

The complaint

Mr and Mrs S complain that Aro Finance Limited – formerly Freedom Finance Limited – mis-sold them a secured loan (second charge mortgage). They say the advice it gave them to take out the loan was unsuitable given their circumstances.

What happened

Mr and Mrs S first sought advice from Freedom Finance in October 2018. They wanted to consolidate their unsecured debts. They initially discussed a secured loan of £15,000 but ultimately applied for a secured loan of £25,000. As part of the application, Freedom Finance asked Mr and Mrs S for some recent bank statements. It saw several payments to online gambling websites on the statements, and it didn't proceed with the application. It says this was because of the gambling transactions and the concerns they raised about the affordability of a secured loan.

Mr and Mrs S then approached Freedom Finance again in April 2019. It recommended they take out a secured loan of £25,000. Mr and Mrs S went ahead with the application and this time it was successful. They borrowed £25,000 over a term of 15 years, at an initial fixed interest rate of 17% for the first five years. A broker fee of £2,625 and a lender fee of £995 were added to the loan. The monthly loan payments were around £440.

Mr and Mrs S say that their financial situation deteriorated after taking out the loan. Mrs S continued to gamble and they accumulated more unsecured debt. They sought debt advice in 2021 and entered into a debt management plan for their unsecured debts. They have continued to make the monthly payments to the secured loan.

They then complained to the lender that it had lent to them irresponsibly. The lender said it had done nothing wrong, and Mr and Mrs S made a complaint to Freedom Finance. They said it had given them bad advice, because it should have known about Mrs S's gambling addiction and that the loan was unaffordable.

Freedom Finance said it had given Mr and Mrs S suitable advice based on the information it had been given, and that the bank statements provided during the April 2019 loan application didn't indicate a gambling problem or that the loan would be unaffordable.

Mr and Mrs S asked the Financial Ombudsman Service to look into their complaint. Our Investigator thought that Freedom Finance hadn't given suitable advice and recommended that it refund the fees and interest on the loan, and pay Mr and Mrs S £300 compensation.

Mr and Mrs S accepted that conclusion, but Freedom Finance did not. It said the Investigator had widened the scope of Mr and Mrs S's complaint, and in any event its advice in 2019 had been suitable on the evidence at the time and the loan was affordable. It also said it has updated its advice process since 2019 and it now asks additional questions about applications which have been declined before, although the new process wouldn't have changed the advice it gave to Mr and Mrs S. Although it considered it had done nothing wrong, it nevertheless offered to refund its fee of £2,625 plus compound interest.

The complaint was referred to me. I came to a different conclusion to the Investigator, so I issued a provisional decision.

My provisional decision

I said:

First of all, I don't accept Freedom Finance's argument that the Investigator has dealt with matters about which Mr and Mrs S hadn't complained. I think Mr and Mrs S have been clear that their complaint is that Freedom Finance advised them to take out a loan which they consider to have been unaffordable and when it should have been aware of Mrs S's gambling addiction. While Freedom Finance framed the complaint differently in its final response letter, that doesn't change the substance of Mr and Mrs S's complaint.

The rules of mortgage regulation, known as MCOB and found in the Financial Conduct Authority's Handbook, set out the rules advisers must follow when providing advice to a consumer to enter into a mortgage. The relevant rules say, in summary, that an adviser must take reasonable steps to ensure that any mortgage recommended is suitable for its customer. They also say that an adviser should obtain all relevant information, and it may rely on what it is told unless, taking a common sense view of this information, it has reason to doubt it.

The rules include specific requirements where debts are being consolidated. In summary, in assessing whether a mortgage is suitable, an adviser should take account of any increased costs associated with consolidation, whether it is appropriate to consolidate previously unsecured debt, and, where the customer is known to have payment difficulties, whether it would be more appropriate to come to an arrangement with creditors rather than take out a secured loan.

Finally, as with all regulated firms, Freedom Finance is required to take account of its customers' best interests and treat them fairly.

When Mr and Mrs S approached Freedom Finance to discuss their options in April 2019, it was only a short time since their last application had been declined. I'm satisfied that the 2018 application is therefore relevant to the advice Freedom Finance gave Mr and Mrs S in 2019.

