DRN-3954753

The complaint

Ms R's complaint is about a secured loan she has with Swift 1st Limited trading as Swift Advances. She doesn't consider that it offered appropriate support when she was in financial difficulties.

What happened

Ms R took out her loan in 2004. It was for £14,250 and due to be repaid over a term of 20 years. The contractual monthly payment (CMP) was set at £178.86.

The account fell into arrears because Ms R wasn't able to maintain the payments. This caused fees, charges and additional interest to be added to the loan balance. Over the years Ms R had various payment arrangements that ranged from Swift allowing her to pay considerably less than the CMP to between £10 and around £40 more than the CMP.

In December 2015 Ms R contacted Swift to ask it to reduce the interest rate or stop charging interest at all. This request was made because, even though she was paying more than the CMP, the total payment was less than the amount of interest accruing each month. Ms R was told she needed to maintain her payments for three months, do an income and expenditure (I&E) exercise, and then the request needed to go to management for consideration. The I&E showed that Ms R had a small disposable income of £72. It was agreed at that point that she would continue to pay the CMP plus £10 as she had been. The monthly interest at that time was £242.35.

In March 2016 Ms R contacted Swift again and chased her case being referred to management for consideration. She again asked that interest be reduced or frozen given the amount she had to pay back. She was told at this point that she had to speak to Citizens Advice before that could happen.

Six months later Ms R went back to Swift and explained that she'd been unable to speak to someone at Citizens Advice face to face. She again asked that her account be referred to its management for consideration of the interest rate. This was arranged and on 12 December 2016 it was decided that the interest rate would be reduced from 14.16% to 8.4%. This was applied on 6 January 2017 and meant that the amount Ms R was paying was more than the monthly interest charged, and the balance on the account started to reduce. However, not by any significant amount each month and there was no possibility that the loan would be repaid by the end of the term in just over seven years' time.

By the time the account was reviewed by Swift's management and the interest rate reduction decided upon, Ms R had started to miss payments again. When she'd initially asked for help in 2015, she had maintained payments over the previous year. Due to payments being missed and the account balance not reducing, Swift decided to take legal action to repossess Ms R's property. A suspended possession order was issued in March 2018, requiring Ms R to pay £200 each month in order to retain possession of her home. She has done so ever since.

Ms R complained again because she was unhappy with the balance on the loan, given what she had already paid. On 13 January 2021 Swift responded to the complaint. It said that some aspects of the complaint were time-barred, and so it didn't comment on them. In relation to the fees and charges and interest applied over the previous six years, it said it had applied them in line with the terms and conditions. As for the outstanding balance, it explained that it was at the level it was because payments had been missed. This had resulted in fees and charges being applied and additional interest. Swift confirmed that the then present balance of the account at around £21,000 included over £3,000 of fees and over £11,000 of extra interest. Swift didn't uphold any aspect of Ms R's complaint.

Later in 2021 Ms R raised further concerns about the fact that the loan wouldn't be paid off by the end of the term and the correspondence she'd been sent. Swift issued another letter on 6 August 2021 explaining that the Consumer Credit Act required it to send its customers information about any arrears on their loan account and any charges that had been applied as a result. Swift also highlighted that Ms R had been told regularly how much she needed to pay in order to clear the loan before the end of the term. In addition, it provided an explanation of certain documents and figures within them. It was satisfied that its communications were what they should have been.

In addition, Swift said that when Ms R had asked for help with her financial difficulties, it had assessed her situation and set up payment arrangements, reduced the interest rate charged, monitored the account and discussed an assisted sale. It considered it had done what it could to assist her. However, it concluded that the interest rate review that took place in late 2016 should have been done earlier. As such, it was backdating the interest rate concession to 1 April 2016., resulting in a reduction in the loan balance of £1,403.32. This date was selected as it was the earliest point the review could have been done following Ms R's request on 26 March 2016. Swift also acknowledged that Ms R's comments in 2016 regarding the balance of the loan should have been dealt with as a complaint.

One of our investigators looked into Ms R's complaint. She concluded that we could only consider part of the complaint and she didn't recommend the part we could consider be upheld.

Neither party accepted everything the investigator said, so the complaint was referred to an ombudsman for consideration.

