

## The complaint

Mr and Mrs O are unhappy that Elderbridge Limited says there is an amount still outstanding in respect of a secured loan they hold.

## What happened

Mr and Mrs O took out a secured loan with a lender in 2006. They borrowed £100,000 over a term of 25 years. The interest rate on the borrowing was initially 7.7% APR but was variable.

Mr and Mrs O fell into arrears on their secured loan. Because of the arrears position, in February 2008 the lender suppressed interest on their account. What this means is that the lender stopped adding the interest that became due, to the loan balance. And the interest on the debt began accruing separately. The impact was that all of the repayments to the loan were then directed towards reducing the capital balance due. So, it reduced faster than it would've done had interest been applied. And that meant the amount of interest charged was also less – as the interest-bearing balance was reducing faster. And as the suppressed interest was held separately it didn't attract additional, compound interest.

Despite interest being suppressed the account position continued to worsen and arrears continued to increase. The lender took legal action and in February 2009 a county court granted it a suspended possession order. The order granted the lender possession of the property but said this should not be enforced as long as Mr and Mrs O paid a set amount each month to clear the arrears. The possession order set out that the amount owed under the secured loan, at the time of the judgement, was £98,718.63.

Mr and Mrs O began making payments in line with the court order, in addition to their contractual monthly repayments. Interest remained suppressed and continued to accrue separately.

In January 2016, ownership of the loan passed to Elderbridge. Mr and Mrs O were informed of this. Payments were then made to Elderbridge.

Elderbridge elected to keep interest suppressed on the loan. I've seen evidence that it did make Mr and Mrs O aware on several occasions that interest was accruing separately.

In early 2019, Mr and Mrs O contacted Elderbridge as they understood they'd paid an amount equivalent to the figure noted in the court order. So, they asked Elderbridge to confirm this and that the loan was settled, inform the land registry that its charge should be released and provide confirmation to the court that they'd satisfied the terms of the possession order.

Elderbridge said that the suppressed interest amount was still outstanding and was now due. So, it declined to release its charge over the property and asked Mr and Mrs O for their proposals to repay this amount.

Mr and Mrs O were unhappy with this response and so, in September 2019, asked our service to consider their complaint. They were also unhappy that Elderbridge had continued

to contact them for repayment proposals after they'd said they disputed the interest due and intended to complain.

One of our Investigator's looked into matters. He said he didn't think Elderbridge had done anything wrong by asking for interest to be paid and he didn't think, based on what he'd seen, that the court had decided this could not be applied. He was also satisfied that Elderbridge had made Mr and Mrs O aware of the suppressed interest and felt it had communicated fairly about this.

Mr and Mrs O asked for their complaint to be reviewed by an ombudsman. They didn't agree that the court hadn't dealt with interest due after the order was granted and said the judge had specifically said this shouldn't be applied. So, they didn't feel they should be liable for this amount. Regardless though, they argued that the interest was certainly not owed under the court order itself, and they felt Elderbridge was wrong to decline to confirm they'd satisfied the original order.

I issued a provisional decision earlier this month explaining that I didn't intend to uphold Mr and Mrs O's complaint. Below are extracts from my provisional findings, explaining why I thought this.

*This complaint is against Elderbridge – which became the owner of, and responsible for, Mr and Mrs O's secured loan in January 2016. Given the nature of the complaint itself, and what it involves, I will reference things that happened before Elderbridge took over the loan. But just to be clear, this decision will only look at Elderbridge's actions and whether it has acted fairly. If Mr and Mrs O wish to complain about the actions of the original lender, prior to their loan transferring to Elderbridge, they will need to do so separately, to the lender itself to begin with.*

*Is it fair that Elderbridge is requesting payment of suppressed interest?*

*Mr and Mrs O argue that they are not responsible for making any further payments to Elderbridge. This is because the suspended possession order obtained by the original lender in February 2009 set out the figure owed at that point. And between February 2009 and early 2019, they've paid that amount.*

*I'd start by making it clear that the Financial Ombudsman Service is an informal dispute resolution service. We are an alternative to a court. We don't have the power to change, interfere with or overturn a court's decision. And, while we have regard for relevant law, our findings are based on what we consider to be fair and reasonable.*

*The original secured loan agreement was that Mr and Mrs O were borrowing £100,000 over 25 years. They'd incur interest on the outstanding balance, for the duration of the agreement. And they'd repay this interest and the amount borrowed incrementally over the loan term.*

*The suspended possession order was granted to the original lender less than three years after the loan was taken out. I've seen a copy of the order, and it does reference the amount outstanding at that time, made up of capital and interest, as being £98,718.63. The order says the lender can recover that amount for "debt and interest to date of judgement". And it orders Mr and Mrs O to pay that amount to the lender. But I note it ordered them to do so by 20 March 2009 – within a month of the court making its finding. And while it says that is the sum owing up to the date of the judgement, the written order doesn't deal with whether interest can continue to be applied to the balance, if the debt is repaid in instalments.*

*Mr and Mrs O say the judge addressed the application of additional interest during the*

hearing. And they've said we should approach the court for evidence of this. But the court order is intended to summarise the judgement made – which I've been provided a copy of. And given that the hearing took place over thirteen years ago, from experience it is unlikely that any additional information is still held.

