

The complaint

Mr and Mrs F complain about a second charge mortgage (secured loan) they have which is being administered by Swift 1st Limited trading as Swift Advances. In particular, they're unhappy that there's still a substantial balance outstanding as they approach the end of the loan term.

What happened

Mr and Mrs F took out their loan in 2004, borrowing around £11,000 over a 20 year term. Their lender was a firm called Swift Advances plc.

In 2016, Swift Advances plc ceased to be a regulated lender. Where lenders are not regulated but the loan is – as is the case here – the lender is required to appoint a regulated administrator to administer the loan on its behalf. Swift Advances plc therefore appointed a sister firm, Swift 1st Limited, to act as the regulated administrator.

In doing so Swift 1st Limited uses the trading name Swift Advances, though it's not the same firm as the lender Swift Advances plc. To avoid confusion, in this decision I'll use "Swift Advances" to refer to the lender Swift Advances plc and I'll use "Swift 1st" to refer to the administrator Swift 1st Limited.

In 2023 Mr and Mrs F asked Swift 1st for the outstanding balance on their loan account. Swift 1st said that the balance outstanding was almost £15,000. Mr and Mrs F complained – they didn't think it was right, or fair, that having paid their loan for the last 20 years they still owed more than they'd started with.

Swift 1st said that Mr and Mrs F had been in arrears during the course of their loan agreement. When that happened, payments weren't made as expected – which meant the balance was higher than it would have been had the payments been made on time, and so additional interest was charged. This in turn meant that the balance was higher, resulting in more interest, in subsequent months too. And various fees and charges had been added to the loan balance because of the arrears and resulting legal action. The combined effect of all this was that the monthly payment set at the start of the loan was no longer enough to clear the outstanding balance – and nor was the increased payment Mr and Mrs F had been making in recent years. Swift 1st said the loan had been managed in line with the terms and conditions and Mr and Mrs F's payment history and it hadn't done anything wrong.

I've previously issued a jurisdiction decision, in which I said that we couldn't consider the actions of the lender Swift Advances, because it hasn't been a regulated firm that falls within our jurisdiction since 2016. We can however consider the actions of the administrator Swift 1st – but only since 23 November 2017, six years before Mr and Mrs F first complained. Within that, we couldn't consider whether Swift 1st acted fairly in sending a field agent to visit their property in 2023, because Mr and Mrs F had complained to Swift 1st about that at the time and hadn't referred the complaint to us within six months of Swift 1st's response, so that part of the complaint was also out of time.

Our investigator then considered the merits of the parts of the complaint I said were in time.

She didn't uphold it. She said that Swift 1st had made Mr and Mrs F aware their balance wasn't on track to be repaid by the end of the term since 2017. It had spoken to them about it in 2018, but Mr and Mrs F weren't able to increase what they were paying at that time. Mr and Mrs F didn't agree and asked for the complaint to be reviewed by an ombudsman.

I took a different view of the complaint, so I issued a provisional decision setting out my thoughts for the parties to consider.

My provisional decision

I said:

“Although I can't consider the fairness of what happened before 2017, it's important to understand what did happen because it explains why, by 2017, the balance wasn't on track to be repaid by the end of the term.

Mr and Mrs F took out their loan in 2004. They borrowed around £11,000 over a 20 year term on a repayment basis. Unfortunately, Mr and Mrs F began missing payments soon after the loan was taken out. In 2006 the lender began legal action, though proceedings didn't go ahead at that time and an arrangement to pay was agreed. There was further legal action in 2007 and 2008, and a possession order was granted in May 2008.

There were further periods of arrears, and arrangements to repay, in the next few years. Mr and Mrs F were in regular contact with the lender throughout this period.

When a loan is in arrears, that's because the monthly payments haven't been made as expected. As a result, the loan balance is higher than it should have been and so more interest is added. Even when the arrears are cleared, the balance is still higher than it would have been had there never been arrears because of this extra interest. There were also fees and charges, including legal fees, added to the loan balance. At the time it responded to this complaint, in December 2023, Swift 1st said that the total fees and charges added were around £3,300, and there was additional interest because of the arrears and fees still outstanding of £14,900.

