

## **The complaint**

Mr O disputes that he has an outstanding secured loan balance with Elderbridge Limited.

## **What happened**

Mr O took out this loan in April 2004 with Firstplus. He borrowed £43,000 over a 25-year term at an interest rate of 9.048% variable.

From February 2007 there were various missed or late payments, meaning the account was in arrears on and off since then.

In January 2016 the loan transferred to Elderbridge, at which time the loan balance was around £50,660 with the arrears balance being around £11,630.

Due to the level of arrears on the account a possession order was obtained in November 2017. Despite holding an order for possession Elderbridge allowed Mr O to put forward a payment proposal of his monthly payment plus £200 towards the arrears. That payment arrangement was immediately broken.

The interest rate was reduced to 0% in October 2019.

On 14 July 2020 Elderbridge wrote to Mr O to say that no payments had been made to the account since February 2018, and that payments needed to be maintained. That letter showed the outstanding balance at that time was around £76,440 (with the arrears balance being around £36,670).

On 15 March 2021 Elderbridge again wrote to Mr O to say that no payments had been made to the account since February 2018, and that payments needed to be maintained. That letter showed the outstanding balance at that time was around £76,440 (with the arrears balance being around £36,670).

On 23 July 2021 Firstplus responded to a complaint Mr O had made about the interest rate on his loan account. It offered to reduce the balance by £35,226, with its letter saying *"Reducing the outstanding balance of the loan by the sum of £35,226 will mean that there is significantly less money for [Mr O] to repay for the remaining term of the loan. We'd like to make clear that this offer will not affect the interest rate charged by Elderbridge in the future. We understand that the rate of interest currently applied to [Mr O's] loan is zero percent."*

As the complaint had been referred to our service we sent a copy of that offer letter to Mr O and he accepted it on 6 August 2021 and his complaint was closed on that basis.

On 17 August 2021 the redress amount was paid to the loan, which reduced the outstanding balance to around £41,210 (from around £76,440).

On 5 September 2021 Mr O contacted our Investigator and said that he hadn't received anything from Elderbridge. Our Investigator said that we wouldn't expect Elderbridge to send anything to Mr O, and if he wanted confirmation of his outstanding balance he would need to

contact Elderbridge to request that. She suggested that Mr O highlighted he'd accepted a redress offer from Firstplus and that he wanted confirmation of the adjusted balance.

As no further payments were received from Mr O and he hadn't responded to its contact attempts, Elderbridge instructed a field agent to visit the property in February 2022. Mr O phoned Elderbridge upon receipt of the letter informing him of the pending field agent visit, and he raised a complaint.

Elderbridge responded to the complaint on 22 February 2022. It detailed the complaint as:

*"Our understanding of your complaint is:*

- You do not believe any balance should be owing on your account.*
- You have not received annual Statements.*
- You do not believe any interest should have ever been charged on your account."*

Elderbridge didn't uphold the complaint. It said:

- There was an outstanding balance of around £41,210 and Mr O hadn't made any payments for over three years. It said the redress from Firstplus had reduced the loan balance from around £76,340.
- As this is an unregulated loan account there is no requirement for annual statements to be issued. It said it had now issued a statement from inception so Mr O could view the full transaction history.
- The original loan agreement showed interest would be charged at a variable rate of interest, and it was only in October 2019 that Elderbridge froze the interest on the account, with no interest being charged after that point. It said a complaint about the interest rate charged had been dealt with by Firstplus, and Mr O had already accepted the redress for that.

Mr O referred that complaint to the Financial Ombudsman Service in June 2022. In his complaint referral he said that Elderbridge had contacted him to say he still owed around £36,620 but he didn't believe he owed anything. He said he'd send a copy of Elderbridge's response to his complaint. As he hadn't provided it, we asked Mr O to provide a copy of Elderbridge's response to the complaint. As we didn't hear anything back from Mr O the complaint was closed.

I understand that due to the level of arrears, and because Mr O wasn't responding to Elderbridge's attempts to discuss matters with him, Elderbridge made the decision to pass the account back to its solicitors in February 2023. An eviction date was set for 4 May 2023, which was subsequently cancelled when Mr O made a payment proposal to Elderbridge. Whilst Mr O made the agreed payments due between April 2023 and November 2023 (other than October 2023 when he only paid £100), his payments then stopped again.

In January 2024 Mr O contacted our service to ask about his complaint. The complaint was reopened, and Mr O asked if Elderbridge was allowed to issue any legal proceedings if the complaint was open with our service. In February 2024 Mr O provided a copy of the final response letter from Elderbridge and our Investigator asked Mr O why he felt he didn't owe any more money to Elderbridge.

Mr O responded saying *"I am at a loss as to why Elderbridge are requesting payment of the same loan amount (or thereabouts). It just does not make sense especially taking into consideration the length of time that has passed."*

Our Investigator looked at the complaint and didn't uphold it. She said Firstplus's redress offer reduced the loan balance from around £76,440 to around £41,210, and Elderbridge had issued letters to Mr O setting out the balance before that so he ought reasonably to have been aware that the redress offer wouldn't repay the outstanding balance. She said she wasn't persuaded that Elderbridge was acting unfairly in asking Mr O to pay the remaining balance owing on the loan.

Mr O said he wanted the matter to be taken further, and he required around two months to review and respond further.