Mr and Mrs O say the judge said no further interest should be applied from the point of the hearing. But the written order itself doesn't make any reference to this, which I think it would have if such a condition was set. And as I've said, the original agreement was that the debt owed, which came about from the lender providing Mr and Mrs O a loan, would be interest bearing for 25 years. If the judge was ordering the contract to be varied, that would have been clearly documented. I'm also conscious that the order made by the court was in the lenders favour – as it granted possession, albeit on a suspended basis. So, I think it is unlikely, given the nature and outcome of the hearing, that the court would've said, after less than three years, the lender was no longer able to charge interest on the loan amount.

I agree that the possession order does refer to the debt and interest owed to the date of the order. But it does not, in my view, say that is everything Mr and Mrs O would ever owe to the lender under the agreement, unless the balance were cleared within a month.

Taking all of this into account, I think Elderbridge has acted fairly and reasonably by asking for interest to be repaid on top of the balance that was outstanding in February 2009.

That being said, I do think Mr and Mrs O are correct in one thing they have said. As I've said, from what I've seen the court order did not address interest to be applied after the date of the order being granted. I'm satisfied that this means Elderbridge is acting fairly in asking for this. But I don't think it can reasonably say that the interest is due under the order itself - as the order did not deal with it.

Mr and Mrs O have said they think Elderbridge needs to therefore inform the court that the order has been satisfied. It isn't for me, or Elderbridge for that matter, to decide whether an order has been satisfied. That would be for a court to decide. As would any decision about the reporting of the order itself to credit reference agencies – which is generally done by the court service. And I don't think Elderbridge is required to contact a court directly to provide the information that Mr and Mrs O want it to. That would be for them to do. But I would expect Elderbridge to provide them with relevant information to share with the court.

From what I've seen though, Elderbridge has provided Mr and Mrs O with a transaction list, showing all payments they've made to the secured loan, since the court order. This also shows the running principal balance being reduced. So, the information provided already demonstrates what Mr and Mrs O are asking Elderbridge to confirm – that they've made payments equivalent to the amount that was outstanding at the point of the court order being obtained. So, I don't think Elderbridge needs to do anything further in respect of this.

*How the outstanding interest has come about and Elderbridge's pursuit of this*

The original lender took the decision to suppress the interest on Mr and Mrs O's secured loan. And Elderbridge isn't responsible for that decision. As I've already explained, the benefit of this was that less interest would be charged in total – as the interest-bearing balance reduced faster than it would've done, and compound interest was not accrued.

When the loan was transferred to Elderbridge, it decided to keep that arrangement in place. And I think that decision was fair.

Had Elderbridge not continued to suppress interest, it would've been added to the principal loan balance each month, so the effect of the monthly repayments made by Mr and Mrs O,

*in terms of reducing that balance, would've been lessened. Which would've meant more interest being incurred, as well as this potentially compounding – interest being charged on interest. So, this would've meant Mr and Mrs O paid more in the long term. And it's because of this I think Elderbridge's decision to leave the interest suppressed was reasonable – as it seems to have been to Mr and Mrs O's benefit.*

*Mr and Mrs O have questioned the amount Elderbridge is saying is outstanding – which they think has increased since they first raised their concerns about this. It appears Elderbridge may've provided an approximate figure on occasion. And it might've been better if it had directly quoted the actual amount – to avoid any confusion. But I haven't seen anything to suggest that the balance it has now said is due is incorrect. And, from the information I've been provided, it doesn't appear that Elderbridge is increasing that amount, by adding further interest.*

*I'm also satisfied that Elderbridge has made Mr and Mrs O aware several times over the years that it considered suppressed interest would be due after the principal balance was paid. Elderbridge has said that it wasn't obliged to provide annual statements for this loan. And based on what I've seen I think this is correct. I think it would've been good practice to inform Mr and Mrs O of the outstanding balance from time to time. But I can see that Elderbridge did do so. And, as well as informing Mr and Mrs O verbally of the suppressed interest, I can also see that it provided confirmation of the up to date interest figure, shortly after taking over the loan and again in August 2018, when writing to Mr and Mrs O. So, I'm satisfied it has been transparent about the interest being owed.*

