

The complaint

The Executor of Mrs T's estate has complained about the amount Swift 1st Limited trading as Swift Advances requires the estate to pay to clear the second charge loan Mrs T had with it and thereby allow the charge to be removed. He is unhappy that Swift has not accepted the estate's offer to settle the debt – the amount borrowed – which he considers is fair given the amount that was paid toward the loan by Mrs T.

What happened

Mrs T, and her husband Mr T, who predeceased her, took out a mortgage with a lender in 2007. They borrowed just over £10,000 over a term of 10 years. Payments almost immediately started to be missed, and so charges and additional interest were added to the balance. There were long periods where no payments were made, although there were times that Mr and Mrs T paid slightly more than they were required to in order to reduce the arrears.

The mortgage is now administered by Swift and has been since March 2016.

Swift has told us that complaints about the balance of the loan due to additional interest, fees and charges having been applied were made and responded to in 2014 and 2016. These complaints covered the time when the lender was administering the loan itself and before Swift was involved in its administration. In 2016 Mrs T also made a complaint about Swift having taken legal action to repossess the property. It was considered by this Service, but we didn't uphold it.

It appears that other than in one month, that was then refunded, Swift did not charge any interest on the loan from the time its administration was transferred to it. Nor did it apply any charges or fees until a litigation fee of £10 was applied in May 2024. The loan balance was just over £49,000 when Swift started its administration of the account. Monthly payments were made thereafter and by Mrs T's death in 2023, the balance had reduced to just under £38,000. No further payments were made.

The Executor complained about the balance of the loan due to the additional interest, fees and charges that had been added to the amount originally borrowed.

Swift didn't uphold the complaint. It said that the fees, charges and additional interest added before 2018 were time-barred, and there had been none since. Swift was satisfied that it administered the mortgage as it should have and also pointed out that complaints about the same issues had been made and responded to in 2014 and 2016.

In June 2024 Swift offered to accept £30,000 to settle the loan. The estate countered with, initially, an offer of £5,000 and then one of £10,744 (the amount originally borrowed). Swift rejected both offers.

The Executor was not satisfied with the response and referred the complaint to this Service.

One of our Investigators looked into the complaint. She concluded that we could only consider the complaint about Swift's administration of the loan over the six years before the current complaint was made in February 2024. The Investigator confirmed that no interest had been applied during the period we could consider and only one charge had been applied. This was a litigation charge of £10 and had been applied over a year after Mrs T's death when Swift began looking at taking legal action. The Investigator didn't consider it had been unfair or unreasonable for Swift to have applied this charge.

In relation to the matter of the offers the estate had made to settle the debt, the Investigator explained that Swift believed that there was sufficient equity in the property to repay both the mortgage and second charge loan, which was why it was unwilling to accept either of the below value offers the estate had made to settle the loan. She confirmed that it was not unreasonable for Swift not to accept the offers made in the circumstances. As such, the Investigator didn't recommend the complaint be upheld.

The Executor did not accept the Investigator's opinion. He set out the history of the loan account and the affect Swift's administration of it had on Mrs T. It was reiterated that he thought the amount Swift wanted to clear the loan was unreasonable, given how much had been borrowed and the amount that had already been made in payments. The Executor said that the amount Swift was requiring to be paid was pure greed and the offer he had made to settle the loan was more than fair.

The Investigator considered the Executor's points and highlighted that the additional interest, and the majority of the fees and charges he was unhappy about having been applied to the loan balance had been charged before the period we could consider Swift's actions. She also confirmed that she could not consider whether the terms and conditions of the mortgage were fair or not, as they were set by the lender, not Swift. As such, the Investigator was not persuaded to alter her conclusions.

The Executor responded by confirming that he appreciated that we were unable to consider things that happened more than six years before the complaint was made, but his point was about how greedy and extortionate Swift was being by wanting over £56,000 to be paid to repay borrowing of less than £11,000. He reiterated that if the estate repaid the amount borrowed at the present time, the amount the lender would receive for the loan was almost £30,000 when the payments made by Mr and Mrs T were taken into account, which he considered a far more reasonable amount. The Executor asked that the complaint be passed to an Ombudsman for consideration if the Investigator didn't change their conclusions. As she did not, the case has been passed to me to consider.

What I've decided – and why

The Investigator explained that we could only consider the estate's concerns about Swift's actions as administrator against it, not the actions taken by the lender when it administered the mortgage itself. In addition, the Investigator explained why we can only consider the events in the six years before the complaint was raised – since February 2018. Both parties have accepted this explanation, and I can confirm that I agree with our Investigator's findings about our Jurisdiction. I have consider the merits of the complaint on that basis.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When the loan administration was transferred to Swift in 2016 the balance was around £50,000. Swift was required from that time to administer the mortgage in line with the terms

and conditions, other than where regulation and good industry practice meant that doing so would be considered as treating the borrower unfairly.

Almost immediately after taking over the administration of the loan account, Swift stopped charging interest and adding arrears management charges. This meant that all of the payments Mrs T made thereafter were used to reduce the amount owing. By the point I am able to consider the complaint, Swift was not charging any interest on the debt or applying charges or fees, and the balance of the loan was decreasing. I can't find that it did anything wrong in its administration of the mortgage during that period.

More recently, Swift has applied one charge to the loan balance. This was a litigation charge in May 2024 that Swift has explained was incurred when it was looking into the possibility of needing to repossess the property, so that market value was paid for the property. The terms and conditions allow Swift to add legal costs to the loan balance when they are incurred. I have considered whether it was reasonable for that charge to be incurred, and I am satisfied it was, given that the Executor confirmed to our Investigator the property is being sold for less than the open market value.

I have considered what the Executor has said about the amount owed and I can understand what he is saying and why he is unhappy with the balance of the loan. However, as I have said above, Swift is only the administrator of the mortgage and as such, it is required by the lender to administer it in line with the terms and conditions the lender has set. That is what it has done and I can't find that it was wrong to do so.

In asking Swift to accept either of the offers the estate has made to settle the loan, it has in effect asked Swift to say that the fees, charges and most of the additional interest that was added to the loan balance by the lender when it administered the loan should not have been charged. It would generally fall within the remit of an administrator to make judgements on a lender's decisions before it was involved with a mortgage or loan. It's also not within my remit to comment on the actions of the lender here. As such, I can't find that Swift was wrong not to accept either of the undervalue offers the Executor made to settle the loan.

The Executor has said that he considers the contractual amount, which is what Swift has said needs to be repaid, is the amount of the borrowing detailed on the loan agreement. I am afraid that is not the case. The contractual amount is that which is owed under the contract, including any outstanding interest and charges that have been applied in line with the terms and conditions of the loan. Until the sum owing under a mortgage or secured loan is paid, it would not be standard for a lender to release its charge on the property – this is usually done by the lender's solicitors once the money has cleared into the lender's accounts and the debt is repaid. So I again can't find that Swift was wrong not to release the lender's charge in order to allow the sale of the property to go through before the money owed, or the reduced settlement offered, had been received.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask the estate of Mrs T to accept or reject my decision before 14 March 2025.

Derry Baxter
Ombudsman