As a result, Mr and Mrs F's loan went off schedule – meaning that even once they repaid the arrears and were making their full monthly payments again, that was no longer enough to clear the arrears by the end of the term. I can see in Swift's records that it explained this to Mr and Mrs F several times. For example, there were several conversations in 2013 in which Swift told Mr and Mrs F that their contractual monthly payment was by now less than the interest being added each month – so the balance was growing even though they were paying in full. Swift said that Mr and Mrs F might want to consider paying more to reduce the balance and help get things back on track.

By 2017, the period I can consider, Mr and Mrs F were paying £155 per month, while their contractual monthly payment was £127. So they were paying more to reduce the balance. But as Swift 1st explained at the time, that still wasn't enough to pay the mortgage by the end of the term. By the time of the 2018 annual statement, in February 2018, Mr and Mrs F would need to increase their payments to £298 per month if they were to clear the loan by the end of the term.

I've set out above the reasons why the balance had gone so far off schedule. As I say, I can't consider whether Mr and Mrs F were treated fairly or not during the period before November 2017, as that's out of time. But I'm satisfied that by the start of that

period, it's correct that they were off track and not on schedule to repay the loan at the end of the term, that the reason for this was the historic arrears – and fees, charges and interest on arrears – and that Swift 1st had made Mr and Mrs F aware of this and what they would need to do to get it back on track.

During the period I can consider, Swift 1st continued to send annual statements to Mr and Mrs F, which included illustrations of what they would need to pay each month to repay by the end of the term. Because there was progressively less time until the end of the term, the longer Mr and Mrs F went without increasing their payments, the more they would have to pay in the remaining time. In 2019, for example, the illustration said they would need to pay £339 per month, but by 2022 this had risen to £679 per month.

On 25 August 2018, Mrs F called Swift 1st to order a new payment book. During that conversation, Swift 1st reminded her that the balance was off schedule and what she would need to increase the payments to, to repay the loan by the end of the term. Mrs F said they couldn't afford to increase their payments. Swift 1st said that another team would contact them two years before the end of the term to discuss the situation then, but that there may be nothing that could be done because the terms and conditions required them to pay in full.

I don't think this was fair. I think Swift 1st had done enough to make Mr and Mrs F aware of the situation. But I don't think it had done enough to support them in dealing with it. As I've set out above, the longer the situation went on the more Mr and Mrs F would have to pay each month to catch up. So I don't think that simply saying that nothing would be considered until there were only two years left was fair, or did enough to support Mr and Mrs F. I think that, acting fairly, Swift 1st had an obligation to do more to consider what could be done to support Mr and Mrs F in repaying their loan – including thinking about whether further forbearance was appropriate. The purpose of forbearance is to support a borrower who has experienced financial difficulty get the loan back on track so it can be repaid.

I think it's likely that Mr and Mrs F were unable to significantly increase their payments at the time. This means that the loan would continue to be off schedule – unless Swift 1st considered forbearance to help bring it back on track. There are a number of things it could have considered. These include a term extension, to give Mr and Mrs F more time to repay the outstanding amount in line with what they could afford. Or there were other options, including rescheduling the loan in some way.

Good practice in situations like this includes options such as not adding interest each month to the main balance – instead moving it to a separate sub-account. This means that all payments Mr and Mrs F make would be used to reduce the capital, meaning their balance would reduce faster and less interest would be charged. And while they wouldn't be repaying the interest until the capital is repaid, interest on interest would be added in a simple not compound way – in the same way the fees balance was treated (until Swift 1st stopped adding interest to the fees balance altogether).

I think this would have been a fair way to support Mr and Mrs F. It strikes a fair balance between Swift 1st's right to recover the money that was lent, with interest, and fairness towards Mr and Mrs F in allowing them to get to a point where they can actually repay what they owe.

This conversation with Mrs F in August 2018 was an opportunity for Swift 1st to understand that Mr and Mrs F were, at the time, paying what they could. They

couldn't afford to pay more. But if they didn't, and no other measures were taken to support them, there was little or no prospect of them clearing the balance by the end of the term or within a reasonable time thereafter. I don't think simply refusing to do any more until two years before the end of the term was sufficient to treat them fairly.

