

complaint

Miss W says that Santander UK Plc (trading as Cahoot) acted unfairly in two ways, specifically:

- when it increased the interest rate on her flexible loan; and
- when it withdrew a facility to enable her to borrow further money.

She also says that her credit file shows that she has available credit on the loan facility when, following changes to it, she does not.

background

Cahoot and its flexible loan

Cahoot was launched in 2000 as the internet division of Abbey National plc, which became a subsidiary of Banco Santander in 2004. It is now the internet division of Santander UK plc. I shall refer to Miss W's lender simply as Cahoot in this decision.

Cahoot's flexible loan was introduced in 2001. Apart from being internet-based, it had one unusual feature. Rather than borrowing a set amount over a period of time and making regular payments, borrowers could choose a credit limit (subject of course to Cahoot's approval) and draw against it from time to time; subject to a monthly minimum payment, they could then repay part or all of what they had borrowed when they chose to do so, without incurring any repayment charge. And if they wanted to borrow more, the loan allowed them to do so – up to the credit limit. No new credit checks were needed. To that extent the loan operated a little like a credit card account, except that there was no card and no facility therefore to make retail purchases.

Cahoot closed the flexible loan to new business in August 2006, but continued to operate it for existing customers such as Miss W.

Miss W's circumstances

Miss W took out a Cahoot flexible loan in 2003. Her initial interest rate was 6.35%. After that, the interest rate increased as set out below:

Date	Former Rate	New Rate
March 2004	6.35%	6.50%
June 2004	6.50%	6.77%
July 2004	6.77%	6.97%
September 2004	6.97%	7.44%
May 2005	7.44%	8.20%
July 2006	8.20%	8.55%
September 2006	8.55%	8.77%
December 2006	8.77%	9.05%
January 2007	9.05%	14.00%
September 2007	14.00%	14.84%
August 2008	14.84%	16.61%

In early 2010 Cahoot wrote to Miss W (and other borrowers) to say that it was making changes to the loan. The effect was that she could not borrow any additional money, although she could still make payments in the same way and without penalty.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

the interest rate changes

I appreciate that the interest rate was variable, but that does not mean that Cahoot could change it at will. It could only do so if the loan terms allowed it to do so and if to the extent that those terms complied with the relevant law.

The loan terms listed a number of reasons for which Cahoot might change the interest rate. They included:

- to maintain the competitiveness of the business as a whole, taking into account actual or expected market conditions;
- to reflect actual or expected changes in money market rates; and
- to ensure that the business was run prudently.

Most of the interest rate rises which Miss W complains about took place between the middle of 2006 and the end of 2007. In that period the Bank of England base rate was also rising. Cahoot says that the rises in the loan rate in 2006 and in September 2007 were made to reflect changes in money market rates, because the base rate is an indication of money market rates. I accept that is the case and that the interest rate changes in 2006 and in September 2007 were made to reflect those changes. It follows that they were made for a reason allowed by the loan terms.

Miss W has correctly pointed out that the interest rate she paid did not however fall when base rate fell.

But the loan terms did not *oblige* Cahoot to change the rate they paid to reflect market conditions – they *permitted* it to do so. And Cahoot did not say that the loan rate would track the base rate (or any external rate) up or down.

Even though the base rate continued to increase throughout much of 2007, the change in January 2007 was very much more than any increase in base rate at or around that time. It cannot properly be said to reflect a change in money market rates generally. The same applies to the change in August 2008. Indeed, Cahoot accepts that. It says however that these changes were made to maintain competitiveness and to ensure that the business was run prudently.

Cahoot has explained this in more detail. In short though, Cahoot says that the flexible loan as a whole was not profitable – mainly because of increases in underlying costs and bad debts. One of the steps it took to address this was to increase the interest rate.

I can see that the provision which allows Cahoot to vary the interest rate in order to maintain the competitiveness of its business could be open to different interpretations – one of which might be that it allows Cahoot to change its rate in order to compete with other providers.

But I am not persuaded that this would be the only reason for which this particular provision could permit interest rate variations.