During the 2018 application, Freedom Finance had asked Mr and Mrs S for bank statements. They had provided part of their August 2018 bank statement and the whole of their November 2018 statement. The partial statement for August showed transactions totalling just under £500 made to gambling websites. The November statement showed similar transactions totalling just over £200 for the whole month. That statement also included payments totalling £250 to an online payment system, which Mrs S has since said she used for gambling, although I accept that Freedom Finance didn't know that at the time. These transactions are the reason why Mr and Mrs S's first application didn't go ahead.

Mr and Mrs S have provided our Investigator with a full bank statement for August 2018, as well as statements for late 2018 and early 2019. The full August 2018 statement shows gambling transactions amounting to more than £3,000. The October 2018 statement shows gambling transactions of significantly more than that. Freedom Finance did not, however, have this information – in either the 2018 or the 2019 application – and I find that it couldn't reasonably have known about it.

Freedom Finance's records show that it asked Mr and Mrs S for the rest of the August 2018 statement during the 2018 application, but it didn't receive the full statement. That application didn't proceed in any event, so there was no need for it to have pressed Mr and Mrs S for the missing pages. There was also no need, at that time, for it to have asked more questions about Mr and Mrs S's circumstances.

I've listened to recordings of the various calls Freedom Finance had with Mrs S in 2018 and 2019. On 3 January 2019, it told her that it couldn't proceed with the application on affordability grounds. It told her that the application didn't fit the lending criteria of the most flexible lender it could place a secured loan with, because the miscellaneous spending on the bank statements it had showed that the proposed loan would be unaffordable. It also said that Mr and Mrs S could consider cutting down on their miscellaneous expenditure and consider reapplying in a few months. It went on to discuss an unsecured loan but Mrs S didn't want to proceed with that.

At the time of this conversation, Freedom Finance had the partial statements showing multiple gambling transactions. I'm satisfied that it didn't, however, know about the extent of Mrs S's gambling at that point – it couldn't have known on the basis of the information it had. While I think it would have been appropriate for Freedom Finance to have directed Mrs S to sources of help and support for her gambling in the light of what it did know, I don't think I can fairly conclude that it was wrong to have told her that if she and Mr S could reduce their miscellaneous expenditure they could consider reapplying later.

When Mr and Mrs S reapplied for a secured loan through Freedom Finance in April 2019, Freedom Finance asked them questions about their income and expenditure and concluded that the £25,000 loan would be affordable. It also requested a copy of Mr and Mrs S's latest bank statement. It says it only asked for the statement in order to check that the gambling was no longer an issue. Mr and Mrs S provided a full copy of their March 2019 statement. That showed transactions to gambling websites totalling £55.

In giving Mr and Mrs S advice Freedom Finance should, as a regulated advice firm, have obtained all relevant information. It could rely on what it was told unless, taking a common sense view of this information, it had reason to doubt it.

I've carefully considered Freedom Finance's obligations and the advice it gave to Mr and Mrs S. It knew from their 2018 application that they spent money on gambling websites. But, as I said earlier, it didn't know the extent of their gambling. On balance, taking a common sense view of the information it received in the 2019 application, I don't think it had reason to doubt that the gambling transactions had reduced as reflected on the March 2019 statement. That meant that the proposed loan was affordable: it left Mr and Mrs S with around £675 in disposable income after all expenditure, and saved them around £260 a month on their existing unsecured debt repayments. It achieved the aim of reducing their outgoings, and the secured loan payments appeared to be sustainable in the long term.

If Freedom Finance had asked Mr and Mrs S for more statements as part of the advice process in April 2019, I don't think things are likely to have turned out differently: the January and February 2019 statements show reduced spending on gambling compared to the statements Freedom Finance had for 2018, and they wouldn't necessarily have raised case for concern. I also think that if the loan hadn't gone ahead in April 2019, Mr and Mrs S are most likely to have reapplied again later, successfully. They had shown that they could reduce their spending on gambling from their bank account and disguise the true picture of their expenditure.

