

The complaint

Mr and Mrs B complain that the secured, second-charge loan they have with Arrow Global Finance Limited has cost them too much to repay. They say the interest they've been charged over the years is unfair.

Mr and Mrs B also complain about the fees and charges that they've incurred throughout the loan term, and they say that Arrow haven't treated them fairly when they've faced financial difficulties.

What happened

In April 2006, Mr and Mrs B borrowed £11,522.50 from a company I'll call F. The loan was taken out over a 15-year term and was a secured fixed-sum loan agreement, regulated by the Consumer Credit Act 1974 ('CCA'). The first three months were interest free before the interest rate reverted to a variable rate of 10.88% per year. The loan agreement set out that if the interest rate didn't change the total cost of the credit would be £12,856.70 – so, Mr and Mrs B were due to pay back around £24,400 over the loan term.

The interest rate changed several times between 2006 and 2009. In September 2009 the interest rate changed to 13.68% per year. Arrow took over the loan account for Mr and Mrs B and assumed responsibility for it in July 2016. Arrow didn't make any changes to the interest rate and it remained at 13.68%.

In February 2019 Mr and Mrs B complained about the amount of interest applied to the account since the start of the loan. They said they'd end up paying more than double the amount they'd borrowed, and they didn't think that was fair.

Arrow responded to their complaint in March 2019; they said they were satisfied the interest charged had been calculated correctly. Unhappy with this response Mr and Mrs B asked us to get involved.

Our investigator's view

Our investigator didn't uphold Mr and Mrs B's complaint. She said that because of the time limits that apply to our jurisdiction we'd only be able to consider events which took place since February 2013 (6 years prior to when Mr and Mrs B first raised their complaint). And she didn't think that applying the three-year extension of the same rule would mean we could go back further.

In terms of the variable interest rate and resulting interest being charged, the investigator determined that since July 2016, although Arrow hadn't varied the rate when they possibly should have done, Mr and Mrs B may have actually benefited as established interest rates such as the Bank of England's Base Rate ('BoE') or The London Inter-Bank Offered Rate ('LIBOR') have increased during that time period but Mr and Mrs B's variable rate remained the same. The investigator also said that there were no unreasonable barriers to exiting the agreement if Mr and Mrs B were unhappy with what they were being charged.

With regard to fees and charges, the investigator didn't think Arrow had done anything wrong. Finally, the investigator found that Arrow had treated Mr and Mrs B positively and sympathetically whenever they'd been in financial difficulties.

Mr and Mrs B's response to the view

Mr and Mrs B didn't agree with the investigator's view. They said:

- They couldn't accept that Arrow had acted fairly because they'd still owe them around £5,000 – £6,000 at the end of the 15-year loan term.
- Arrow should have frozen the interest on the loan as they've already had back 100% of the capital borrowed; the interest charges meant that the amount owed only reduced by a marginal sum each year.
- Arrow should have frozen the interest when they had financial difficulties "*instead of piling on the interest*".
- They felt strongly that Arrow had overcharged them for this loan, and that the investigator had just looked at the "*small print*" to justify what Arrow had charged.

Mr and Mrs B also mentioned an issue with Arrow regarding a Covid-19 payment holiday and the amount they were expected to pay when that payment holiday ended. This isn't something I'll be addressing in this decision as the issue has only recently arisen. If Mr and Mrs B wish to pursue a separate complaint about that they should first raise the matter with Arrow.

Events since the investigator's view

Since our investigator issued her view in January 2021 our service has continued to consider this and similar complaints about interest rate variation terms in secured loan contracts. To be clear, these complaints have involved a range of businesses, not just Arrow.

As our approach to these issues developed, another investigator reviewed Mr and Mrs B's complaint and concluded that, whilst the interest rate variation term in the contract Mr and Mrs B had with F is fair, it wasn't implemented fairly by Arrow after they took responsibility for the account in July 2016. They said Arrow ought to have linked the variable rate to a new base lending rate when the rate the term was based on (the F base lending rate) ceased to exist. So, they said Arrow should backdate the interest rate changes on the loan to follow the Bank of England base rate changes since July 2016. They explained that if this resulted in an overpayment and additional interest refund, this should be put towards the outstanding balance. But if adjusting the interest in this way would not be beneficial, then no action should be taken.

Arrow responded to say that since they acquired the loan, the base rates (LIBOR and BoE) have remained broadly flat. So, they didn't think the fact they hadn't varied Mr and Mrs B's interest rate since July 2016 had unfairly impacted them. However, Arrow said that a review they'd carried out in 2020 should have resulted in Mr and Mrs B's loan rate reducing by 0.65% in January 2021. They accepted this hadn't happened due to an "*administrative oversight*" and agreed to remediate this.

