

The complaint

Mr D complains that his second charge secured loan with Elderbridge Limited was mis-sold because no checks were carried out to ensure that he could afford it. He also complains that the loan interest rate has been unfairly high.

What happened

In May 2008, through a broker, Mr D took out a second charge secured loan with GE Money Secured Loans Limited. He borrowed £55,000 plus fees on a capital and interest repayment basis over a term of 25 years. The initial payments on a variable interest rate of 12.24% were £616.84 each month. In 2016 Mr D's loan was transferred to Elderbridge.

On 11 July 2024 Mr D made a complaint. He said the interest rate on the loan was unfairly high and that the loan was mis-sold to him in 2008, because he was self-employed with no accounts and the broker who sold him the loan had told him what to put on his application. He said the lender had failed to check he could afford the loan and it has turned out to be very expensive, his family have had to help with the monthly payments, and he has struggled financially and mentally.

Elderbridge said that neither it nor the previous lender had done anything wrong. It said the interest rate was variable and had operated in line with the loan terms, and the broker who sold the loan was responsible for the sale.

Mr D referred his complaint to us. Our Investigator said that time limits apply to the complaint which mean he couldn't consider all of Mr D's complaint points, and in respect of the issues he could consider, he didn't think Elderbridge or the predecessor lender had treated Mr D unfairly.

Mr D didn't accept that and asked for an Ombudsman's review. He said, in summary, that when Elderbridge took over the loan it should have reviewed the lack of affordability checks done by its predecessor, and the Investigator had misunderstood some of what he had said about his circumstances.

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.

Having done so, and having taken careful account of everything Mr D has told us both before and after our Investigator issued his assessment, I've reached the same overall conclusion as the Investigator, for much the same reasons. I'll set out firstly what I can and can't look into in this complaint. I'll then set out my conclusions about the parts of the complaint I can consider.

What I can and can't consider

The Financial Ombudsman Service can only consider complaints which have been made within the relevant time limit rules. Those rules, which set out our jurisdiction, are the Dispute Resolution rules, known as 'DISP'. They are published by the Financial Conduct Authority in its Handbook and are available online.

The DISP rules include rules about time limits. They say – at DISP 2.8.2 R¹ – that unless the business complained about consents (which Elderbridge doesn't), we can't look at complaints made:

- more than six years after the event complained of; or, if later
- more than three years after the consumer knew, or should reasonably have known, they had cause to complain;
- unless the person complaining referred the complaint to the business complained about or to this Service within that period and has a written acknowledgment or some other record of the complaint having been received, or unless there are exceptional circumstances to explain the delay in complaining.

I'm satisfied that Mr D's complaint about the sale of the loan and the interest rate charged before July 2018 has been made outside these time limits.

Mr D took out the loan in 2008 and interest has been charged on it since then. He made this complaint in July 2024 – more than six years after the loan was sold and more than six years after all the interest charges applied before July 2018. The three-year part of the time limit rules doesn't give him any more time to complain, because I consider that he should reasonably have known of his causes for complaint more than three years before July 2024.

I think it's clear from what Mr D has said about his discussions with the broker when he applied for the loan that he knew the basis on which he was applying – that is, he knew what he was putting on the application about his income. Mr D has also told us that he struggled to afford the loan payments from the outset in 2008. I think he would have known that at the time. I also think he should reasonably have known about the interest rate he was being charged on the loan. The initial interest rate and that the rate was variable were set out on the loan agreement, and the annual statements and rate change letters sent to Mr D over the years included details about the interest rate and the impact of changes on the monthly loan payments.

I find nothing to indicate that Mr D complained about the sale of the loan or the interest rate before July 2024. While I've noted what Mr D has told us about his financial and health problems over the years, I don't consider that these meant he couldn't have complained sooner – so I can't set aside the time limits on grounds of exceptional circumstances.

For these reasons, I can't consider Mr D's complaint about the sale of the loan or about the interest rate charged on the loan before July 2018. I can consider Mr D's complaint about the interest rate since July 2018, and in doing so I'll bear in mind earlier rate changes as part of all the circumstances.

I can also consider whether the way the loan was sold to Mr D and the interest rate charged resulted in an unfair relationship between Mr D and Elderbridge, the current lender, and if so, whether there are any steps Elderbridge should now take to put that unfairness right. The complaint that unfairness arose because of the way the loan was sold and the way the interest rate operated is not time-barred.

¹ <https://www.handbook.fca.org.uk/handbook/DISP/2/8.html>

My conclusions about the parts of the complaint I can consider

The loan was sold to Mr D by a broker. The broker – not the lender – was responsible for giving Mr D advice about the suitability of the loan. In doing that, the broker was acting for Mr D, not for the lender. So Mr D's complaint about what the broker told him isn't a matter for Elderbridge. The lender was, however, responsible for its decision to lend Mr D the loan.

