

## The complaint

Mr and Mrs A's complaint relates to a second charge secured loan they took out in 2010 and which is now owned by Prestige Finance Limited. The complaint points that fall to be considered under this complaint are:

- They have been charged interest at an annual rate of 16.38% throughout the term of the loan, but the loan agreement said interest would be charged at 12.9%.
- The incorrect interest rate being applied and the application of unreasonable fees and charges to the loan, means that they have paid too much to the loan and the balance is higher than it should be.
- Following recent changes in financial regulation the interest rate applied to the loan was reduced, but they don't think it was done correctly.
- They were not granted a Covid-19 payment deferral in 2020 when they asked for it.

In addition, Mr and Mrs A repeated complaint points about the arrangement of the loan and compliance with regulations about provision of documentation, which were the subject of an earlier, separate complaint with the Financial Ombudsman Service.

In settlement of the complaint Mr and Mrs A want the loan to be written off.

## What happened

Mr and Mrs A took out their loan in 2010 with lender 'M'. They borrowed £22,500 over a term of 25 years. The loan agreement set out that:

*'Interest at the APR [annual percentage rate] of 20.3% (variable) calculated as a total of £80,851.00 by reference to interest at an initial flat annual rate of 12.9% on the credit to be provided ..., which is however subject to variation in accordance with Clause 3.1 overleaf.'*

The annual statements sent to Mr and Mrs A by lender M detailed the interest rate that had actually been charged on the loan equated to an APR of 18%. So the interest rate applied to the loan from the time it was advanced was lower than that detailed in the loan agreement. The annual statements show that this is the APR that applied to the loan throughout lender M's ownership of it. Prestige has confirmed that it was informed that the annual interest rate being charged on the loan when it took it over was 16.63% and it continued to apply that until it reviewed the account in 2021.

Mr and Mrs A raised the concerns set out above in 2021. The final response of 4 November 2021 from Prestige it set out the details of the policy. It confirmed that the loan had been sold by an independent broker, so they should refer any concerns they had about the service they had been provided with by that business directly to it. Prestige went on to say that arrears had started on the loan in January 2011, and it had been in arrears for long periods ever since. As such, additional interest had been charged and charges had been incurred for additional work Prestige had to do in managing the account. Prestige was satisfied that the charges that had been applied to the loan, the arrears figures and amounts outstanding were correct and as a result of missed payments. It was highlighted that the balance was higher

than would have been expected when the loan was taken out, because Mr and Mrs A hadn't made the payments required under the contract.

In relation to the request for a payment deferral in 2020, Prestige acknowledged this had been requested but not actioned. It confirmed that the payment deferral should have been put in place. It said it could do so at that time, but it would make little difference to the account status, other than the arrears would be recorded as 40.85 months, rather than the then current 43.85 months. However, Prestige paid Mr and Mrs A £50 for the distress and inconvenience this caused them.

Prestige then went on to confirm that a review of Mr and Mrs A's account had been undertaken in June 2021 and it had reccredited the account with £385 of arrears charges that had been charged between September 2019 and November 2020. It was also confirmed that it had refunded £526.16 of arrears letter charges. In addition, it had reduced the interest rate to 5.23% as of November 2020, which meant a further reduction in the balance of over £2,000.

Mr and Mrs A weren't happy with Prestige's response and asked us to consider the complaint.

One of our investigators looked into Mr and Mrs A's complaint and concluded that we couldn't consider it all. Initially, he pointed out that some of their complaint points had recently been considered by this service under a different complaint reference, so we wouldn't be doing so again.

As for the complaint about the interest rate applied to the loan, the investigator concluded that we could only consider this part of the complaint about the interest rates applied to the account over the six years before the complaint was raised in 2021 – so from 2016. He then went on to consider the merits of the parts of the complaint we could consider, but he didn't recommend that the complaint be upheld.