*Mr and Mrs O are unhappy that Elderbridge has contacted them since they indicated they disputed the interest amount. But again, I think it is fair of Elderbridge to consider this amount due. And just because Mr and Mrs O have raised a complaint, I don't think that means Elderbridge couldn't ask for this amount to be repaid. From what I've seen there hasn't been any further payment made towards the amount outstanding since early 2019. The contact notes I've been provided indicate Elderbridge contacted Mr and Mrs O at regular intervals, every few weeks, for several months seeking proposals. Mr and Mrs O did not want to discuss the balance further while their complaint was ongoing. But I think it was reasonable of Elderbridge to seek to discuss the balance – as arrears were beginning to accrue again on the mortgage. So, I don't think Elderbridge has acted unreasonably when doing this.*

*Moving forward, I think it is reasonable that Elderbridge will want to engage with Mr and Mrs O about their plans for repaying the interest balance. Mr and Mrs O have indicated they may continue to dispute this and seek legal advice, as they are entitled to. But that doesn't mean Elderbridge shouldn't continue to contact them.*

*Mr and Mrs O have also said that they will defend any legal action taken by Elderbridge to pursue the amount it says is owed. And they say they don't believe it has any right to ask for repayment under the previous court order. Again, Mr and Mrs O are entitled to dispute this. But, if there are no proposals forthcoming, I think Elderbridge is entitled to pursue repayment by whatever means it feels necessary. And ultimately it would be for a court to decide the validity of any legal action. I would just remind Elderbridge though that action to take possession of a property should be considered a last resort.*

## **Responses to my provisional decision**

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Elderbridge said it had nothing further to add.

Mr and Mrs O did not agree with my provisional decision. In summary, they said my explanation of their complaint was not entirely accurate. They explained they are not saying that Elderbridge is not entitled to ask for payment of the suppressed interest but rather it is not entitled to do so under the court judgement. At the same time though they said they would dispute having to pay the suppressed interest – indicating they don't think this is due.

They've also said that I was incorrect in saying that they were arguing that the judge said further interest could not be applied after the court judgement. They said their actual argument was the judge said that further interest could not be addressed in the judgement. And by incorrectly summarising their complaint, I'd misunderstood it and questioned the integrity of their statements. They've explained their question is, has the amount stated on the judgement been paid and so has the judgement been satisfied.

They said I'd not given due attention to the judgement requiring arrears to be repaid at a rate that would take several years – which they say evidences that it wasn't intended to cover future interest. And they've said the fact that the judgement didn't address suppressed interest accrued between 2008 and the date of the judgement showed interest, in particular due after the judgement, was not part of the judgement, so it was wrong of Elderbridge to seek repayment of suppressed interest under the judgement itself.

Mr and Mrs O have added that they are unhappy that I've made my decision based on the information available to me and not asked for further information from the court. And they've said they asked the court to mark the judgement as satisfied based on the information Elderbridge had sent them, but it had declined. So, they think it is unfair that Elderbridge will not provide the relevant confirmation that the judgement has been satisfied.

Lastly, they've said they don't agree that Elderbridge has acted fairly by continuing to contact them about the debt. They've said that in March 2021 they told Elderbridge that Mr O had been advised to avoid stress, but it had failed to observe the 'Debt Respite Scheme (Breathing Space)' guidelines set by the Insolvency Service.

### **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.

Mr and Mrs O have said that they dispute how I have summarised their complaint. They have said they aren't arguing the suppressed interest is not due, but that it isn't due under the judgement made by a court in 2009. However, they went on to reiterate that they would dispute any attempts by Elderbridge to recover the amount it says is owed as suppressed interest. This indicates they do in fact dispute owing the amount Elderbridge says is outstanding. That was why, in my provisional findings, I addressed how that balance had become due and whether I felt it was fair that Elderbridge were asking for this to be repaid. And I remain of the opinion that this is an important part of the complaint that I need to address, in order for me then to look at Mr and Mrs O's other concerns. Because whether it is fair that Elderbridge is asking for the suppressed interest, sits at the heart of this complaint.

As I explained in my provisional findings, I'm satisfied that the original loan agreement was that the balance would be interest bearing for its duration. And I'm also satisfied that the evidence available to me does not indicate that a court ordered that agreement be varied – as any such variation would be documented in the written judgement.

Mr and Mrs O have said they didn't say the judge said interest could not be applied from the point of the judgement, but that the judge said the judgement could not deal with future

interest. And they are unhappy I did not ask for further information from the court to verify this. It is within my power, as the deciding ombudsman, to determine what information I need in order to reach what I consider to be a fair and reasonable decision. And as I've said, the court order is intended to summarise the judgement. And, given I've seen the court order, I'm satisfied I have enough information to fairly decide the complaint.