Our Investigator has asked Elderbridge for details of Mr D's loan application and how it was assessed. Elderbridge made enquiries of the original lender, and I've seen a copy of an email from GE Money saying it couldn't trace Mr D's account. Elderbridge has told us there's no longer a copy available of Mr D's loan application or of the checks done before the loan was agreed.

Our Investigator has also asked Mr D for his recollections and details of his income and financial situation from 2008 onwards. Mr D has said that he was self-employed in 2008 and working as close to full time as possible. He had no accounts or business forecasts to provide to the lender. He has said that the broker told him to self-certify his income on the loan application and told him what he needed to put in order to get the loan – and the lender was negligent to lend to him on this basis. He hasn't been able to provide an estimate or any other information about how much he was earning at the time and no longer has any records or accounts available. He has said that the loan repaid his credit card debts and was used for home improvements. He has also told us about his circumstances since taking out the loan, which include being in and out of work for periods including to look after his children and the impact of the coronavirus pandemic and rising cost of living on him and his family.

It's unfortunate that there are no longer any records available about Mr D's loan application and the affordability assessment that was carried out. I don't however find that surprising or unusual given the time that has since passed.

Mr D has said that the lender shouldn't have accepted what he told it about his income on the application. Self-certifying income means that the applicant isn't required to provide proof of income. It doesn't mean however that there are no affordability criteria – a lender will have lending criteria which the applicant will need to meet if it is to lend. Mr D must have met those criteria given that he got the loan, and I wouldn't expect Elderbridge to have re-underwritten the loan or reviewed the 2008 affordability assessment when it took the loan on in 2016.

Elderbridge has been able to provide a copy of the signed loan agreement, a number of rate change letters and annual statements, and its and its predecessor's records of contact with Mr D and his partner since 2008. I've looked at all those carefully alongside what Mr D has told us.

Mr D told us that he began to struggle to afford the loan payments after about three or four years and had to rely on his partner and family for help. He also said that he reduced his working hours after his first child was born in 2010. He then told us that his earnings didn't in fact change after 2008 and he struggled to make the loan payments from the outset. He said that Elderbridge's records show that direct debit payments failed and he received arrears letters as long ago as 2013 and that his partner was helping him manage his account as far back as 2009. He has also said that he might have used the money from the loan to make the monthly payments to the loan.

Elderbridge's records show that a direct debit was unpaid in December 2008 and Mr D told the lender at the time that this was because money went into the account a day late. There was then an issue with the direct debit being represented even though Mr D's partner had

made a card payment. Direct debits were unpaid again around five years later in 2013, and it appears that this was down to an issue with the direct debit instruction being cancelled and set up again. In 2015 Elderbridge's records say that returned direct debits were due to Mr R and his partner being away and not transferring money in time.

The first indication of financial difficulty other than short term or temporary issues as above was in early 2020, when Mr D asked for a payment deferral during the coronavirus pandemic. The contact records do show that Mr D's partner made some of the payments to the loan over the years using her debit card, but Mr D's and his partner's household arrangements were a matter for them, and I don't consider this is evidence of unfair treatment by the lender. Until 2021, the loan was never in more than one month of arrears.

In the circumstances I think it would be difficult to conclude that the original lender's decision to lend resulted in any lasting unfairness. I share the Investigator's view that the difficulties Mr D has described in affording the loan and the recent arrears have arisen as a result of changes in his circumstances and the impact on him of wider economic conditions rather than because the loan was lent irresponsibly or negligently.

I also don't consider that there has been unfairness because of the interest rate charged on the loan. The loan agreement was clear that the interest rate was variable and what the monthly payments would be at the outset on an annual rate of 12.24%. The interest rate was the same as Barclays Bank base rate, plus a margin of 7.24%. That was set out clearly in the loan agreement and the terms and conditions.

Barclays Bank base rate has, in practice, been the same as Bank of England base rate. I'm satisfied that the rate on Mr D's loan has operated in line with this rate plus the margin set out in the loan agreement. It has therefore operated in line with the loan terms. Until 2023, the rate was in fact always lower than the 12.24% it was at the outset when Mr D took out the loan. So Mr D has benefited from the interest rate being variable rather than fixed.

I realise that Mr D considers the loan has and continues to cost him far too much. The loan agreement said the total amount he would need to pay back, including the amount borrowed, was £130,052 – subject to interest rate changes, payments being made on time and the length of time Mr D kept the loan for. That was also in the 'welcome letter' which GE Money sent to Mr D. Both the agreement and the letter were clear about the cost of the loan, including the interest payable on it.

Elderbridge has said that Mr D should contact it if he's struggling to afford the loan so it can see what it can do to help, and I encourage him to do so. But I can't fairly uphold this complaint. The interest rate on the loan varied as it should, and I don't find that the lending decision in 2008 or the way the loan interest rate has operated since created an unfair relationship between Mr D and Elderbridge. I make no order or award.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 June 2025.

Janet Millington
Ombudsman