Our investigator thought that if Swift 1st had tried to work with Mr and Mrs F at this point, they wouldn't have engaged. But I'm not persuaded that's necessarily the case. If Swift 1st had explained the situation they were in, that it risked getting worse, and that it wanted to see what support and forbearance it might be able to put in place if Mr and Mrs F weren't able to afford to pay more, I think it's likely they would have responded to that.

To put things right, I think Swift 1st should put Mr and Mrs F back in the position they would have been in had it offered appropriate forbearance at the time. This means that it should, with effect from 1 September 2018, re-work the account as if interest on the outstanding capital balance from then on had been added to a separate sub-account on a simple not compound basis, rather than adding it to the main balance. It should then apply all payments Mr and Mrs F have made since then to reducing the capital balance first, followed by the interest and fees balances. It should then tell Mr and Mrs F what the remaining balance now is, and should discuss with them an affordable repayment plan.

I understand that in recent months, while this complaint has been in progress, Mr and Mrs F have withheld payment on the basis that the loan term has ended and therefore Swift 1st should not be requiring them to pay any more. But even though the term has ended, the loan does remain outstanding, and Mr and Mrs F are required to repay it. Although I've found that Swift 1st ought to have done more to support them in getting the off schedule balance back on track, I don't think it would be fair to require it to write the remaining debt off altogether, or not collect it from Mr and Mrs F.

If my final decision is along these lines, therefore – and if Mr and Mrs F then accept it – Swift 1st will need to re-work the balance along the lines set out above. It should then tell Mr and Mrs F what the remaining revised balance is and work with them to agree an affordable repayment plan. Mr and Mrs F will need to engage with Swift 1st, sharing details about their current financial circumstances, if that is to happen.”

Swift 1st accepted my provisional decision. It said it would result in the current balance being reduced by about £3,100.

Mr and Mrs F said that in the six years I said I could consider, they had made payments of over £11,000 but their balance had only reduced by about £2,000 over that time. This illustrates the amount they have been charged because the balance was higher than it should have been. They said that the balance at the end of the loan term should be the final balance – final means final, and so it wouldn't be fair for interest to continue to be charged beyond the date the loan term was supposed to end.

Mr and Mrs F said they had not withheld payments since the end of the term, but Swift 1st had not asked them to make payments. It also hadn't told them that interest would continue to be added beyond the end of the term. It wasn't fair to charge them interest while the balance was in dispute because of their complaint.

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.

I've also considered again what I said in my provisional decision in light of the responses to it. Having done so, I haven't changed my mind. I still think that there is more Swift 1st could have done to assist Mr and Mrs F when it was clear they weren't on track to repay the loan by the end of the term – but that the reason they weren't on track was because of the historic arrears and the additional interest and charges that resulted.

Putting things right

I've thought about what Mr and Mrs F have said. But I'm afraid I don't agree it would be unfair for interest to be charged since the end of the term. The term end is when the loan ought to have been repaid – but if it wasn't, the loan and loan agreement don't come to an end, they continue until the debt is repaid in full. That includes the debt being subject to ongoing interest. Subject to ensuring that interest is added separately and not to the main balance, and subject to any future forbearance that may be agreed, it's not unreasonable that interest continues to be charged while the loan is outstanding.

I've not seen any evidence that Swift 1st told Mr and Mrs F not to make payments following the scheduled end date. They were paying manually rather than by direct debit, so it would have been their choice to stop making payments rather than Swift 1st's decision to stop collecting them. I appreciate Mr and Mrs F were unhappy about their situation and were making a complaint. But they knew they still had an outstanding debt, to which they were no longer making payments. I don't think it would be fair to expect Swift 1st not to charge interest during that period.

To put things right, Swift 1st should re-work the loan balance, so that it is as if interest had been moved to a separate sub-account and charged on a simple not compound basis, and with all payments made used to reduce the capital, with effect from 1 September 2018. This will result in a reduced outstanding balance. Swift 1st should tell Mr and Mrs F what the revised balance is, and work with them to agree an affordable repayment plan if possible. Just because the term has ended, that does not mean that Swift 1st's obligations to offer forbearance and try to find a sustainable way for the debt to be repaid have also come to an end. It must continue to treat Mr and Mrs F fairly, treating taking further action as a last resort.

My final decision

My final decision is that Swift 1st Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 28 May 2025.

Simon Pugh
Ombudsman