One of my ombudsman colleagues issued a decision setting out our jurisdiction in relation to the complaint. She concluded that we could consider the following aspects of Ms R's complaint:

- Her request for an interest concession in early 2016 wasn't fairly considered.
- The outstanding balance she had in March 2016 was unfairly high. Including looking into what had affected the account balance in the previous six years (i.e. from 27 March 2010), such as charges and interest applied.
- Since 8 January 2015 fees, interest and other costs were unfairly applied to her account, that she wasn't given clear information about what she had to repay and Swift didn't keep her arrears separate from her loan balance.
- Swift didn't offer appropriate support with her financial difficulties from 8 January 2015.

One of our investigators then considered the merits of the parts of the complaint we could consider. She concluded that the offer made in relation to the interest rate concession request in 2016 was fair and reasonable in the circumstances. The investigator didn't recommend the remainder of the complaint points be upheld.

Ms R wasn't happy with the investigator's conclusions and said that she was not disputing that Swift had acted legally and within its rights, but that it was irresponsible, which led to her difficulties. She said that she didn't receive support or understanding of her situation, she was just told to pay less which made things worse and increased her arrears. Ms R said that no solution was given when she was in financial difficulties and there should be a fair outcome now; she would like at least some of the charges refunded. She asked that the complaint be referred to an ombudsman.

I issued a provisional decision on 24 January 2023 setting out my conclusions and reasons for reaching them. Below is an excerpt.

'*At each stage of our investigation we review our jurisdiction to consider a complaint. Having done so, I agree with my colleague's conclusions on jurisdiction and I will review the merits of the complaint accordingly.*

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The first point of Ms R's complaint that we can consider is about her request for an interest rate concession in 2016 not being considered fairly. Swift has already accepted that it should have dealt with the request sooner and that if it had, it would have reduced the interest rate at an earlier date. It has offered to back-date the change to the point where the change should have been applied to the loan. As Swift has accepted it should have dealt with the request earlier, I don't need to reach a conclusion on this matter. I won't, however, comment on the offer made at this point, as I will be considering the interest applied to the loan and how Ms R's financial difficulties were dealt with as a whole.

When a borrower is in financial difficulties a lender should explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved. For long-term difficulties, a lender must also look at other ways to help, such as deferring interest for a period of time or reducing the amount of interest charged. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

In Ms R's case, at the point I can look into the management of the account, and the handling of her financial difficulties, the arrears situation had been ongoing for years. Indeed, at the beginning of the period I am considering in 2010, the interest being charged was more than the amount of the CMP and either more than she was paying to the loan or around the same amount. As time progressed, the amount being paid, even when it was more than the CMP, was less than the interest accruing each month and the balance owed increased accordingly.
While there were times that Ms R's situation appears to have improved and she managed to pay more than the CMP, there were also periods where she wasn't able to afford to pay even that amount. It wasn't until late in 2013 that Ms R's situation appears to have stabilised and she was able to maintain payments for more than a few months.

However, throughout Swift kept in touch with Ms R and reviewed her situation on a regular basis, as I would have expected it to. Various arrangements to pay (ATP) were set up and they were reviewed on a regular basis. When Ms R's finances were particularly difficult, it agreed to payments of significantly less than the CMP for periods, to give her circumstances time to improve. In addition, when she approached Swift to reduce the interest rate on the account, it reviewed the situation and reduced the interest rate (albeit later than it acknowledges it should have). Swift had a duty of care toward Ms R and I don't think it should have taken her asking for such a review for it to have taken place.

However, I note that in November 2013 Swift reviewed Ms R's payments with her. At this point an ATP was agreed of £10 above the CMP. Ms R maintained that arrangement and it was extended at a review in March 2014 for another three months. Again Ms R maintained the monthly payments as she had agreed to. At the next review in June 2014, I think it would seem reasonable for Swift to have concluded that Ms R's situation had stabilised. It is at this point that I consider it should have looked into Ms R's situation in a wider context, including the interest it was charging on the loan, not just the amount she could afford to pay each month.

