

## **The complaint**

Mr A and Mrs R have complained about a secured loan they took out with Firstplus Financial Group Plc in 2006. They're unhappy about the level of interest paid on this variable rate loan, saying the interest rate applied has been extortionate and they've been overcharged.

## **What happened**

Mr A and Mrs R took out this secured loan with Firstplus in 2006. They borrowed £25,100, plus a payment protection insurance plan loan, over a term of 25 years, on a variable interest rate which was initially 7.48%.

In September 2015 Firstplus suspended the interest on the account. What that means is that to help Mr A and Mrs R as they were struggling with their payments, Firstplus stopped adding interest onto the main loan account as otherwise they'd be paying interest on interest - known as compound interest - if they didn't keep up their payments. Instead Firstplus carried on calculating the interest in the background, as it was still due, but as it wasn't applied to the main account it didn't attract interest itself. This is known as simple interest.

In effect, in order to prevent interest accruing on unpaid interest, Firstplus 'ring-fenced' the interest in a separate account, so that it didn't attract further compound interest. This also meant any payments Mr A and Mrs R made after that point went towards reducing their arrears, and then repaying the capital.

Ultimately, it meant Mr A and Mrs R were charged less interest overall (putting aside this complaint about the interest rate) than they would have been otherwise. That's because the interest is charged on the outstanding balance in the main account. Had the interest been accruing in the main account as it normally would (and as it was until Firstplus suspended the interest in September 2015) the balance in Mr A and Mrs R's main account would only have been reducing by the difference between the monthly interest and the amount Mr A and Mrs R had paid that month.

That means the interest calculation for the following month would be based on a higher balance. Instead, all of Mr A and Mrs R's payments were being used to reduce the balance in the main account so the balance in that account was reducing at a much faster rate than it normally would, meaning less interest was then charged each month going forward.

But because the interest was still due, it couldn't simply be written off or ignored, instead the interest due each month was included in a separate account (which was non-interest bearing, so interest wasn't being charged on that interest) and once the main account balance is cleared that sum will be moved across for Mr A and Mrs R to start making payments towards it.

The loan was transferred to Elderbridge in 2016 and the suspended interest arrangement continued.

In September 2021 Elderbridge went a step further and set the interest rate across the entire account to 0% as a forbearance measure.

On 11 December 2021, Mr A and Mrs R complained about the loan.

In April 2022 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. It said Mr A and Mrs R had complained too late about the interest rate charged more than six years before they made their complaint, but it offered compensation in respect of the six-year period leading up to the complaint. That was an offer to reduce the loan balance by £2,442, and for Firstplus to pay an additional £150 to Mr A and Mrs R in recognition of the inconvenience caused.

Unhappy with the response from Firstplus, Mr A and Mrs R referred their complaint to our service.

The complaint was looked at by one of our investigators. He said that Mr A and Mrs R had complained too late about the interest they had been charged before 11 December 2015, although he said he would take account of earlier interest rate changes as part of the overall circumstances of the complaint. He then considered whether the offer made by Firstplus was fair, and he was of the opinion that it was.

Mr A and Mrs R didn't agree with our investigator's findings and asked for a higher sum in recognition of the inconvenience caused.

Our investigator passed Mr A and Mrs R's comments to Firstplus and it said it would – as a gesture of goodwill - increase its offer from £150 to £300.

Mr A and Mrs R also provided their comments about why they didn't complain sooner.

Our investigator didn't change his opinion on the time limits, and as Mr A and Mrs R didn't agree the case was passed to me to decide.

I issued a decision setting out the parts of this complaint the Financial Ombudsman Service can and can't consider. I concluded that Mr A and Mrs R had complained too late about the interest rate that was charged on their loan in the early years, and that we can only look into the rate applied since 11 December 2015, which is six years before they made this complaint.

I also said that in considering the interest rate for that period, we would take into account all the circumstances of this case – which include the fairness of the rate applied before 11 December 2015, insofar as this influenced the rate applied after that date.

After receiving my decision about our jurisdiction, Mr A and Mrs R said they didn't want to accept Firstplus's offer and asked that an ombudsman make a final decision.

The complaint has therefore been referred back to me to determine the outcome of the parts of it that I can consider.

## 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.

Before I go any further I should pick up on a point Mr A and Mrs R made in response to my decision about our jurisdiction. They said they referred a complaint about Firstplus to our service in 2015 which was about financial hardship. They said our service could, at the time, have advised them about the interest rate. This service is impartial between, and independent from, consumers and businesses. What this means is that we can't give advice to consumers about alternative complaints they could make.

I've looked at my decision I reached about our jurisdiction and I'm satisfied that I've not erred in my understanding - and application - of our rules. For that reason, I won't be making any further comments about the time period we can consider for this complaint.

Mr A and Mrs R say that the interest rate on their loan has been extortionate, and they consider they have been overcharged and are due a refund.