Mr and Mrs A didn't accept the investigator's conclusions and reiterated their points about the loan having been mis-sold and the documentation provided. They also said that they had sought legal advice and had been told that the loan agreement was invalid, and they didn't need to make any further payments to it. They asked that the complaint be escalated.

Our investigator referred the complaint for review by an ombudsman, but also confirmed again that we had already investigated their concerns about the mis-selling and provision of documentation, and so wouldn't comment again. As for the legal advice Mr and Mrs A had reported receiving, he confirmed that we were not able to provide legal advice and so couldn't comment, but he didn't have any reason to conclude that the loan agreement wasn't valid.

The complaint was referred to me and issued a decision setting out our jurisdiction in relation to Mr and Mrs A's complaint. I confirmed the only complaint points we could consider were:

- They have been charged interest at an annual rate of 16.38%, but the loan agreement said interest would be charged at 12.9%.
- The incorrect interest rate being applied and the application of unreasonable fees and charges to the loan, means that they have paid too much to the loan and the balance is higher than it should be.
- Following recent changes in financial regulation the interest rate applied to the loan was reduced, but they don't think it was done correctly.
- They were not granted a Covid-19 payment deferral in 2020 when they asked for it.

In addition, I confirmed that the matters relating to the interest rate applied to the loan and the charges applied to the loan would only be considered from October 2015.

Following this Mr and Mrs A were asked to confirm exactly what they meant when complaining about 'recent changes to financial regulation' and 'the interest rate not having been applied correctly'. Mr and Mrs A were chased for a response to our question several times and none was forthcoming. As such, we explained that we wouldn't be able to specifically comment on this complaint point.

Mr and Mrs A then responded, but did not provide an answer to our question. Rather they said that we had all the information we needed to look into their complaint and if that was not enough we were not doing our job properly. They also expressed their dissatisfaction with the restrictions out jurisdiction placed on our consideration of their complaint.

I issued a provisional decision on 25 May 2023 setting out my conclusions about the merits of the parts of this complaint that fell within our jurisdiction. Below is an excerpt:

*'While not part of this complaint, I will comment on a recent concern Mr and Mrs A have raised about the loan not being recorded on their credit file with credit reference agencies. I haven't looked into this matter, but I think it would be helpful for Mr and Mrs A to know that not all lenders report to credit reference agencies and there is no requirement for them to do so. So if the loan isn't included in their credit reports, that doesn't mean that Prestige has done anything wrong or indicate anything in relation to the validity of the loan.'*

*As I have detailed above, the loan agreement said that lender M would charge interest at 20.3% APR and 12.9% annual flat rate. It also confirmed that the interest rate was variable as set out in the terms and conditions.*

*There are different ways to express the interest that is charged on a loan. In this case three different terms have been used and I believe that is what has raised Mr and Mrs A's concern that they are being charged more interest than they thought they would be when they took the loan.*

*Lender M used 'flat rate' and 'APR'. Prestige has used annual interest rate. This has caused confusion because while all of the terms refer to the same thing, they are calculated differently from each other and are not directly comparable. Indeed, introduction of the requirement for APRs to be used was specifically to enable consumers to better compare different loans and other financial products.*

*The annual interest rate Prestige has detailed on its statements is the term that most lenders and consumers use when confirming what interest rate is applied to their loan – that is 16.63% in this case. The APR is usually slightly higher than the annual interest rate – in this case 18% - and a flat rate tends to be in the region of half the APR. I know that Mr and Mrs A won't be satisfied with this explanation, but they are comparing different things and that is why there looks like there is such a discrepancy between the figures.*

*Prestige has said that 16.63% is the annual interest rate that lender M had been charging on the loan at the time the loan was transferred. That interest rate would seem to correlate with the 18% APR lender M detailed on its statements from the outset. So it would appear that Mr and Mrs A were paying the same rate of interest on their loan from the time it was advanced until the review took place in 2021. I would also point out that this is a lower rate than that detailed in the credit agreement.*