In June 2014 Ms R was paying £10 each month toward the arrears and the CMP. However, the interest that was accruing each month was around £40 more than the amount Ms R could afford to pay. The balance was slightly under £20,000 at that point with just over ten years left on the term. So it would have been very clear to Swift that based on what it had assessed Ms R was able to pay to the loan that its balance was going to continue to increase each month and there was no possibility of it being repaid at all, let alone by the end of the term. In addition, the interest accruing was still increasing the balance of the debt each and every month; contributing to the balance that Ms R complained about in 2016.

Given this, I consider that Swift should have taken action about the interest rate, as it did in 2016, in June 2014. I consider that it should have proactively reviewed the interest rate it was charging on the loan and reduced it to a level that would have allowed Ms R to repay the loan by the end of the term, assuming she continued to pay the monthly payments it had agreed with her. If this meant that the interest rate would have needed to be zero, then that is what it should have reduced it to. I consider that Swift should complete this backdated assessment now, and rebuild the account accordingly.

I note that Swift took legal action and was granted a suspended possession order in March 2018. It appears this was due to the level of arrears and the fact that Ms R started to miss payments again from the autumn of 2016. I have considered whether I think the above action would have changed that situation. While the loan balance would have been lower, there would still have been arrears, charges and additional interest balances outstanding, and the further missed payments would still have been missed. As such, I don't think I can conclude that the decision to start legal action wouldn't have been made.

Ms R's account has had charges added to it over the years, both for additional management activities and litigation activities. We don't generally consider it is reasonable for a lender to add charges and fees to a mortgage or secured loan just because there are arrears on the account. However, where an account is not being maintained and this causes the lender additional cost to administer it, we wouldn't consider it unreasonable for charges to be applied. I have reviewed the charges that were applied from 27 March 2010.

As I have said above, Swift and Ms R had agreed various ATPs over the years. I don't consider that where such an agreement was in place and Ms R fulfilled her side of it, even if the payment was slightly late, an additional management charge should have been applied. As such, I consider that Swift should reverse the management charges applied on the following dates:

2 October 2014
2 July 2011
2 June 2011
2 December 2010
28 March 2010

There were other occasions where there wasn't an ATP in place, or Ms R paid the CMP rather than a higher ATP amount. Again, if Ms R had paid at least the amount she was

legally obliged to pay to the loan, it doesn't seem fair that a charge was applied for those months. As such, I consider the account management charges applied on the following dates should also be reversed:

2 October 2013
2 April 2013
2 February 2011
2 January 2011

Swift decided to start legal action in March 2018 and applied the first charge for this action on 26 March 2018. However, it also applied an account management charge in the same month. Given that the account had been move to its litigation team, I don't consider it was fair to apply a management charge as well, as any actions from that time onwards would reasonably have been carried out under the litigation process. As such, I consider that Swift should reverse the account management fee applied on 10 March 2018.'

Ms R accepted my provisional decision. Swift did not. I will comment on its response later in the decision. However, in the meantime, in light of Swift's comments regarding the charges, I reviewed this issue again and came to a slightly different conclusion. Our investigator informed the parties of my revised conclusions, which were that the following charges should be reversed, for the reasons detailed in my provisional decision:

10 March 2018
2 October 2013
2 April 2012
2 July 2011
2 June 2011
2 February 2011
2 January 2011
2 December 2010

Swift agreed to reverse all but the charge applied on 10 March 2018. It considered that this charge was reasonably applied because it related to Ms R having missed the payment due in February 2018, which resulted in additional administration for it. The litigation fee applied later in March 2018 was a separate and specific fee in and for activities undertaken that month. As such, there were not two fees applied *for* March, but rather one for February and one for March. It went on to explain what activities were undertaken in order for the litigation fee to be charged.

Ms R accepted my revised conclusions.

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.

Swift explained that it is concerned that when reaching my conclusions I had made the assumption that if a customer was in financial difficulty, they would be so until the end of the term and possibly forever. It went on to say that this gave the impression of giving up on or writing off a customer, which was not the right thing to do. Swift then gave examples of situations where it considered it would be appropriate to change forbearance arrangements. Swift also set out the various things that Ms R had put forward as potential changes to her situation and it also postulated on what Ms R's situation might have been at the end of the term of her main mortgage. On a generic basis, it suggested that the approach I had set out for redress in this case, meant that theoretically a customer could pay nothing over the term

of a loan and simply repay the amount borrowed at the term end.

