

## **The complaint**

Mr W has complained about a loan he holds with Elderbridge Limited.

## **What happened**

Mr W took out this loan with Firstplus in joint names with his now ex-wife who I'll refer to as Ms D. They borrowed £70,000 over a 20-year term in August 2004 and the loan was secured on their property.

They separated and were undergoing divorce proceedings in 2007, and those were finalised in 2011 once the financial situation was resolved.

The last payment had been made in February 2007, and so in July 2007 Firstplus made the decision to suppress the interest on the account. I'll explain what that means.

Because Mr W and Ms D had been struggling to pay their loan, one particular thing that was done to help them was to stop adding interest onto the loan account as otherwise they'd be paying interest on interest - known as compound interest - if they didn't keep up their payments. Instead Firstplus carried on calculating the interest in the background, as it was still due, but as it wasn't applied to the account it didn't attract interest itself. This is known as simple interest.

In effect, in order to prevent interest accruing on unpaid interest, Firstplus 'ring-fenced' the interest in a separate account, so that it didn't attract further compound interest. This also meant any payments Mr W and Ms D made after that point went towards reducing the arrears, and then repaying the capital. Ultimately, it meant Mr W and Ms D were charged less interest than they would have been otherwise.

To be clear, I'm not making any findings about the decision by Firstplus to suppress interest on the account, merely explaining how it worked to add context to this complaint.

Following negotiations in court between Mr W and Ms D as part of their divorce, Firstplus agreed to accept a £30,000 lump sum from Ms D to remove the charge from the property, and for Mr W to then make the payments of around £660 a month on an unsecured basis towards the remainder of the debt.

Ms D made her payment in January 2011 and the charge was removed from the property. In the meantime, Mr W had started his monthly payments in October 2010.

In March 2011 Mr W wrote to Firstplus to complain. In that he explained the history and said he wasn't involved in the detail of the arrangement to get the charge removed. He said he'd just been asked by the Judge how much he could afford to pay monthly. Mr W detailed his complaint as:

- A statement of account hadn't been provided.
- The monthly direct debit had been taken since October 2011 [sic] but he'd not received any correspondence from Firstplus.

- In January 2011 he'd been asked to complete another direct debit mandate without explanation.
- In February 2011 he'd received a letter saying he was behind on his payments, but he'd made all the payments since October 2010.
- When he phoned Firstplus he was told the letter was a mistake and should be ignored.
- He'd asked for a statement of account as he didn't know the total amount now owed by him and over what period he was expected to pay but hadn't received one.
- The original loan agreement must have been set aside, so he should have been consulted as to the new agreement's length and terms.

He said he urgently required the following items:

- A statement of account for the entire period of the loan.
- Confirmation of the interest rate that was being charged.
- How much was owed and over what period the payments would be made.
- Confirmation of whether there was a new agreement.

Firstplus responded a few days later. It said there would be a charge of £3.50 for each statement normally, but it had sent the requested statement free of charge this time. It said a settlement figure would also be sent.

It also said:

*"The current rate of interest is 9.5%*

*The remaining term of the loan is 80 months.*

*The current outstanding balance is £38,866.91 plus accrued interest of £23,931.03 (Please note, £62,797.94 is not a settlement figures this, as stated earlier, will be sent to you under separate cover).*

*Due to the severity of the arrears the account was defaulted on 19 July 2007 and we suspended the interest. Interest continues to accrue but has not been applied to the account monthly. This means that any payment made will reduce the outstanding balance first and you are charged simple interest rather than compound interest.*

*Please note that the loan account remains under the same reference number and original loan agreement with the amendments that loan is no longer a secured loan and the transfer of the account into your sole name."*

Mr W made 59 payments from October 2010 to August 2015 inclusive totalling around £39,170. Of those 59 payments, 53 of them totalling around £35,190 had been made since the March 2011 letter saying Mr W owed £38,866 plus accrued interest of £23,931, and that interest was being charged at 9.5%.

Since August 2015 the parties have been in discussion, with Mr W saying he wasn't going to make any further payments as he considered the loan to have been repaid.

Further complaints were raised in October 2015 and February 2016. The contact notes for the 2015 complaint indicate that was resolved over the phone.

The February 2016 complaint was responded to in writing by Elderbridge (as by then the loan account had been transferred from Firstplus). The final response letter dated 25 February 2016 summarised the complaint as:

- *“You are unhappy that you did not receive correspondence from FIRSTPLUS regarding a complaint raised and request the recordings of telephone calls in October 2015.*
- *You are unhappy with the balance of your loan as the suppressed interest was not part of your arrangement.”*

For the first part Elderbridge said the complaint was noted to have been resolved over the phone, but it couldn't retrieve the recording. It apologised and offered £25 compensation. On the second part Elderbridge said:

*“Having reviewed your account, I have been unable to find any evidence to suggest that an agreement to only pay back the balance of your loan was made. A letter dated 18 March 2011 informs you of the suppressed interest on your account and that it is owed. I have enclosed this letter for your review.*

*In light of the above I am unable to uphold this aspect of your complaint. I trust the above has adequately explained the reasons for this decision and thank you for providing us with this opportunity to assess your concerns.”*

The letter closed with an explanation that Mr W had six months from the date of the letter to refer the complaint to us. If he didn't do so, and there were no exceptional circumstances, Elderbridge said that it wouldn't consent to us looking at the complaint.

