

The complaint

Mr and Mrs H have complained about a secured loan they took out with Firstplus Financial Group Plc in 2006. They're unhappy about how the interest rate has varied.

What happened

This loan was taken out in March 2006 and was for £74,000 (plus a £14,748 PPI premium). It was set up with a term of 25 years and had an initial interest rate of 9.06% variable.

The first payment was missed in July 2007, then from May 2008 the situation deteriorated. The arrears were capitalised in March 2009, and over the next couple of years whilst payments were made late the situation didn't worsen.

In August 2011 the arrears started to build again, and from June 2012 Firstplus suppressed the interest on the account. The 'normal' loan account remained interest-bearing, but instead of the interest being added to that balance (thus becoming interest bearing itself) the interest due each month on the outstanding debt accrued in a separate account which wasn't interest bearing. This had the effect of removing the compounding effect of interest on interest.

The arrears situation didn't improve, and Firstplus took legal action, with a suspended possession order being granted by the court in August 2014. Mr and Mrs H made a part payment in September 2014, and then no further payments were made to the account.

The contact notes (which are a contemporaneous record of the account) show Firstplus responded to a complaint from Mr and Mrs H in May 2015, which related to a claim that Firstplus hadn't helped Mr and Mrs H when they had been in financial difficulties. The notes indicate the complaint wasn't upheld on the basis Firstplus had set various arrangements on the account since 2009, and no payments had been made since September 2014.

That complaint was referred to our service and an Ombudsman colleague issued a final decision in December 2015. She said the complaint related to how Firstplus had responded when Mr and Mrs H had money problems, and she didn't uphold the complaint.

The loan was transferred to Elderbridge in 2016, and in January 2017 the matter went back to court and the lender (which was now Elderbridge) was given permission to enforce the previous court order. The property was taken into possession in March 2017 and was sold in May 2017. The first charge mortgage lender was paid off, and the remainder of the funds (once any outstanding legal and sale costs were deducted) were put towards the Firstplus loan. This left a balance outstanding of around £62,000.

Mr and Mrs H complained about the interest rate they had been charged on the loan, and as they didn't receive a response they referred the complaint to our service.

In January 2023 Firstplus made an offer to settle the complaint, albeit it said it was a goodwill offer and it didn't agree it had done anything wrong in respect of the interest rate

charged. That was an offer to reduce the loan balance by £17,372, and for Firstplus to pay an additional £150 to Mr and Mrs H in recognition of the inconvenience caused.

Our Investigator explained the offer to Mr and Mrs H but they didn't want to accept it. As the matter couldn't be resolved between the parties the case has been passed to me to decide.

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.

Firstplus has said that the interest rate on Mr and Mrs H's loan was variable and wasn't tied to an external index such as Bank of England base rate (BOEBR) or the Finance House Base Rate (FHBR), although such indices may be relevant factors in setting the rate. It also said it had made variations to the rate over the years against a backdrop of rising costs and increased credit risk, and the rate on Mr and Mrs H's loan has varied both up and down a number of times, always in line with the loan terms.

The loan terms and conditions set out Firstplus's entitlement to vary the interest rate on Mr and Mrs H's loan. They say, at clause 7:

"We may from time to time vary our interest rate. We may increase or reduce our interest rate to reflect a change which has occurred, or which we reasonably expect to occur in interest rates generally or to ensure that our business is carried on prudently, efficiently and competitively. The interest rate on your account will not in any twelve month period, vary by more than twice the variation in the Finance House Base Rate published by the Finance and Leasing Association during the same period. If for any reason, the Finance and Leasing Association ceases to publish the Finance House Base Rate we may refer the variation in our interest rates to any other Base Rate which in our reasonable opinion best matches that rate."

The interest rate on Mr and Mrs H's loan, the FHBR, and BOEBR, have varied as follows:

Effective date	FHBR	BOEBR	Loan rate
March 2006	5.00%	4.50%	9.06%
August 2006		4.75%	
November 2006	5.50%	5.00%	
December 2006			9.52%
January 2007		5.25%	
February 2007			9.79%
March 2007	6.00%		
May 2007		5.50%	10.25%
July 2007		5.75%	10.52%
September 2007	6.50%		

October 2007	7.00%		
November 2007	6.50%		
December 2007		5.50%	
January 2008			10.79%
February 2008		5.25%	
March 2008	6.00%		9.79%
April 2008		5.00%	
May 2008			10.25%
August 2008			10.52%
October 2008		4.50%	
November 2008	6.50%	3.00%	
December 2008	5.50%	2.00%	
January 2009	4.00%	1.50%	
February 2009	3.00%	1.00%	
March 2009	2.50%	0.50%	9.79%
April 2009	2.00%		
June 2009	1.50%		
September 2009	1.00%		10.52%
March 2010			9.79%
January 2012	1.50%		
July 2012	1.00%		
August 2016		0.25%	
September 2016	0.50%		
June 2017			0%

The rate history above shows that the loan interest rate didn't consistently follow movements in FHBR and BOEBR – particularly after both FHBR and BOEBR began to fall sharply from late 2008 onwards. So the loan rate didn't change in line with “interest rates generally” as clause 7 of the terms said it may.

Clause 7 also said the loan interest rate could change to “ensure that our business is carried on prudently, efficiently and competitively”. I think that, however, is very broad.

Having considered the loan agreement and the way Mr and Mrs H’s loan interest rate has operated over the years, while I’m satisfied that clause 7 made it clear that Mr and Mrs H’s loan interest rate was variable, I’m not satisfied that the reasons the rate could be varied were as clear and unambiguous as they could have been, or that the rate was consistently varied fairly.