The investigator also asked Arrow to consider taking steps to help Mr and Mrs B pay off the loan earlier, given that the original loan term of 15 years has now expired. Arrow offered to reduce the interest rate on the account to 0% effective from 9 March 2022 until completion. Mr and Mrs B accepted this, although they said they wanted the monthly repayment amount reduced too, even though that'll mean it takes them longer to pay it off.

As no agreement could be reached, the complaint has come to me to decide.

The scope of my decision – what I can and can't look at

Before I set out the findings and outcome I've reached on Mr and Mrs B's complaint I think it's important to clarify the scope of what I'm deciding here. I agree with the investigator who set out her view in January 2021 that our rules mean we can't usually look at events which happened more than 6 years ago. The rules that set out our jurisdiction are determined by the Financial Conduct Authority (FCA) and set out in their handbook under the Dispute Resolution Rules (DISP). The specific section of the rules that is relevant here is DISP 2.8.2. It says:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

...

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;"

Mr and Mrs B referred their complaint to us in February 2019, more than six years after their loan account, and the events they've complained about, began. They also were aware (or ought reasonably to have been aware) more than 3 years before 2019 that they weren't happy with the fees and charges they'd incurred on the loan between 2006 and 2013, and I think they'd have known that they weren't happy with F's response to their financial difficulties between 2006 and 2013 also. So, for their complaints about those matters (fees, charges and financial difficulties) I'd only have jurisdiction to look at the events from February 2013 until their complaint in February 2019. But, and I'll explain why below, my findings will be limited to a shorter period than that – I'll only be looking at what's happened since July 2016.

For their complaint about the rate of interest they've been charged it is more difficult to know precisely when they became aware (or ought reasonably to have become aware) that they had cause to complain about the rate of interest charged. I don't consider there to be a specific point in time where Mr and Mrs B would have become aware (or ought reasonably to have become aware) of this. On that basis, it's possible I might be able to look back to how the interest variation term has been applied since 2006. However, in this case, I've decided that I can't look back to events which happened before July 2016. And that's because: the only respondent I can make findings about here is Arrow Global Finance Limited; Arrow's involvement in Mr and Mrs B's loan didn't begin until July 2016; and I have no evidence that Arrow have any liability for the historic actions of F.

So, whilst I intend to refer to matters which took place prior to that date, to set the context for more recent events, and I'll be referring to a contract term which has remained unchanged since 2006, any findings I make only relate to Arrow and the period July 2016 to February 2019 (the date of Mr and Mrs B's complaint).

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.

Having done so, I've reached substantially the same conclusions as our investigators have communicated to both parties.

To begin with I should say I'm very aware that I've summarised this complaint in far less detail than the parties have done, and I've done so using my own words. I'm also not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

I'd also like to say at the outset that I appreciate Mr and Mrs B feel badly let down by F and, subsequently, Arrow, and that I recognise they've encountered financial difficulties over a prolonged period which have caused them distress. With this in mind, and knowing that my decision is unlikely to result in any substantial refund of the interest they've paid, I expect they'll find my decision disappointing. But I hope they'll be reassured that the complaint points they've raised have been looked at independently. I'll set out my findings against each of the complaint points.

Interest rate and amount payable

When considering Mr and Mrs B's complaint about the way the specific term has been applied and whether they have been treated fairly and reasonably, I've thought carefully about whether the interest term was fair or not. If a term is fair, we then must consider whether it has been applied fairly.

The applicable terms for Mr and Mrs B's loan regarding interest rates set out that the rate will vary in line with F's published base lending rate.

When I consider what is a fair term, I need to be satisfied that it is clearly outlined and understandable. When we've considered the term in F's contract with Mr and Mrs B amongst the wider legal arguments and industry practice, I am satisfied that the term is fair. It is clear why the interest rate would change and how in practice it should change. Whilst F owned the loan, they varied the rate in-line with their published base rate, as the term clearly set out it would do.

When Arrow took over responsibility for the loan from July 2016, they were also responsible for setting the interest rates. F have confirmed the base rate they used ceased to exist, and so, a new rate needed to be used moving forwards. We asked Arrow for more information around how they decided the new interest rate, and they confirmed that Mr and Mrs B's agreement continued to be serviced on the F base rate without linking it to a new rate – hence why it stayed at 13.68% until their review in late 2020.

