

The complaint

Mr J took out a secured loan with a lender I'll refer to as lender W. He says the debt was transferred to another lender (which I'll refer to as lender C) and then onto Swift 1st Limited. Whilst he accepts the debt could be transferred between lenders, he says Swift hasn't provided him with any evidence to prove that it legally acquired the rights to the debt.

Whilst this loan was taken out in joint names the complaint has been brought just by Mr J. Any reference to Mr J in this decision should be taken to include the joint borrower where appropriate.

What happened

Mr J took out this secured (second charge) loan in December 2004 with lender W. He borrowed £20,000 (plus PPI premium and fees) over a 15-year term on a repayment basis. The rate of interest was noted on the loan agreement to be 1.20% a month (variable) which gave an initial contractual monthly payment of around £350.

Unfortunately, Mr J got into financial difficulties and his first charge lender took possession of his property in 2012 and sold it. As the sale proceeds weren't enough to repay this second charge loan, the debt remained outstanding. Mr J was making payments initially of £50 a month and then later £30 a month and finally £20 a month towards the debt.

In June 2018 the loan was transferred to lender C and Mr J continued to pay £20 a month towards the debt until January 2020.

Mr J complained to lender C about the debt and it issued some final response letters as follows:

- December 2020;
 - Mr J was unhappy about the correspondence he'd received as he didn't think he had an agreement with lender C. Lender C didn't uphold the complaint saying it had taken the loan over from lender W in June 2018, and Mr J had been notified of that at the time. It also said the loan term ended in December 2019 and there was an outstanding balance due of around £24,700.
- April 2021;
 - Mr J felt lender C was harassing him, and that the contract was unlawful. It said there was an outstanding balance owed that it was allowed to attempt to recover, and it had previously responded to a complaint about the lawfulness.
- July 2021;
 - Mr J was unhappy that lender C had shared information with its solicitors, and he felt his request for evidence of the agreement hadn't been satisfied. Lender C said it had provided information about who it would share Mr J's personal data with, and it had previously responded to a complaint about the evidence of the agreement.
- December 2021;

- Mr J had notified the Information Commissioner's Office that lender C hadn't responded to the data protection issues he had raised. Lender C provided a further copy of its July 2021 letter which dealt with those points.

None of those complaints were referred to the Financial Ombudsman Service.

In April 2023 lender C transferred the debt to Swift.

Mr C raised a further complaint which Swift responded to in May 2023. Swift summarised that complaint into four points:

- Mr J is unhappy that lender C never provided verification of the debt, and he says he does not hold, and has never held, a contract with lender C.
- He is unhappy that lender C harassed him for a statute barred debt.
- He is unhappy that lender C failed to action his request to have his details erased.
- He is unhappy that his information has been passed to Swift as he believes lender C never had consent to process his information.

Swift didn't uphold the complaint. It said, using the same four bullet points:

- If Mr J had made all his payments in full and on time he would have paid around £63,200, however to date he had only paid around £29,000. Lender C had already responded to a complaint about the verification of the debt so it had nothing further to add.
- Lender C had already responded to this complaint point and it had nothing further to add.
- Lender C had already responded to this complaint point and Swift would need to retain Mr J's data until the debt is repaid.
- As Swift has acquired the loan it holds his personal information as it is responsible for collecting his payments and administering his loan.

Our Investigator summarised Mr J's complaint as:

"To summarise, I understand you took a second charge mortgage with [lender W] in 2004, however due to financial pressures the property was repossessed in 2012.

You say you were never told how much the property was sold for and by how much it reduced the mortgage debt. You say you were not aware that [lender W] had gone into administration, until you were approached by [lender C] in 2018. At the time you contacted [lender C] and requested further details about their right to take over the loan and requested evidence, however you didn't receive a reply.

In April 2023, you were approached by Swift Advances, who told you they had purchased the loan. You don't agree that you owe Swift Advances the loan amount as they haven't provided you with evidence of their right to take over the loan and chase you for the amount outstanding.

To put things right, you'd like evidence from Swift Advances in regards to the loan and if no evidence is available that they cease their contact with you and remove your data from their records."

Mr J confirmed that summary was correct and so our Investigator continued on that basis.

Our Investigator issued her findings. She said we can't deal with a complaint about the repossession and sale proceeds, and neither could we deal with a complaint about the

points Mr J raised with lender C in 2020 and 2021. In relation to the one point we can consider – whether Swift had the right to take over the loan – she didn't uphold the complaint.

Mr J responded to say that his complaint wasn't about the repossession or lender C, just whether Swift had the legal right to take over the loan. He said he'd not been provided with a copy of a Deed of Assignment in line with Section 136 of the Law of Property Act. He said that unless Swift provides that then it should cease contact with him and remove his data from its records.

As an agreement couldn't be reached the case has been passed to me to decide.

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.

As Mr J has clarified that he no longer wants our service to consider his points about what happened before Swift took over the loan in 2023, I won't be commenting on those parts of this complaint. Instead, I'll just focus on his complaint about Swift and whether it has the right to take over the loan.

It isn't in dispute that under the terms of Mr J's loan agreement with lender W that the debt could be transferred to another lender(s). Mr J has accepted that fact so I won't go into any detail here about how the contract allows for that.

Instead, Mr J feels that unless Swift provides him with *“evidence substantiating their claim to the loan and their right to collect on it ... such as a deed of novation or assignment in accordance with the Law of Property Act”* then its claim is unverified.

Swift took over a large number of loans from lender C, not just Mr J's. A Deed of Assignment of a loan book is commercially sensitive, as it contains details of multiple loans that have been assigned, not just Mr J's. I'm satisfied there's no requirement for Mr J to be provided with the Deed of Assignment or a Deed of Novation by Swift. Instead, it was sufficient for Mr J, and all the other customers that had their loans transferred, to be notified of the transfer by letter; which they were by lender C and by Swift. That's normal and entirely as I would expect to see.

I've read everything Mr J has said and I understand he feels very strongly about this matter, but I'm not persuaded that Swift is required to provide Mr J with the documents he'd like it to send him, so I can't say that it is acting unfairly or unreasonably. I've also taken into account that the lenders acted within the loan terms and conditions when the debt was transferred. In these circumstances, I can't fairly require Swift to take any action, and so I don't order it to cease contact with Mr J or to remove his data from its records.

I appreciate that this isn't the answer Mr J was hoping for. But if he rejects my decision, Mr J is free to pursue this matter against Swift through the courts, if he wants to. But Mr J might want to take independent legal advice before doing so.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 2 January 2024.

Julia Meadows
Ombudsman