In response to Mr A and Mrs R's complaint, Firstplus said that the interest rate on their 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 A and Mrs R'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 A and Mrs R'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 A and Mrs R's loan, the FHBR, and BoEBR, have varied as follows (up until the point Firstplus made its offer of compensation):

| Effective month | FHBR | BoEBR | Loan rate |
|-----------------|------|-------|-----------|
| August 2006     | 5%   | 4.75% | 7.48%     |
| November 2006   | 5.5% | 5%    |           |
| December 2006   |      |       | 7.94%     |
| January 2007    |      | 5.25% |           |
| February 2007   |      |       | 8.23%     |
| March 2007      | 6%   |       |           |
| May 2007        |      | 5.5%  | 8.69%     |
| July 2007       |      | 5.75% |           |
| August 2007     |      |       | 8.96%     |

|                |                  |              |       |
|----------------|------------------|--------------|-------|
| September 2007 | 6.5%             |              |       |
| October 2007   | 7%               |              |       |
| November 2007  | 6.5%             |              |       |
| December 2007  |                  | 5.5%         |       |
| January 2008   |                  |              | 9.24% |
| February 2008  |                  | 5.25%        |       |
| March 2008     | 6%               |              | 8.23% |
| April 2008     |                  | 5%           |       |
| May 2008       |                  |              | 8.69% |
| August 2008    |                  |              | 8.96% |
| October 2008   |                  | 4.5%         |       |
| November 2008  | 6.5%             | 3%           |       |
| December 2008  | 5.5%             | 2%           |       |
| January 2009   | 4%               | 1.5%         |       |
| February 2009  | 3%               | 1%           |       |
| March 2009     | 2.5%             | 0.5%         | 8.23% |
| April 2009     | 2%               |              |       |
| June 2009      | 1.5%             |              |       |
| September 2009 | 1%               |              | 8.96% |
| March 2010     |                  |              | 8.23% |
| January 2012   | 1.5%             |              |       |
| July 2012      | 1%               |              |       |
| August 2016    |                  | 0.25%        |       |
| September 2016 | 0.5%             |              |       |
| October 2016   |                  |              | 7.73% |
| November 2017  |                  | 0.5%         |       |
| January 2018   | 1%               |              |       |
| August 2018    |                  | 0.75%        |       |
| December 2019  | Publication ends |              |       |
| March 2020     |                  | 0.25% / 0.1% |       |
| April 2020     |                  |              | 7.08% |
| September 2021 |                  |              | 0%    |
| December 2021  |                  | 0.25%        |       |
| February 2022  |                  | 0.50%        |       |
| March 2022     |                  | 0.75%        |       |

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 A and Mrs R's loan interest rate has operated over the years, while I'm satisfied that clause 7 made it clear that Mr A and Mrs R'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. I also note that the agreement said Mr A and Mrs R may be required to pay additional interest, plus a service charge, if they settled their loan early. This could have

resulted in unfairness had Mr A and Mrs R been considering repaying early or moving their loan to another lender.

Firstplus has said it recognises that Mr A and Mrs R may not fully have 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 refund £2,442 of interest is based on the interest rate that would have applied to Mr A and Mrs R'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 – and had the rate reflected changes in the BoEBR since January 2020, when the FHBR had stopped being published. Firstplus has also applied a 'floor' – a rate below which Mr A and Mrs R's loan rate can't fall – in its calculations.

I think that recalculating the interest rate based more closely on how FHBR and later BoEBR operated is appropriate in the light of the specific reference in the loan terms to FHBR and any other base rate if FHBR ceased being published.

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 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 A and Mrs R's loan.

Firstplus's offer of compensation is based on an interest rate floor of 5.00% and, having considered everything, I'm satisfied that is the correct interest floor to be used for Mr A and Mrs R's complaint.

Firstplus has provided detailed explanations and supporting data to our service to show how it has carried out its calculations for complaints like this one, and I've reviewed those calculations and the data that sits behind them. Having done so I'm satisfied that Firstplus has carried out its calculations in line with the approach I've set out above in order to come to fair compensation.

I must also keep in mind that I can only make any award or direction in respect of a limited period, from 11 December 2015. The time limits I have to apply mean I can't direct Firstplus to extend compensation further back than that.

Having considered everything very carefully, 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 did consider 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 A and Mrs R had a fixed interest rate on their loan, and it's clear from the loan agreement that that's not what they signed up to and is not what they should reasonably have expected.

I understand that in September 2021 Elderbridge set the interest rate to 0% as a temporary forbearance measure to help Mr A and Mrs R, however if that changes and Mr A and Mrs R

are unhappy with the interest rate on their loan in the future, they may take that up with Elderbridge (or any future lender) in the first instance.

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.

Firstplus agreed to pay £300 compensation. I understand Mr A and Mrs R feel a higher sum is due. I've carefully considered everything Mr A and Mrs R have told us about how they've been impacted over the years. I won't detail that here to protect their privacy when this decision is published, but I can reassure them I've taken everything they've said into consideration.

Mr A and Mrs R have talked about how this affected them for the past 18 years, and the impact on their children when they were younger (they are now adults). But for all the reasons I explained in my decision about our jurisdiction I can't consider the full term of the loan, I can only consider the period since 11 December 2015, so I'm not able to consider the impact on them before that date.

I'm very sorry to hear about how difficult things have been for Mr A and Mrs R. But the higher payment due on this account because of this interest rate issue would have been a fairly small amount each month, albeit when multiplied by all those months (between December 2015 and April 2022) comes to £2,442. So whilst the higher payment would have been unwelcome, the small reduction if their payment had been set at the lower rate since 11 December 2015 is unlikely to have made much difference to their overall circumstances.

Although I recognise Mr A and Mrs R's strength of feeling - and whilst acknowledging what a difficult time they've had - I consider the offer of £300 compensation to be fair.

### **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 A and Mrs R's loan balance by £2,442 and pay Mr A and Mrs R £300 for their inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs R to accept or reject my decision before 4 March 2024.

Julia Meadows

**Ombudsman**