

complaint

Mrs F says that Santander UK Plc trading as Cahoot acted unfairly in three ways, specifically:

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

She also says that her credit files shows that she has available credit on the loan facility when, following changes to it, she does not. She also says that these details suggest the loan has a term of 999 years.

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 Mrs F'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 Mrs F.

Mrs F's circumstances

Mrs F took out a Cahoot flexible loan in 2002. Her initial interest rate was 7.72%. After that, the interest rate changed as set out below:

Date	Former Rate	New Rate
June 2003	7.72%	7.57%
December 2003	7.57%	7.81%
March 2004	7.81%	8.09%
June 2004	8.09%	7.53%
July 2004	7.53%	8.00%
September 2004	8.00%	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 Mrs F (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 accept 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 and 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 Mrs F 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 January 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.

I appreciate that the interest rate he 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 to order to assess how the specific interest rate changes made on Mrs F'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 Mrs F's account.

notification of loan terms and changes to the interest rate

Mrs F 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 Mrs F proper notice of the interest rate changes from time to time.

the removal of the additional borrowing facility

I can understand that Mrs F wished to continue to use the flexible borrowing facility which she had enjoyed for more than four 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 Mrs F to repay her existing borrowing on flexible terms.

Mrs F 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 Mrs F did receive this.

Mrs F also says that Cahoot should have provided an alternative product. I am satisfied that Cahoot told customers about other loans that were available but did not give a guarantee that they would lend to any particular customer. In Mrs F's case it appears she applied for a fixed rate loan but was declined. In the circumstances, I cannot say Cahoot did anything wrong.

credit file

Mrs F says that information on her credit file suggests that she has an available credit facility, when she does not and that her loan is for a term of 999 years.

I agree with Mrs F that Cahoot should arrange for the credit file to be amended to reflect the true position – that the line of credit is no longer available. I cannot see that Mrs F has suffered any loss or disadvantage as a result of the registration so far, and so I do not consider that any payment of compensation is warranted.

After careful consideration I have concluded:

- Cahoot was not obliged to continue to provide the flexible loan to Mrs F at a lower rate of interest.
- Cahoot was entitled to withdraw the further borrowing facility.
- Cahoot must amend Mrs F's credit file to reflect the fact that the loan account no longer offers a potential borrowing facility nor is it a loan for a term of 999 years.

my final decision

My final decision is that I do not uphold this complaint.

Nicolas Atkinson
ombudsman