Firstplus has said it recognises that Mr and Mrs H may not have fully appreciated the way the loan was intended to operate when they took it out, although it doesn’t accept that it has applied interest unfairly. It has made an offer of compensation, and I need to decide whether I think that offer represents a fair and reasonable resolution to this complaint. In all the circumstances of this complaint, I think it does.

Firstplus’s offer to reduce the loan balance by £17,372 is based on the interest rate that would have applied to Mr and Mrs H’s loan had the rate reflected changes in the FHBR more closely since December 2008 – when both FHBR and BOEBR began to fall sharply following the financial crash. Firstplus has also applied a ‘floor’ – a rate below which Mr and Mrs H’s loan rate can’t fall – in its calculations.

Firstplus has provided its calculations and the data behind those calculations, all of which I’ve carefully considered. This information shows that Firstplus’s offer of compensation is based on an interest rate of:

- 10.50% being applied in December 2008 (rather than 10.52%)
- 9.50% being applied in January 2009 (rather than 10.52%)
- 8.11% (the rate floor) being applied from January 2009 until May 2017 (rather than how the rate varied between 9.79% and 10.52% as I set out above)

I think the approach Firstplus has applied is a reasonable one, and I don’t consider that I can fairly require it to increase its offer. I have considered whether striking out the interest rate variation term would result in a fairer outcome, but I don’t think it would, since doing so would mean Mr and Mrs H had a fixed interest rate on their loan, and that’s not what they signed up to and is not what they should reasonably have expected.

I think that recalculating the interest rate based on how FHBR operated is appropriate in the light of the specific reference in the loan terms to FHBR.

I also consider including an interest rate floor in this recalculation is fair, to reflect the riskier nature to lenders of second charge lending as opposed to first charge, and to reflect that interest rates on second charge borrowing are generally higher as a result. Including a floor ensures that the interest rate doesn’t become the same as or lower than what we’d likely see for first charge lending across the same period. The interest rate floor is dependent on several factors, including the initial interest rate on the loan, the average standard variable rate (SVR) for secured first charge lending at the time, and the average SVR at the point this complaint was first made. It ensures there will always be an appropriate difference between the average SVR on first charge mortgages and the interest rate applied to Mr and Mrs H’s loan.

Mr and Mrs H have said that the offer from Firstplus is only about 60% of what the true refund should be, and the fact an offer has been made would indicate there is a problem, mentioning the fairness of the terms. But I don’t need to make a finding on whether or not a court would find the term to be unfair as the offer Firstplus has put forward is in line with our approach if we looked at and upheld such a complaint; that is, the redress would be to put

Mr and Mrs H back in the position they would have been in had the term been varied fairly. That's what Firstplus's offer does.

Mr and Mrs H have also commented on the fact their property was taken into possession and the impact that has had on them. I've considered this point very carefully, and whilst I've a great deal of sympathy for the position Mr and Mrs H found themselves in, I'm satisfied that even if the interest rate had been varied fairly throughout the life of the loan then the situation would have been the same. That's because Mr and Mrs H were in arrears for much of the term, and made no payments at all after September 2014. So at the time the property was taken into possession no payment had been made for over two years; a lower interest rate wouldn't have changed that.

I understand Mr and Mrs H would like the money to be paid to them, but that isn't something I would tell Firstplus to do. This isn't money Mr and Mrs H have paid to Firstplus and therefore it needs to refund it to them, this is money that is still owing on the loan as there is still over £60,000 outstanding on the debt following the property being sold in possession. If Mr and Mrs H had made all their payments in full and on time then the sum could have been paid to them as a refund, with the loan then continuing to run as normal. But that isn't the case here and so I can't tell Firstplus to pay the £17,372 directly to Mr and Mrs H.

Mr and Mrs H have also said that the £150 isn't fair compensation for the distress and inconvenience that has been caused to them, making reference to how they were treated over the life of the loan whilst in financial difficulties.

But the £150 isn't in respect of how they were treated over the life of the loan, it is just for a very specific point that the interest rate wasn't varied fairly. Mr and Mrs H didn't raise how they were treated over the life of this loan when they made this complaint to Firstplus, it was just about how the interest rate had varied, and so I can't consider those points. And in any event, as I set out previously, a complaint about how Firstplus treated Mr and Mrs H has already been decided by our service in 2015; we wouldn't look at the same complaint again now.

The £17,372 loan reduction recognises that Mr and Mrs H's interest rate wasn't fairly varied (the £150 isn't supposed to recompense that), and I can't consider a complaint about how Firstplus treated Mr and Mrs H over the life of the loan. This complaint also doesn't relate to the repossession, albeit I'm satisfied the interest rate charged wasn't the cause of the repossession for all the reasons I've already set out.

The offer of £150 compensation is in line with the awards we've made on other cases of a similar nature to Mr and Mrs H's, and it isn't designed to be £75 each or to represent how long the complaint has been running. The offer would be £150 regardless of whether there was one person or four people on the loan account. And whilst Mr and Mrs H have been through some very difficult times, I'm satisfied the way the interest rate was varied on this loan wasn't the cause of those, and their situation would have been the same even if the rate had varied fairly.

Having considered this complaint very carefully I'm satisfied the offer made by Firstplus in January 2023 is fair and reasonable in all the circumstances.

My final decision

My decision is that Firstplus Financial Group plc has made a fair offer of compensation. To settle this complaint, it should reduce Mr and Mrs H's loan balance by £17,372, and pay Mr and Mrs H £150 for their inconvenience in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 15 April 2024.

Julia Meadows
Ombudsman