

The complaint

Mr A complains about a second charge secured loan he had with Arrow Global Limited. Mr A believes the fees and charges applied to his account have been added unfairly and the interest rate applied to the loan is also unfair.

What happened

In June 2005, Mr A agreed to a second charge secured loan from a firm I will call 'F'. He agreed to borrow £25,000 over the course of 300 repayments with a variable APR interest rate of 9.4%. The total charge for the credit, assuming nothing changed, shows on the credit agreement as £38,249. So, in total, Mr A could expect to pay around £63,249 if nothing changed.

The variable interest rate on the loan has changed several times since it began, until the last change on 1 January 2009 where it has remained at 11.86%.

During the course of this loan, the business responsible changed from a company I'll call 'F' to Arrow Global in July 2016. Mr A has had two parties, F and Arrow Global, responsible for setting the interest rate as well as applying fees and charges.

The account fell into arrears shortly after the loan was agreed. Over the course of the agreement the arrears have varied between a single missed payment to multiple missed payments. Mr A has been in relatively consistent communication throughout about his financial difficulties.

In May 2021, Mr A received an inheritance and made an offer to Arrow Global in order to settle the agreement in full. Arrow Global accepted the £20,000 offer, agreeing to write-off the remaining debt and the account was settled in July 2021.

Our Investigator's view

When the Investigator considered the merits, they upheld Mr A's complaint. They said the interest rate variation term was fair, but Arrow Global hadn't acted fairly in terms of setting the interest rates. The Investigator said that to put things right, Arrow Global should review the account from when they acquired the debt and apply any Bank of England base rate (BBR) changes. If the result of this calculation showed Mr A had paid more in overpayments and interest, this should be refunded along with 8% statutory interest.

The Investigator also upheld four of the charges applied to Mr A's account out of the five considered.

Mr A accepted what the Investigator outlined in their view with no further comments. Arrow Global responded to say that since they acquired the loan, the base rates (LIBOR and BBR) have remained broadly flat. So, they didn't think the fact they hadn't varied Mr A's interest rate since July 2016 had unfairly impacted him. However, Arrow Global said that a review they'd carried out in 2020 should have resulted in Mr A'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.

Arrow Global also said that they were not liable for any events that took place before they acquired the loan. Therefore, the charges that were applied prior to 2016 when they acquired the loan were not something they'd consider refunding because they weren't liable for them.

The Investigator explained to Mr A that as Arrow Global were not liable for the charges we could not recommend they refund those charges. Mr A accepted this and understands that we can only consider the whether the interest rate variation term has been applied fairly by Arrow Global.

As Arrow Global has disagreed with the Investigator's view, it has fallen to me to determine what I think is fair and reasonable in the circumstances and issue a final decision on the matter.

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.

When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. I'm also required to decide what I consider to be fair and reasonable in all the circumstances of the case.

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

The terms Mr A agreed to say that the interest rate on the loan will vary in line with 'F's parent company's published base lending rate (which I'll call the *G rate*).

When I consider what is a fair term, I need to be satisfied that it is clearly outlined and understandable. Having considered the term in Mr A's loan contract 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 the *G rate*, as the term clearly set out it would do.

When Arrow Global took over responsibility for the loan from July 2016, they were also responsible for setting the interest rates. 'F' have confirmed the *G rate* they used ceased to exist, and so, a new rate needed to be used moving forwards. We asked Arrow Global for more information around how they decided the new interest rate, and they confirmed that Mr A's agreement continued to be serviced on the *G rate* without linking it to a new rate – hence why it stayed at 11.86% until their review in late 2020.

Since Arrow Global took over the loan, I am unaware of any further interest rate changes that have occurred to Mr A's loan. The *G rate* was calculated on cost of funding which the regulator considers to be a fair approach to setting an internal variable rate. The *G 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 Global. In general, the approach

has been that the interest rate has moved to a new business rate which has closely followed changes to the BBR. This approach seems fair and this is what Arrow Global should have done in Mr A's case.

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

I've noted what Arrow Global says about the way that base rates have remained 'broadly' flat and that Mr A has not been treated unfairly by not changing the rate on his loan. From this I understand Arrow Global is suggesting Mr A has not lost out by his interest rate not changing, as any decreases in the rate would be offset against any increases. Whilst this may be the case I haven't seen any specific calculations or evidence to demonstrate this is the case and therefore whether Mr A has or hasn't actually lost out.

As I don't think Arrow Global has acted fairly I think it should take steps to put things right. Arrow Global should calculate what Mr A would have paid if they'd done what I think they should have done – linked the interest rate on his loan to the changes in the BBR rate. If this results in Mr A having paid more than he should have done, he should receive a refund of any overpayments. If it doesn't or tracking the BBR would have resulted in him paying more than he has, no action should be taken.

Putting things right

As outlined above, I am upholding Mr A's complaint. I think Arrow Global has acted unfairly in how they applied the interest rate variation term after they acquired the debt from 'F' in 2016. To put things right, Arrow Global should:

- Review from the date they took over the loan until the loan was settled, what Mr A would have paid if the BBR changes had been followed;
- If Arrow Global calculate that Mr A has paid more interest than he would have if Arrow Global had followed the BBR changes, the balance should be recalculated, and the overpayments and interest should be refunded to Mr A;
- 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 Global calculate that Mr A would have paid more had the interest followed the BBR, then no further action should be taken.

*HM Revenue and Customs may require that Arrow Global deduct tax from any interest paid. Should Mr A request it, Arrow Global should give him 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 uphold Mr A's complaint. Arrow Global Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 April 2022.

Mark Hollands
Ombudsman