Mr and Mrs S had taken on more unsecured debt between October 2018 and March 2019. I would expect this to have alerted Freedom Finance to the need to ask further questions, particularly in the light of what it knew about Mr and Mrs S's gambling. Its records show that it did ask about the reasons for the extra debt; Mrs S told it that the money was to fix the car, to help their son buy things for university, and for household goods. Taking a common sense approach, I don't think it had reason to doubt this. Mr and Mrs S's credit files didn't indicate any payment difficulties and, when Freedom Finance asked how they had accumulated so much unsecured debt, Mrs S told it that it was a result of her returning to university to complete a postgraduate degree and the resulting costs.

I must also bear in mind that it was the lender's decision to lend and to complete its own assessment of Mr and Mrs S's application and the affordability of the loan.

In all the circumstances, and while I realise this will come as a disappointment to Mr and Mrs S, I don't consider that Freedom Finance's recommendation was unsuitable for Mr and Mrs S in their particular circumstances – based on what it knew, or should reasonably have known, at the time of the advice. It follows that I can't fairly uphold this complaint.

Freedom Finance has told us it's prepared to refund its fee of £2,625 to Mr and Mrs S, plus compound interest. I ask that it confirm in response to this provisional decision whether it is still prepared to offer that sum to Mr and Mrs S.

I asked Mr and Mrs S and Freedom Finance to let me have any further comments or evidence they wanted me to consider before I make my final decision.

Mr and Mrs S didn't accept my provisional decision. They said I hadn't considered how vulnerable Mrs S was when they applied for the loans because of her compulsive gambling, and Freedom Finance hadn't treated them fairly or considered their best interests. They said Freedom Finance knew about Mrs S's gambling addiction – so it should have asked more questions and put safeguarding measures in place and, had it done so, Mrs S would have got the help she needed sooner. Instead, they said it had told them in the 2018 application how they could apply successfully next time – and so Mrs S had used credit cards and an online payment system to gamble instead of using their bank account. Mr and Mrs S also questioned why Freedom Finance would offer to refund its broker fee if it believed it had done nothing wrong.

Freedom Finance has now changed its name to Aro Finance, so I'll refer to it as Aro from now on. Aro agreed with my provisional decision, and it said its offer to refund the broker fee to Mr and Mrs S still stands.

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.

In doing so, I've taken careful account of Mr and Mrs S's further comments. I know Mr and Mrs S will be very disappointed, but I have come to the same conclusion I reached in my provisional decision, for the same reasons.

I recognise that Mrs S was very vulnerable when she and Mr S approached Aro in late 2018 and early 2019 – she was gambling heavily and compulsively. Importantly, though, I'm satisfied that Aro didn't know any of this. It did know that there were some gambling transactions on the partial August 2018 statement and the November 2018 statement. But it

didn't know about the extent of Mrs S's gambling, and I don't think that it could have known about that on the information Mr and Mrs S had provided to it. In the circumstances, I don't think Aro was wrong to say that Mr and Mrs S could reapply later if they wanted to cut down on their miscellaneous spending.

Aro should have obtained all relevant information about Mr and Mrs S's finances and circumstances. It could rely on what it was told unless, taking a common sense view of that information, it had reason to doubt it.

I don't think, in the particular circumstances of this complaint, and for the reasons I set out in my provisional decision, that Aro had common sense grounds to doubt what Mr and Mrs S told it in either their 2018 or their 2019 application. It did ask questions about Mr and Mrs S's increased unsecured debt in 2019, and they gave it a plausible explanation.

Aro has offered to refund its broker fee plus interest, but that of itself isn't grounds on which I can fairly uphold Mr and Mrs S's complaint. Aro has said it is still prepared to refund the fee – if Mr and Mrs S would now like to accept that offer, they should contact Aro directly.

For the reasons I've explained, I don't consider that Aro's recommendation was unsuitable in the circumstances, given what it knew about Mr and Mrs S's situation. So I can't fairly require it to refund any fees or interest or otherwise compensate Mr and Mrs S.

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 S and Mrs S to accept or reject my decision before 20 June 2024.

Janet Millington
Ombudsman