Since Arrow took over the loan, I am unaware of any further interest rate changes that have occurred. F's base rate was calculated on cost of funding which the regulator considers to be a fair approach to setting an internal variable rate. F's base rate was also a published rate. So, I have to consider what would be fair when replacing it. I've considered the industry practice applied to the portfolio of loans previously held by F that have been moved to various other businesses like Arrow. In general, the approach has been that the interest rate has moved to a new business rate which has closely followed changes to the BoE base rate. This is an approach I don't think is necessarily unfair.

As Arrow didn't do that, didn't set a new base rate for Mr and Mrs B's loan to follow, I don't think they acted fairly. They've also not varied the rate at all nor explained to Mr and Mrs B on what basis the variable interest rate term would work once they took over responsibility for setting the interest rates.

To put things right, I think Arrow should calculate what Mr and Mrs B would have paid if they'd done what I think they should have done – linked the interest rate to the changes in the BoE base rate. If this results in Mr and Mrs B having paid more than they should have done, they should receive a refund of any overpayments. If it doesn't, or tracking the BoE base rate would have resulted in them paying more than they have, no action should be taken. I've set this out in more detail below.

The position moving forward is that Mr and Mrs B will not be charged any further interest from 9 March 2022 until the loan has completed. I don't consider this to be unfair.

I know Mr and Mrs B would like the business to agree to reduced monthly repayments, but this will need to be something agreed between themselves and Arrow. However, I'd remind Arrow that they have an obligation to treat customers in financial difficulty positively and sympathetically. Should the parties not agree on an affordable repayment plan for the outstanding balance, that may result in a new complaint.

Fees and charges

As I've explained, I'm only considering events since July 2016, and I can't see that any fees have been charged since that date. It follows that I can't say that Arrow have acted unfairly in applying fees and charges to Mr and Mrs B's loan account. However, for completeness, I can see that since February 2013, Mr and Mrs B have had three charges applied to their account, all of which appear to have been refunded.

Arrears management

When a consumer is experiencing financial difficulty, we expect to see a lender treat a customer positively and sympathetically. However, we also need to consider that the customer has been proactive in their situation. There is only a limited amount of forbearance measures which a business can consider, whilst we do look at what a business can fairly do in the circumstances. For much the same reasons as the investigator, I won't be upholding this part of Mr and Mrs B's complaint.

I know that Mr and Mrs B have suffered with periods of illness, and they've had unplanned expenditure, and I understand how this would have caused significant distress when also trying to maintain essential payments along with this loan and other credit repayments. I've read through the contact notes to gain an understanding of what happened, and the actions taken by Arrow. I don't see anything that suggests Arrow acted unfairly, they do have an obligation to understand a customer's financial circumstances and any other issues in order to provide help and support. There have been periods where Arrow has provided breathing space and been patient with Mr and Mrs B when needing information.

Considering the forbearance measures available, I am not sure Arrow could have done much more that wouldn't have considerably extended the loan term or the costs. I appreciate this loan is already in a position where it has cost more than it would have if no payments had been missed, but I don't think Arrow acted unfairly in the manner they have. I do also have to acknowledge that when payments are missed and the loan falls behind, it will always cost the consumer more than it otherwise would have. There isn't an obligation on the business to stop interest or write-off sums of money in these circumstances.

Putting things right

As outlined above, I am partly upholding Mr and Mrs B's complaint. I think Arrow has acted unfairly in how they applied the interest rate variation term after they acquired the debt from F. To put things right, Arrow should:

- Review from the date they took over the loan until 9 March 2022 what Mr and Mrs B would have paid if the Bank of England base rate changes had been tracked;
- If Arrow calculate that Mr and Mrs B accumulated more interest than they would have if Arrow had tracked the BoE base rate changes, the balance should be recalculated, and the overpayments and interest should be offset against the outstanding balance;
- Add simple interest at 8%* a year to any overpayments from the date that they were made to the date that they are effectively repaid;
- If Arrow calculate that Mr and Mrs B would have paid more had the interest tracked the BoE base rate, then no further action should be taken;
- Reduce the interest rate charged on this loan to 0% from 9 March 2022 as they've already agreed to do; and
- Engage with Mr and Mrs B in agreeing an affordable repayment plan for any outstanding balance.

*HM Revenue and Customs may require that Arrow deduct tax from any interest paid. Should Mr and Mrs B request it, Arrow should give them a certificate showing how much tax has been taken off so that they may reclaim it if appropriate.

My final decision

My final decision is that I partly uphold Mr and Mrs B's complaint. Arrow Global Limited should put things right in the way I've set out in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 28 April 2022.

Beth Wilcox
Ombudsman