

Ombudsman decision

CIFO Reference Number: 15-000010

Complainants: [Mr and Mrs Y]

Respondent: [Registered Credit Provider A (Company X)]

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

This complaint concerns lending by [Company X] to the complainants. The complaint is that [Company X] carried out irresponsible lending and at no time was any assessment made of affordability, creditworthiness, sufficiency of security or ability to repay.

Background

A number of loan agreements were signed by the complainants between 5 May 2009 and 14 March 2012.

On 3 March 2016 the case handler sent out his review of the complaint. He did not uphold the complaint because he was satisfied that [Company X] acted reasonably when lending and appropriately assessed the complainants' ability to repay.

The complainants responded by letter dated 4 April 2016, indicating that they disagreed with the case handler's conclusions and wanted to escalate the matter further for me to determine. In that letter, the complainants contest that in relation to the nine loan agreements I have reviewed, [Company X] have provided documentation which is "factually incorrect", "fictitious" and "spurious". The complainants further make a number of assertions that information has been falsified and is incomplete. Later in the same letter, they reiterate that they want the loans to be "struck off" by [Company X].

Findings

I have considered all the available evidence to decide what is fair and reasonable in the circumstances of this complaint.

I have reviewed the assessments conducted. I have to consider whether, in all the circumstances, [Company X] acted reasonably in granting the loans at the time they were granted.

¹Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

I agree with the conclusions of the case handler. I consider, based on the evidence, that [Company X] have not been unreasonable in their lending practices.

I am of the view that [Company X] carried out credit checks, title searches and assessments of equity in properties owned by the complainants before deciding whether to lend. [Company X] determined that the overall lending was within the available equity the complainants held in the properties.

I also agree with the case handler's analysis that [Company X] have acted reasonably when seeking to have the loans repaid to them. Sums of money have been written off, some loans have been rewritten, others have been part-settled, and after a point in 2010 [Company X] stopped supplying the complainants with further additional funds. Therefore, I am satisfied that [Company X] have acted reasonably in seeking the repayment of the loans.

The individual circumstances raised in the complainants' letter for each separate loan agreement do not necessarily mean that [Company X] should not have provided the loans. It can be seen from the documents that later loans were agreed with the intention of reducing the pressure on the complainants' finances.

Insofar as those loans are concerned, where additional money was provided, I am satisfied that the loans were affordable at the time. Any issues with affordability have occurred since and [Company X] have assisted the complainants with the financial pressure that arose from their change in circumstances.

The complainants signed the loan agreements and were aware of the repayments that needed to be made. The complainants maintained regular repayments and I view this as evidence that the loans were affordable when [Company X] approved them.

It is reasonable to expect a loan company to consider the affordability of a loan before agreeing to it. That does not mean, however, that affordability should only be judged on the ability to meet repayments as they fall due. Where the borrowers have said that they intend to sell other assets to repay part or all of the proposed loan, it is reasonable to take this into consideration when deciding whether a loan is affordable. In the present case, this is demonstrated on the "Guarantor and Indemnity" forms which relate to the properties owned by the complainants.

I also consider [Company X] to have acted reasonably in taking into consideration the past conduct of the complainants' borrowing, which had been good, and in relying on information provided about their properties. [Company X's] records show no evidence that it was told that the complainants were having financial difficulties before applying for some of the loans; given the past satisfactory conduct of the complainants with [Company X], there was no information that would have caused it reasonably to be aware of the financial difficulties.

The complainants say that some of the loans provided were said to be for property refurbishment. They contend that [Company X] should not have taken these assertions at face value and should have looked into the purposes of the loans further. I am not

persuaded by this. It was reasonable to expect [Company X] to have relied upon information provided by the borrowers regarding the purpose of the loan.

The complainants have made a number of representations in their complaint and subsequent correspondence to the effect that [Company X] should have acted differently but, given the material that I have considered from both parties, I am of the view that [Company X] have conducted themselves fairly and reasonably in the circumstances.

Final decision

My final decision is that I do not uphold this complaint.

Douglas Melville
Principal Ombudsman and Chief Executive