I'd also note that what Mr and Mrs O have now sought to clarify – that they argued that the judge said the order could not address future interest – would in fact seem to confirm the finding I made. If the judge was not addressing future interest, I don't think it can reasonably be argued that this equated to them saying it could not be applied and would not be due. So, I remain of the opinion that the court judgement did not prevent the application of further interest or meant that Elderbridge was not entitled to request this be paid.

Elderbridge has explained that the original lender suppressed interest and that it elected to maintain that arrangement when it took over the debt. And given the benefit of this to Mr and Mrs O, in terms of interest not compounding and the capital balance reducing faster - meaning less interest was applied, I still believe that was fair. And I'm satisfied Elderbridge did enough to inform Mr and Mrs O of the interest balance.

Nothing Mr and Mrs O have now said leads me to depart from these conclusions. So, I remain of the opinion that Elderbridge is not acting unfairly by saying that Mr and Mrs O still owe interest under the loan agreement. Elderbridge has sought proposals from Mr and Mrs O for this amount to be repaid, which I think is reasonable.

Mr and Mrs O have said that their argument is that they do not owe this amount under the possession order given by the court in 2009. So, they consider that the court order has been satisfied. And they want Elderbridge and our service to confirm this.

As I said in my provisional findings, I don't think Elderbridge can reasonably say that the interest is due under the order itself. This is because, as I've already explained, the order makes no mention of having dealt with interest to be applied after the judgement. But as I also explained previously, it isn't for Elderbridge to decide if that means the court order has been satisfied. Nor is that our service's role. Only the court can decide that – as we have no power to change, interfere with or overturn a court's decision. So, I don't agree that Elderbridge needs to confirm that the order has been satisfied. And that isn't something I can decide either.

Elderbridge has provided Mr and Mrs O with a transaction list, showing all payments they've made to the secured loan, since the court order, and the running principal balance being reduced. This demonstrated that they've made payments equivalent to the amount that was outstanding at the point of the court order being obtained – which is what Mr and Mrs O wanted confirmation of.

Mr and Mrs O have provided evidence that, in March 2021, they applied to the court for a certificate of satisfaction in respect of the 2009 judgement. And they included the details Elderbridge had provided. But the court returned the application and Mr and Mrs O have said it hasn't issued a certificate of satisfaction.

The application document Mr and Mrs O completed for the certificate of satisfaction indicates that, if they couldn't provide evidence of full payment, the court would write to the creditor to confirm the debt has been paid. And if it doesn't receive a response within a month, the certificate will be issued. I'm not sure why that hasn't happened here, and the court instead returned the application. But given that I think Elderbridge is entitled to the suppressed interest it is claiming, I can't reasonably require it to say that the debt owed to it has been cleared. And again, it isn't for Elderbridge, or our service, to say that the court order has

been satisfied.

As they received a response from the court, which based on the information provided to me seems to be at odds with the usual process for the application they made, I think Mr and Mrs O should discuss with the courts what is required. And if the court asked Elderbridge directly for information, in order for it – the only body that can – to decide if the order has been satisfied, I'd expect Elderbridge to co-operate. But I remain of the opinion that Elderbridge has acted fairly to this point. And I don't think it needs to do anything more at this stage.

Turning to whether it was fair for Elderbridge to contact Mr and Mrs O for repayment of the debt. Mr and Mrs O initially complained to Elderbridge and our service in 2019. Elderbridge addressed what had happened to that point – including that Mr and Mrs O were generally unhappy it had continued to contact them. And when making my provisional decision, I considered what had happened up until the complaint was referred to our service. As I think it was reasonable of Elderbridge to consider Mr and Mrs O responsible for the suppressed interest, I don't think it was unfair for it to ask for repayment proposals. And, as I said in my provisional findings, I don't think it was required to cease contact because Mr and Mrs O complained. And my opinion on that point hasn't changed.

Mr and Mrs O have now said that in March 2021 they told Elderbridge Mr O needed to avoid stress and they feel it hasn't followed the Insolvency Services' Debt Respite Scheme (Breathing Space) guidelines. But the events they've now referred to in response to my provisional decision did not take place until 2021 – almost two years after the complaint was made. Their response was also the first time these specific concerns have been mentioned to our service. And Elderbridge hasn't had the opportunity to respond to Mr and Mrs O's specific complaint about this – that its actions since March 2021 breached government guidelines, given a change in Mr O's circumstances which took place in early 2021.

Before our service can consider a complaint, the business complained about – in this case Elderbridge – must first be given the opportunity to address and respond to the complaint made. That is part of the rules set by the regulator, the Financial Conduct Authority, that we are required to follow. As a result, I won't be commenting on this issue as part of my decision. Mr and Mrs O would need to raise these concerns directly with Elderbridge as a new, separate complaint as they involve a new issue that has arisen since the complaint I am dealing with here was made.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs O to accept or reject my decision before 21 April 2022.

Ben Stoker  
**Ombudsman**