

The complaint

Mr and Mrs W complain that Elderbridge Limited ("Elderbridge") did not make them aware that interest on their secured loan was being suppressed and held in a separate sub-account. This meant that there was around £30,000 outstanding when they thought the loan should be repaid.

What happened

Mr and Mrs W initially took out a secured loan of £60,000 (plus £14,694 insurance premium) with another lender in August 2006 for a period of 22 years. They went into arrears and in January 2013 the County Court granted a Possession Order which was suspended on the basis that Mr and Mrs W complied with an agreed payment plan to pay off the arrears along with the ongoing loan payments. At this time the judgment sum was for just under £75,000, being the amount outstanding under the mortgage. Mr and Mrs W paid £740 a month going forward. Elderbridge took over the loan account in January 2016 and Mr and Mrs W continued to make the same payment until May 2021 when they believed they had made the final payment in respect of the debt ordered by the court.

Mr and Mrs W say that no interest was shown on the statements received from Elderbridge (or the original lender) until July 2020 when a separate amount was shown. This was followed by a further statement in July 2021 which showed an account balance different to previous years, as the further interest of around £30,000 had been added to the balance owed. Mr and Mrs W say that they believed the payments made under the court order were final and that the addition of further interest should not be allowed. Elderbridge says the further interest was added monthly under the terms with the original lender.

Elderbridge says that in order to prevent further arrears, the interest on the account was suspended in November 2012, when the account was still held by the original lender. This meant that the interest was separated from the balance which allowed the payments made by Mr and Mrs W to go directly towards the capital. Due to this, the arrears and balance were reduced faster as the interest is not applied to the loan balance every month. As the interest accrued was simple interest and not compound interest, Mr and Mrs W were not paying interest on the interest. This meant they would be able to clear the balance sooner and that, once the principal balance was paid, the suspended interest would then become payable. No further interest is charged on this and all payments made are now used to reduce the balance.

Elderbridge says that the loan is unregulated so the original lender had no legal or regulatory obligation to notify Mr and Mrs W when they suspended the interest on their loan account. However, it says that there would always have been an expectation that interest was being charged and, had interest not been suspended and accrued in the way it was, the balance today would be much higher than it currently is. Elderbridge says that, although the loan is unregulated, it provided Mr and Mrs W with a statement in July 2020 showing the interest accrued and confirming it had not yet been added to the account and then a further statement in July 2021 showing the suspended interest had been applied to the account.

Our investigator looked into this complaint and concluded that he was unable to say that Elderbridge had failed to adhere to the court order and the remaining suppressed interest balance was outstanding. Although he didn't think it was fair or reasonable to expect Mr and Mrs W to rely on a single letter to make them aware of the suppressed interest balance

outstanding, as the loan was unregulated the investigator was unable to say that Elderbridge had acted unfairly when administering the loan.

Mr and Mrs W disagreed with the investigator's view and the case therefore came to me to make a decision. They maintained that Elderbridge's claim for interest following the court hearing is unlawful and that the interest rate for a judgment debt is 8% and Elderbridge has added a higher amount. Mr and Mrs W also said that Elderbridge had not complied with providing notice of adding interest as they weren't informed about this throughout the time they were making the payments under the court ruling.

I set out in my provisional decision dated 27 January 2023 (reproduced below) why I was minded to partially uphold Mr and Mrs W's complaint and direct Elderbridge to pay them £150 in recognition of trouble and upset caused. I invited both parties to let me have any further comments and evidence by 10 February 2023.

Elderbridge submitted that I should reconsider the compensation for trouble and upset and whether the suppressed interest came as a shock to Mr and Mrs W when they believed the loan had been paid off, as it says Mr and Mrs W were made aware some 11 months prior to this being applied.

Mr and Mrs W asked for some clarification about the content of the provisional decision but made no further submissions.

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 considered the responses to my provisional decision dated 27 January 2023, I remain of the view that Elderbridge should compensate Mr and Mrs W for the trouble and upset caused.

In my provisional decision I set out the following:

"Having carefully considered all the evidence and arguments, I agree with the investigator's view on whether the suppressed interest remains outstanding despite the court order for broadly the same reasons. However, I disagree with his view in relation to the fact that the loan being unregulated means that Elderbridge hasn't acted incorrectly in not informing Mr and Mrs W about the suppressed interest balance sooner. I've explained my reasons further below.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

As Mr and Mrs W fell into arrears on their loan, the original lender stopped adding interest onto the loan account in order to avoid them paying interest on interest (compound interest) if the payments weren't maintained. Instead, the lender carried on calculating the interest in the background, as it was still due, but as it wasn't applied to the account it didn't attract interest itself. This is known as simple interest.

I've looked at the loan statement and I can see that no monthly interest was charged on the loan account after November 2012. In effect, in order to prevent interest accruing on unpaid interest, the original lender 'ring-fenced' the interest in a separate account at this point, so that it didn't attract further compound interest. This also meant any payments Mr and Mrs W made after that point went towards reducing their arrears, and then repaying the capital. Ultimately, it meant Mr and Mrs W were charged less interest than they would have been otherwise.

Mr and Mrs W says that Elderbridge's claim for interest following the court hearing is unlawful and that the interest rate for a judgment debt is 8% and Elderbridge has added a higher amount.