Our Investigator said she would pass the complaint to an Ombudsman to decide, and that we usually allow two weeks for the parties to respond to us. She said we could allow more time in exceptional circumstances, but there would need to be a compelling reason for it. She said the deadline for any final submissions was 8 April 2024, although if Mr O contacted her before that date and provided supporting evidence for any request for additional time then it could be considered. She said if she didn't hear from Mr O by 8 April 2024 then she'd assume he had nothing further to add.

No response was received from Mr O by that date and on 9 April 2024 our Investigator told both sides that the case had been allocated to an Ombudsman and that it was currently under review. I've now completed that review and I'm issuing this decision as the final stage of our process.

### **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.

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.

I understand from the call Mr O had with Elderbridge in February 2022 that he thought a letter he had from Firstplus said no interest was due on the loan and so he believed there should be no balance outstanding.

I assume Mr O is referring to the redress offer letter from July 2021 that our service sent him on his previous complaint about Firstplus. I've reviewed the letter very carefully and I can't see it says that the loan will be non-interest bearing for the life of the loan – that is, since it was taken out in April 2004 – or that the balance has been written off.

The letter says:

*"We are willing to arrange to reduce the outstanding balance on [Mr O's] loan by £35,226 (the "Reduction"). [...]"*

*In arriving at this offer we have not treated this loan as a tracker product. We have considered the interest that might have been paid if the interest rate had followed movements in the Finance House Base Rate ("FHBR") from December 2008 to December 2019 when the FHBR ceased to be published, and movements in the Bank of England Base Rate from January 2020, in each case subject to a floor of 6.95%. The Reduction*

*also recognises the time for which this complaint has been outstanding.”*

And:

*“Reducing the outstanding balance of the loan by the sum of £35,226 will mean that there is significantly less money for [Mr O] to repay for the remaining term of the loan. We’d like to make clear that this offer will not affect the interest rate charged by Elderbridge in the future. We understand that the rate of interest currently applied to [Mr O’s] loan is zero percent.”*

I can see there may have been some confusion about the mention of zero percent interest, but that is only referring to the rate of interest *currently* applied to the loan, which is a true statement of fact as Elderbridge reduced the rate of interest to zero in 2019. That doesn’t mean no interest has been charged on the loan before that date.

The redress calculation which led to the offer of a £35,226 balance reduction being made is based on the fact interest was – and should have been - charged; it just should have been charged at a lower rate than it was. If there was no longer any debt left to pay then Firstplus would have said that in its letter, rather than saying the balance reduction *“will mean that there is significantly less money for [Mr O] to repay for the remaining term of the loan.”*

The original loan agreement was for 300 payments of £362.27 (variable) to be made, which means if the interest rate had remained the same then Mr O would pay £108,681 over the 25-year term (which runs until 2029).

The figures on the loan agreement are based on a person paying all of the contractual monthly repayments in full and on time and no fees or charges being added. That didn’t happen here as Mr O has been in arrears for much of the term, and a possession order was granted. Looking at the account history and the transaction notes it seems that between January 2015 and December 2023 (a period of nine years) Mr O only made eleven payments with the other payments due in that time either not being made or being claimed back under the direct debit guarantee scheme. Payments were made in July 2015, December 2017, February 2018 and April to November 2023 (albeit in October Mr O only paid £100).

As interest was constantly being charged, it’s not as simple as making up any missed payment, there’s also the extra interest incurred for every day that payment is overdue. This interest can add up significantly as Mr O has found; for each delayed payment extra interest will be charged on the unpaid capital for every day it is late. Then there are any additional charges incurred and legal costs added onto the debt. Elderbridge froze the interest in October 2019 so since then no interest has been accrued, but until then the additional interest due had added up significantly due to the late / missed payments since 2007.

Elderbridge had sent Mr O letters in July 2020 and March 2021, both of which said that no payments had been made to the account since February 2018, and that the outstanding balance was around £76,440. So Mr O was on notice, before he accepted the balance reduction of £35,226 from Firstplus in August 2021, that his outstanding balance (at £76,440) was significantly higher than the amount of the reduction (of £35,226).

We don’t provide an auditing service or carry out a forensic analysis of loan records. But I’ve looked at the transaction history and there’s nothing on there that appears unusual or incorrect. Of course, it’s open to Mr O to instruct an independent and suitably-qualified professional to audit his account. But that would have to be at his expense – though if errors were found to his financial detriment, he could complain about them and ask that his costs in discovering them could be taken into account in putting matters right. But as things stand,

I'm not persuaded that Elderbridge has mis-managed his account or is asking for an outstanding balance that isn't due.

Mr O borrowed £43,000 and agreed to pay that sum back, plus monthly interest at a rate of 0.754% (variable) up until the point the loan is repaid. That interest was always due, and there are no grounds for me to order Elderbridge to refund any interest Mr O paid between April 2004 and October 2019; and he hasn't paid any interest after that point as Elderbridge reduced the interest rate to zero at that time. Firstplus has already reduced the balance of the loan by £35,226 to reflect the fact a lower rate of interest could have been charged over the years, but there are no grounds for me to say the loan should be non-interest bearing over the full term, or that the outstanding balance should be written off.

I can see how strongly Mr O feels about this, but I haven't seen any evidence to indicate that Mr O doesn't owe the outstanding sum that is being requested. Having considered everything very carefully there are no grounds for me to uphold this complaint.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 10 May 2024.

Julia Meadows

**Ombudsman**