The contact notes indicate that over the next couple of years Mr W was telling Elderbridge that he'd referred the 2016 complaint to the Financial Ombudsman Service but hadn't heard anything back.

In 2021 Mr W raised another complaint. The final response letter dated 10 June 2021 summarised the complaint as:

- *“The phone line was disconnected after receiving a call from us on 25 May 2021*
- *You are unhappy with the volume of text messages you have received from us*
- *You are disputing the outstanding debt owed on your account”*

Elderbridge apologised for the first issue. In respect of the text messages it said no payment had been made since 3 August 2015, there was no payment arrangement in place to address the arrears, and whilst the account remained in the position it is in then Mr W would receive calls, text messages and written correspondence. The letter closed that section with an explanation that Mr W had six months from the date of the letter to refer the complaint to us. If he didn't do so, and there were no exceptional circumstances, Elderbridge said that it wouldn't consent to us looking at the complaint.

It then dealt with the third point, saying it had responded to a complaint about that in February 2016. It enclosed a further copy of that letter, along with the March 2011 letter. It said the time to refer that point to us had elapsed and no further action would be taken.

Following a call from Mr W in August 2021 Elderbridge said the June 2021 letter had been issued to Mr W's previous address. It apologised for that mistake and provided a copy of the June 2021 letter.

The most recent final response letter was issued on 30 September 2022 and summarised the complaint as:

- *“You believe you have paid more than you owe.*

- *Unhappy with the volume of text messages you have received from us*

Elderbridge said that once Ms D had made her lump sum payment that left an outstanding balance of around £40,190, and with Mr W's monthly payments the balance had reduced to around £3,380. It said the interest had been suspended in July 2007, and the accrued interest balance was around £34,750 which was still due. It said the debt wasn't statute barred as Elderbridge had been regularly communicating with Mr W about the outstanding debt.

In respect of the text messages, Elderbridge said it had responded to that in the 2021 complaint.

Mr W referred the complaint to us in October 2022 and it was looked at by one of our Investigators. She said the only point we could look at is how Elderbridge chased Mr W since 24 August 2021 as the rest of the complaint hadn't been referred to us in time. In respect of that point she said Elderbridge hadn't done anything wrong as she felt the number of messages weren't unreasonable, and she didn't think the nature and tone were threatening.

Mr W didn't agree and so the matter was passed to me to decide.

I issued a decision about our jurisdiction in September 2023. In that I said we can only consider the text messages sent to Mr W since June 2021 as everything else has been referred to us too late under our rules. I explained that I'll only be able to consider the complaint about the text messages from the starting point that Mr W owes the money to Elderbridge as any complaints about the interest, amount owed and whether the original agreement was cancelled and replaced with something else have all been brought to us outside of the time limits allowed for under our rules.

### **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.

Where evidence is incomplete, inconclusive or contradictory, I reach my decision about the merits of this complaint on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. We're not the regulator, nor are we a court of law. I'm here to decide what's fair and reasonable.

As I explained in my decision about our jurisdiction, my starting point when considering this complaint must be that Mr W owes the money to Elderbridge as I'm unable to consider his complaints that the money isn't owed.

I've reviewed the text messages that Elderbridge sent to Mr W and I'm satisfied they're not inappropriate. The copies Mr W has sent us say *"Hello, this is Elderbridge, this secure link can be used any time at your convenience as an alternative way to make payment. Thank you."*

As Mr W owed Elderbridge money and wasn't making any payments that seems an entirely reasonable message for Elderbridge to have sent him. It wasn't threatening, and the messages were sent at reasonable intervals.

I understand that Mr W considers the account as "in dispute", but an account can't stay in dispute indefinitely as that would be open to abuse, with the potential for disputes being

used as a way to get interest and payments frozen, and adverse credit reference information stopped. I'm not saying that is the case here, I'm simply explaining why that isn't a tenable option. Elderbridge feels it responded to the complaints and dispute as far as it could, the fact Mr W didn't accept its responses doesn't alter that.

I know Mr W feels strongly about this, but it's not helpful to keep going over the same ground. Elderbridge doesn't have to respond to any further complaints about the same issue. It's unfortunate we were unable to look at Mr W's complaints as he referred them to us too late, but that doesn't mean Elderbridge has to carry on dealing with the same complaints.

Having considered everything I don't think Elderbridge did anything wrong here in contacting Mr W about the debt and so I don't uphold this complaint.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 November 2023.

Julia Meadows  
**Ombudsman**