Firstly, I should clarify that the court ordered that Mr and Mrs W were to give the lender possession of the property and pay the sum of £74,777.32, which was the amount outstanding under the mortgage at the time of judgment in January 2013. So, if Mr and Mrs W had repaid the mortgage at that point then this would have been the amount they owed.

However, the possession order and requirement for Mr and Mrs W to repay the full amount owed was suspended and not to be enforced so long as Mr and Mrs W paid the lender the arrears at £30 a month in addition to the current instalments under the mortgage. So, in order to stop enforcement of the possession order, Mr and Mrs W were required to pay the amount agreed under the terms of the original loan agreement. This included the payment of interest at the rate agreed in the loan agreement.

As set out above, the fact that the interest was suppressed and put into a different account means that Mr and Mrs W have benefitted and paid less overall than they would have done if they had made all payments on time under the terms of the original loan agreement. It also appears that the loan will be paid off earlier than it should have been under the original terms, despite the fact that Mr and Mrs W went through a period when many payments were missed.

So, in terms of the suppressed interest, I am satisfied that this amount is owed by Mr and Mrs W and that Elderbridge has not gone behind the court order in adding this to the balance owed.

I've also considered what Mr and Mrs W have said about not being made aware of the suppressed interest until July 2020.

I can see from the statement sent to Mr and Mrs W by Elderbridge on 24 July 2020 that this showed a reducing balance with a closing balance of just over £7,500. On a separate page, the statement had the title "Accrued interest payable" and stated "This section confirms the interest that has been charged on your loan, but has not yet been added to the balance. While your account is in a default status, we do not add interest to your account balance until the balance of your loan is paid in full. This is to prevent additional interest being charged on this interest figure." The statement showed that the total amount of accrued interest to date was £30,655.72.

In the statement dated 13 July 2021 I can see that, once the balance went below zero in May 2021, the further interest was added manually on 23 June 2021 taking the closing balance back up to just under £30,000.

Elderbridge has said that as the loan is unregulated, there was no legal or regulatory obligation to notify Mr and Mrs W about the suppressed interest on their loan account. However, whilst the loan itself is unregulated, Elderbridge is regulated. It is therefore subject to the regulator's high-level principles on how to treat consumers. Two of those principles are relevant here:

- principle six, which requires Elderbridge to pay due regard to Mr and Mrs W's interests and treat them fairly; and*
- principle seven, which requires Elderbridge to pay regard to Mr and Mrs W's information needs and communicate in a way that's clear, fair and not misleading.*

For the reasons I've already explained, I think the suppression of the interest meant Mr and Mrs W were treated fairly, as it meant they were charged less interest than

they would otherwise have been. Having reviewed the transaction history and the contact notes, I don't think Mr and Mrs W would have been able to pay more than they were already paying towards their loan, so I'm not persuaded that they have been financially disadvantaged by being unaware of the suppressed interest.

However, I can understand that it would have been shocking for Mr and Mrs W to find out that they owed another £30,000 after so many years and when they thought the loan had been paid off. This means that they had not planned financially in order to continue making the payments towards the loan for such a long period of time. In light of this, I think Elderbridge should pay Mr and Mrs W £150 in recognition of the upset caused by this."

In response to my provisional decision, Elderbridge has submitted that Mr and Mrs W were made aware of the suppressed and accrued interest in the statement dated 24 July 2020 and this interest was applied to the loan on 23 June 2021 when the principal balance had been paid. Therefore it believes that I should reconsider whether this came as a shock to Mr and Mrs W when they believed the loan had been paid off, as it says Mr and Mrs W were made aware some 11 months prior to this being applied.

I have considered what Elderbridge has said and I disagree. I set out in my provisional decision above that Elderbridge sent a statement dated 24 July 2020 and I considered the contents of that.

The decision to suppress the interest was made in November 2012 and Elderbridge took over the account in January 2016. Yet the statement sent to Mr and Mrs W in July 2020 is the first correspondence Elderbridge is able to identify which mentioned the suppressed interest to them at all. This was after they had been paying off what they believed to be the full amount for many years and the capital balance had nearly been paid off. Once the capital balance had been paid, the suppressed interest of over £30,000 was added to the balance.

In light of this, I don't think that Elderbridge paid regard to Mr and Mrs W's information needs and communicated with them in a way which was clear, fair and not misleading as it didn't mention the suppressed interest to Mr and Mrs W for around four and a half years after it took over the loan account. So for the reasons set out above and in my provisional decision I remain of the view that it would have been shocking for Mr and Mrs W to find out that they owed another £30,000 at this point after they had been paying off the loan for many years.

Mr and Mrs W have asked for clarification as to whether the provisional decision meant that the interest remained but only at 8% or if there was another outcome. The investigator has since clarified that the provisional decision set out that I didn't feel Elderbridge had done anything wrong when applying interest at the rate agreed in the loan agreement or that it had gone behind the court order in relation to the interest charged. Mr and Mrs W have made no further submissions.

Putting things right

In order to put things right, I require Elderbridge to pay Mr and Mrs W £150 in respect of the trouble and upset caused.

My final decision

For the reasons I've explained in my provisional decision and above I uphold this complaint against Elderbridge Limited in part and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 16 March 2023.

Rachel Ellis

Ombudsman