toiletries, recreation, and childcare)

Lenders must obtain evidence of income and information about expenditure. A lender is entitled to rely on the information it is given unless there are common sense reasons to doubt it. The rules also say, at MCOB 11.6.12 R:

(2) in taking account of the customer's committed expenditure, a firm must take reasonable steps to obtain details of the customer's actual outstanding commitments; and

(3) in taking account of the basic essential expenditure and basic quality of living costs of a customer's household, a firm may obtain details of the actual expenditure. Alternatively, it may use statistical data or other modelled data appropriate to the composition of the customer's household, including the customer, dependent children and other dependents living in the household. If it uses statistical or other modelled data a firm must apply realistic assumptions to determine the level of expenditure of the customer's household.

I don't therefore agree with Mr R that it was unreasonable in principle for UTB to use modelled expenditure, rather than Mr F and Miss H's actual expenditure, for the purposes of the affordability assessment. It's something expressly permitted by the rules.

I said in considering the parallel complaint against A that some of the expenditure information Miss H gave A appeared unrealistically low, and that A should have questioned that as part of considering whether the loan was suitable.

However, those figures weren't taken into account by UTB as part of its affordability assessment. They're not something UTB was even aware of. A took income and expenditure information as part of sourcing a loan from the range of lenders it used. But having selected UTB, it then passed on to UTB the specific information UTB required to carry out its own assessment. Because, at the time, UTB relied on modelled rather than actual expenditure it didn't ask A for Mr F and Miss H's actual expenditure. So it couldn't have questioned what they told A – which didn't anyway form part of the affordability assessment – because it didn't know what they had said.

In determining affordability, UTB used Mr F and Miss H's actual income, which it verified from payslips. It used their actual credit commitments, which it verified from their credit records. In doing so, it applied the stress test the rules require for secured lending – it used an increase of 3% on the interest rate of the first charge mortgage, but no increase on this loan because the interest rate was fixed for five years. Again, that's in line with what the rules required at the time.

But it used modelled expenditure rather than actual expenditure. UTB has shown us that it used typical household data as published by the Office for National Statistics (ONS), adjusted to remove rental payments, which as home owners Mr F and Miss H weren't paying, and to remove modelled car finance expenditure, as it included actual amounts for this under credit commitments. The ONS publishes a range of

household data tables, and UTB used the one for that time which showed the typical expenditure for a household of Mr F and Miss H's composition and overall position in the range of household incomes – which was a realistic assumption.

I'm therefore satisfied that the approach UTB took to assessing Mr F and Miss H's affordability for this loan was one that was permitted by the rules of mortgage regulation at the time – using actual figures for income and credit commitments, and modelled figures for all other expenditure.

On this basis, the affordability assessment showed that the loan was affordable. I agree with Mr R that, in reality, it wasn't affordable based on Mr F and Miss H's actual financial situation at the time. They were clearly living beyond their means, and relying on ever increasing debt to do so. I agree the loan wasn't appropriate for them in those circumstances. But it's on that basis that I've said I'm minded to uphold the complaint against A – it didn't make a suitable recommendation to consolidate part of their unsecured debts based on what it knew or ought to have known about their circumstances.

But since UTB didn't ask about their actual expenditure, it wouldn't have known any of that. And, under the rules that applied at the time, it wasn't required to. It carried out the affordability assessment it was required to do, and that assessment showed that the loan was affordable for Mr F and Miss H. In those circumstances, I don't think I can fairly find that UTB did anything wrong in lending to them."

UTB had no further comment to make.

Mr R responded on Mr F and Miss H's behalf. He said that he had been told that A did provide expenditure information to UTB, and so UTB ought to have been aware that what they had told A was unrealistic. He recognised that the rules of mortgage regulation allowed a lender to use modelled rather than actual figures. But he said it had the choice over whether to do so, and especially for a second charge loan being used for debt consolidation it would have been more responsible to use actual figures – had it done so, UTB might have realised the loan wasn't affordable. Mr R also said that UTB hadn't explained how it assessed affordability to him when he first raised this, despite many attempts to get it to do so.

Mr R also said it wasn't fair that UTB could avoid responsibility for providing an unsuitable product to Mr F and Miss H. Its agent, A, had given unsuitable advice and UTB should be responsible for the failings of its agent. As a result, UTB continue to charge interest and benefit from a loan it should never have lent, and still retains a charge over Miss H's property.

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.

I've also considered again the findings I made in my provisional decision in light of Mr R's further arguments.

I'll start by explaining that it's not correct that A was acting as the agent of UTB. That's not how the relationship between customer, broker and lender works. A broker is acting as the agent of the customer in finding a suitable loan and then liaising with the selected lender on the customer's behalf. The broker is not the agent of the lender. That means that whatever A's failings in this case, UTB is not responsible for them as A's principal – because it wasn't

A's principal and A wasn't its agent.

As a responsible lender, UTB was required to carry out an affordability assessment. In doing so, the rules of mortgage regulation say that it can use actual expenditure, or it can use modelled expenditure – such as the typical household expenditure reported by the ONS. The rules don't say that one approach is preferable to the other, in this type of loan or any other. While I take Mr R's point that using Miss H and Mr F's actual expenditure might have produced a different result, I don't think I can reasonably find that UTB failed to carry out an appropriate affordability assessment when it did what was required by the regulator's rules.

For those reasons, and the reasons given in my provisional decision, reproduced above, I don't think I can safely find that this loan was lent irresponsibly.

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 F and Miss H to accept or reject my decision before 8 April 2024.

Simon Pugh
Ombudsman