Cahoot has said that, by 2006, the flexible loan product (as a whole) was no longer profitable – and I am satisfied, on balance, that this was so. In other words, if Cahoot continued to provide the product on the same terms as before, it would at best achieve no return at all from that activity or at worst would run it at a loss. I accept that, in these circumstances, it would not be unreasonable for Cahoot to rely on the provision which allows it to vary the interest rate in order to ensure that the business is run prudently.

I appreciate that, even if the rate being charged on the flexible loan did not provide a profit for Cahoot, Santander UK was still profitable overall. But I do not consider that the entire Santander group would have to be making a loss before Cahoot could rely on the provision which allows it to vary the interest rate in order to ensure that the business is run prudently.

I am not in a position to audit the profitability of Santander and its constituent business areas, nor can I carry out the forensic accountancy that would be required in order to assess how the specific interest rate changes made on Miss W's individual account related to Cahoot's profitability. But, taking everything into account, I am not persuaded that Cahoot acted unfairly or that it was not entitled to make rate increases on Miss W's account.

notification of loan terms and changes to the interest rate

Miss W has said that she did not receive a copy of the loan terms. However, when she took out the loan, she signed a declaration that she had read and accepted the conditions booklet. I can understand that she may not have paid much attention to the conditions booklet at the time or kept a copy, but on balance I think it more likely than not that she did receive it.

I am also satisfied that Cahoot gave Miss W proper notice of the interest rate changes from time to time.

the removal of the additional borrowing facility

I can understand that Miss W wished to continue to use the flexible borrowing facility which she had enjoyed for more than six years. As I mentioned, this was a rather unusual feature of the loan account when she chose it. However, the loan agreement and the loan terms both said that the loan limit would be what Cahoot decided it should be '*from time to time*'. The loan terms also said that either party could end the agreement by giving written notice. If Cahoot wanted to end the agreement it had to give 30 days' notice.

Since the loan agreement allowed Cahoot to change the loan limit and to end the agreement entirely, it must be the case that it was entitled to take the steps it did – effectively to reduce the loan limit to zero, whilst allowing Miss W to repay her existing borrowing on flexible terms.

Miss W says that she did not receive notification of the changes. Cahoot did however send a secure on-line message to her, telling her about the changes and explaining her options. On balance I think it more likely than not that Miss W did receive this.

credit file

Miss W says that information on her credit file suggested that she had an available credit facility, when she did not. Cahoot has since amended this, and I agree that this was the right thing to do. Miss W's credit file was suggesting she had available credit when she did not. I cannot, however, see that Miss W has suffered any loss or disadvantage as a result of the registration, and so I do not consider that any payment of compensation is warranted.

other issues

Miss W says that there are a number of other reasons why, given the relevant law and codes, Cahoot has acted unfairly. She has referred to the Consumer Credit Act, legislation relating to unfair contract terms as well as industry guidance on irresponsible lending. Our rules require that, in making that determination, amongst other things I must have regard to (but am not necessarily bound by) any relevant law, relevant codes and good industry practice.

In this particular case, given the detail into which Miss W has gone, I consider these points to be ones that Miss W ought to raise in court if, as seems likely in this case, one becomes involved. She also says, for example, that she was told in writing that her interest rate would not change but, despite requests, has not provided us with a copy of the letter she says she received. Again these might be issues Miss W would be better off raising in court.

handling of complaint

Cahoot accepts that it did not handle Miss W's complaint well and offered £50 in recognition of the distress and inconvenience this caused. I agree with our adjudicator that this is fair and reasonable.

other cases

Finally, Miss W says that she understands that the ombudsman service has upheld similar complaints to hers in the past.

It is correct that we have dealt with some complaints about the flexible loan in the past and that some had successful outcomes for the consumer, largely because Cahoot had not at that time provided us with a sufficient level of detail about the reasons for the interest rate changes.

After careful consideration I have concluded:

- Cahoot was not obliged to continue to provide the flexible loan to Miss W at a lower rate of interest.
- Cahoot was entitled to withdraw the further borrowing facility.
- Cahoot should pay Miss W £50 in compensation for the way it has handled her complaint.

my final decision

My final decision is that I am requiring Santander UK plc to pay Miss W £50 in recognition of the distress and inconvenience the poor handling of its complaint caused.

Nicolas Atkinson
ombudsman