

complaint

Mr and Mrs D complain they were mis-sold a fixed rate loan by Ulster Bank Ltd in May 2008. They also complain there was a hidden swap agreement in place that they weren't aware of.

background

Mr and Mrs D are trading as a partnership. In April 2008 they were looking to borrow an extra £100,000 to renovate a property. They say Ulster advised them to restructure their borrowing so that they had an overall loan of £750,000 over 15 years. They fixed the interest rate in relation to £375,000 of this for 10 years – at a rate of 7.1% (including margin and costs).

Ulster called in the borrowings in June 2013 and added an estimated break cost for the fixed rate loan of £49,000. At the point the loan was broken – in August 2013 – the break cost was fixed at £44,266.61.

I issued a provisional decision upholding the complaint in part. My provisional findings are attached and form part of this decision. In summary, I couldn't see there was a hidden swap agreement in place. I was satisfied Mr and Mrs D had been attracted to the idea of fixing the interest rate for part of their loan. But I thought they would've fixed for a shorter length of time – five years instead of 10 – if they'd been given more information about the possible break costs they could incur.

Ulster responded accepting the provisional decision. It also confirmed Mr and Mrs D hadn't been charged interest after June 2013. Mr and Mrs D responded saying they had nothing further to add.

my findings

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

As I haven't received any new evidence or arguments since my provisional decision, I don't feel it's necessary to comment further. My conclusions remain as set out in my provisional decision for the same reasons.

fair compensation

I'm satisfied Ulster should put Mr and Mrs D into the position they'd have been in if they'd fixed the interest rate on £375,000 of their borrowing for five years instead of 10. This requires it to:

- Pay Mr and Mrs D the difference between what they paid for the first five years of their 10 year fix and what they would've paid with a five year fix. Ulster has confirmed the rate for a five year fix would've been 7.23% (including margin and costs). If – as it seems – this calculation results in a negative amount of compensation, Ulster can deduct it from the compensation due.
- Pay Mr and Mrs D the difference between what they paid after the first five years with their 10 year fix and what they would've paid with a variable rate loan. Ulster has

confirmed it didn't charge Mr and Mrs D interest after June 2013. This calculation will only need to be done up to June 2013 therefore.

- Refund to Mr and Mrs D the break cost they were charged in August 2013.
- Pay Mr and Mrs D compensatory interest of 8% simple per year* on each reimbursed payment from the date it was paid to the date compensation is paid.

*If Ulster believes it's legally required to deduct tax from this interest, it should send a tax deduction certificate with the payment. Mr and Mrs D may then be able to reclaim any tax overpaid from HMRC, depending on the circumstances.

There's been some discussion as to what (if any) compensation can be set off against Mr and Mrs D's debts. If Ulster can show that it wrote off any debts connected to this loan, it seems fair for it to set some of the compensation off against those. But I don't think it'd be fair for it to set any of the compensation off against debt it's now transferred to a third party; or debt on any facilities other than this one.

I note Mr and Mrs D's comments about the professional costs they've incurred bringing the complaint. But it's important to note that this service offers a free and informal service to resolve disputes. And in the absence of persuasive evidence to the contrary, I think Mr and Mrs D could've complained to both Ulster and this service without professional assistance.

my final decision

My final decision is that I uphold Mr and Mrs D's complaint in part. I require Ulster Bank Ltd to pay Mr and Mrs D fair compensation as set out above. I don't make any other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 15 February 2016.

Laura Layfield
ombudsman

COPY OF PROVISIONAL FINDINGS

There's been some discussion as to what type of agreement Mr and Mrs D entered into. I note their comments about there being a hidden swap. And I understand why they think this is the case. I agree the documentation isn't clear and includes references to a swap on a number of occasions. But Ulster has explained this is an error with the documentation. And there isn't any other evidence I've been provided with – for example, a swap agreement or evidence of swap payments being taken – that suggests Mr and Mrs D did have a swap.

Taking everything into account, I'm satisfied Mr and Mrs D entered into a fixed rate loan agreement for £375,000 of their borrowing. Mr and Mrs D have queried whether this was an appropriate type of agreement for them given the nature of their partnership. I'm satisfied that in theory it could be so I've gone on to consider the sale.

It wasn't a condition of the lending that Mr and Mrs D fix the interest rate. Mr and Mrs D say they were pressured into agreeing to do this. They say they didn't feel interest rates were going to rise and have pointed to the fact rates were falling at the point they fixed. They've also pointed to the fact that in the past when rates were going up, they didn't fix.

I've thought about this carefully. I accept it seems Mr and Mrs D weren't looking to fix when they first approached Ulster for additional lending. And I accept it may have been Ulster that suggested fixing as an option to them. But I don't think this necessarily means Ulster did anything wrong.

Although I recognise Mr and Mrs D's strength of feeling about this, there isn't enough for me to say Ulster pressured Mr and Mrs D into agreeing to fix the interest rate for part of their borrowing. Instead I think it presented it as an option and Mr and Mrs D knew they had a choice about whether or not to agree. Just because Mr and Mrs D hadn't fixed before and interest rates had been falling, doesn't mean they didn't decide it was a good idea to fix at that point in time. No one knew what interest rates were going to do and by fixing a portion of their borrowing for 10 years, Mr and Mrs D gave themselves a balance of certainty and flexibility.

There also isn't enough for me to say Ulster advised Mr and Mrs D to fix. I accept there may have been a general discussion about what interest rates might do. But I haven't been provided with any persuasive evidence Ulster gave a definitive opinion.

Mr and Mrs D say they weren't given enough information to understand what they'd agreed to. I think they were given enough to understand how their debt was set up and the concept of fixing. But like the adjudicator, I can't see that Ulster gave Mr and Mrs D enough information about the possible break costs of the fixed rate loan. The basis of the calculation was set out in the agreement and I think it made them aware the break costs could be "*substantial*". But I haven't been provided with any persuasive evidence that it gave them enough to understand how substantial they could be in their circumstances.

I therefore have to decide what I think Mr and Mrs D would've done if everything had happened as it should. I appreciate Mr and Mrs D's comments about this being purely speculative. But unfortunately it isn't possible to know for sure what they'd have done. I therefore have to decide what I think it's most likely they'd have done.

Although the notes from the time suggest the purpose of the loan was a long-term investment, they also suggest Mr and Mrs D were intending to sell property whilst they held the loan and reduce their borrowings. Having half of the loan on a variable interest rate gave them some flexibility as they could repay this part of the borrowing first. But taking everything into account, I don't think Mr and Mrs D would've agreed to fix for 10 years if they'd understood how high the break costs could be. I think a five year term would've given them a more acceptable balance of certainty and flexibility.

I note Mr and Mrs D's comments about the fact the discussions were only carried out with Mr D and Mrs D wasn't involved in them. But I'm satisfied Mr D was acting on behalf of the partnership. And I don't think Ulster did anything wrong in only carrying out discussions with Mr D.