I would firstly agree with Swift that it would not be appropriate to write-off a customer. Any forbearance arrangements put in place should be reviewed regularly to ensure that they are what a particular customer needs. If there were material improvements in a customer's circumstances, such as them gaining work if previously unemployed, or changing jobs and having an uplift in their income, then any forbearance being provided might not be needed to the same degree or at all. In such circumstances it wouldn't be unreasonable for the arrangements to be changed.

My provisional decision set out my conclusions for Ms R's individual case. While when speaking to Swift Ms R expressed the hope for various things to happen, from her parents making a payment to the loan to her gaining employment, those things didn't happen. So in this case, it was not necessary for me to highlight any points where forbearance arrangements should reasonably have been reviewed because of an improvement to Ms R's circumstances, because there was no such improvement. Furthermore, as a suspended possession order was later issued, the judge's conclusions about the situation took precedence from that point.

As for Swift's concern that the approach I have set out on this case means that in the extreme consumers could pay nothing during the term of a loan and just pay back the amount borrowed at the end of the term, I don't agree with that interpretation. As I made clear in my provisional decision, I didn't consider that the review of the interest rate should have been undertaken until Ms R's financial situation appeared to have reached a point of reasonable stability. This being evidenced by the fact that in June 2014 when Swift completed its second review of the payment arrangement that had been in place since November 2013, all payments had been made under that agreement.

I note that Swift has said that when it did an income and expenditure exercise it showed that Ms R had £58 disposable income, but it set the arrangement at £8 as its policy was that it would factor in an additional £50 on the expenditure to allow for any unexpected expenses. As such, Ms R had the option to pay more to the loan and reduce the arrears more quickly. I would firstly confirm that Swift's approach of leaving a customer with some contingency income when completing an income and expenditure exercise is an appropriate one. We don't consider that it is appropriate for a lender to expect a consumer to pay every penny of their calculated disposable income to a payment arrangement for arrears on their loan or mortgage. This is because there will be costs in life that can't be factored into an income and expenditure exercise, especially when the subject of that exercise has a property to maintain. So I am not persuaded that the £50 contingency sum that Swift allocated in its calculations for this purpose would reasonably alter my conclusions.

Swift has highlighted that it is not required by any specific regulations to alter the interest rate applicable to a loan. I would agree that this is not specified by the regulator. However, since April 2014 Swift has been regulated by the FCA and it does require a lender to treat a customer fairly and, where possible, to support them when in financial difficulties and during their recovery from such circumstances. This could result in a range of forbearance provisions, including the reduction of the rate of interest applied to a loan or mortgage. It is clear that Swift understands that it needs to look into the various options, including changing the interest rate, as it did just that in 2016. What my provisional decision effectively concluded was that Swift should have completed the review earlier than it did.

I am pleased to see that Swift has agreed to reverse most of the charges. However, it has objected to the refund of the charge on 10 March 2018. I acknowledge that the charge was applied because the payment in the previous month was missed. However, the additional administration that missed payment caused was undertaken in March. This means that Ms R

was charged twice in the same month for administrative activities completed in that month relating to the arrears on her account. While I have considered everything that Swift has said I am not persuaded that this is fair in the circumstances.

Putting things right

I require Swift to complete a retrospective review of the interest rate on Ms R's account, as of June 2014, and reduce the rate to a level that would have allowed Ms R to repay the loan by the end of the term, assuming she continued to pay the monthly payments it had agreed with her. If this means that the interest rate would have needed to be zero, then that is what it should have reduced it to. The account should be rebuilt accordingly.

In addition, Swift should reverse the following charges:

10 March 2018
2 October 2013
2 April 2012
2 July 2011
2 June 2011
2 February 2011
2 January 2011
2 December 2010

My final decision

My decision is that I uphold this complaint. I require Swift 1st Limited trading as Swift Advances to complete the actions detailed in 'Putting things right' above.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms R to accept or reject my decision before 31 March 2023.

Derry Baxter
Ombudsman