*As for the change to the interest rate made in 2021 and backdated to November 2020, I would explain that when a borrower is in financial difficulties, we would expect the lender to do what it can to support the borrower. Looking at the interest rate being charged would be one of the forbearance measures that could be considered. Prestige did this and reduced the interest rate considerably in order to assist Mr and Mrs A. I haven't seen any evidence that this reduction was inappropriate or that it has not been applied correctly.*

*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 each of the charges that were applied and for which months. Having done so, the majority of the charges were applied when Mr and Mrs A paid either nothing or less than they were due to pay, which means I would not ask Prestige to refund those charges. However, there are four that I would consider were applied unfairly on this basis. These being those charged on 10 January 2020, 13 June 2018, 10 October 2017 and 11 May 2017 when Mr and Mrs A paid the amount agreed or the CMP.*

*In addition, Prestige has acknowledged that it should have given Mr and Mrs A a payment deferral when they asked and this would have been in place from April 2020. As the payments during this period would not have been considered late or missed, the arrears charges applied in May, June July, August, September and October 2020 should also be refunded.*

*I note that Prestige refunded £385 of charges incurred during the period between September 2019 and November 2020. This equates to 11 of the 14 charges applied during that period. Prestige has unfortunately been unable to confirm which of those charges it refunded, so I can't be certain it included the charge from January 2020, but I think it is likely that it did.*

*Prestige has confirmed that its collections department also refunded £315 of arrears management charges in June 2021. It is unsure which charges were refunded or for what period; indeed it thinks there is a possibility it was some of the same charges that were refunded in the £385 detailed in the final response. In light of this, I can't be certain, or conclude that it is likely on balance, that the three charges of 13 June 2018, 10 October 2017 and 11 May 2017 were included in the refund. As such I consider that Prestige should reverse these three charges.*

*Prestige has acknowledged that it should have dealt with Mr and Mrs A's request for a payment deferral in 2020 and that its service fell short in not doing so. When awarding redress we aim to place a consumer as close to the position they would have been in, but for the mistake of the financial business.*

*When a payment deferral is given, the payments that should have been made by the accountholder are effectively capitalised to the loan balance, rather than being recorded as arrears, as missed payments usually would. The fact it is a payment deferral wouldn't alter the amount owed, only how it was recorded and how/whether it was reported on to credit reference agencies. The latter is not a consideration in this case, as Mr and Mrs A have confirmed the loan doesn't show on their credit reports, so that is not a concern. Prestige has confirmed that the payments being recorded missed, rather than as deferred, has meant that the arrears balance is higher than it would have been. However, it has also commented that those three months makes little difference in practical terms, given the loan was already more than 40 months in arrears.*

*I can understand the point that Prestige is making here and I have to agree that there would be limited benefit to altering the account balances in the circumstances. However, if Mr and Mrs A want the balances to be changed, they should say so in response to this provisional decision. In light of the situation, I consider the £50 offered is reasonable in the circumstances.'*

Following my provisional decision, Prestige was able to confirm the charges that had been refunded as part of the £315 in June 2021. That list of charges included the ones for 10 October 2017 and 11 May 2017. This was explained to Mr and Mrs A and they were told it meant that I would only be requiring Prestige to reverse the charge applied on 13 June 2018.

In addition, Prestige confirmed that it had already paid the £50 compensation it had offered. Mr and Mrs A didn't respond to my provisional decision, or the further email (including a copy of the provisional decision) detailed above. While they have not responded, both the provisional decision and follow-up clarification were sent to the email address Mr and Mrs A have corresponded with us from, and so I am satisfied they would have received them.

### **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.

I have reviewed the file again in its entirety and I have revisited my provisional decision. Having done so, I have not changed my conclusions about this complaint.

### **My final decision**

My final decision is that I uphold this complaint in part. I require Prestige Finance Limited to reverse the arrears charge applied on 13 June 2018.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs A to accept or reject my decision before 27 July 2023.

Derry Baxter  
**Ombudsman**