

## **The complaint**

Ms H and Mr H have complained about a secured loan (second charge) they hold with Swift Advances.

The loan is administered by Swift 1st Limited trading as Swift Advances and that is the entity responsible for dealing with this complaint. Any reference to Swift in this decision should be taken in that context where appropriate.

Ms H has been adjudged bankrupt and her trustee in bankruptcy – company R – has joined the complaint as, under our rules, they are also an eligible complainant.

Ms H and Mr H have been represented in bringing this complaint. For ease I'll simply refer to Ms H and Mr H throughout this decision, but that should be taken to mean their representative acting on their behalf where appropriate.

## **What happened**

Ms H and Mr H took out this loan in March 2007. They borrowed £17,000 (plus fees) over a 15-year term on a repayment basis. The loan agreement shows the initial rate of interest was 11.91% variable, which gave an initial contractual monthly payment ("CMP") of around £213.

The interest rate increased to 12.26% in June 2007 (which took the CMP to around £217), and then again to 12.51% in July 2007 (which took the CMP to around £220). It stayed at 12.51% until May 2020, at which point it reduced to 12.16%.

Ms H and Mr H's direct debit was returned as unpaid in April 2008, with a further direct debit being returned in August 2008. Although the arrears were cleared on 4 September 2008, the account went back into arrears later that same month where it remained until March 2015.

Ms H and Mr H cleared the arrears by making some extra payments on and off between February 2009 and December 2012, and then from January 2013 they set their direct debit to pay an extra (approximately) £10 a month, which they increased from July 2013 by a further £20 a month, and then from August 2014 by a further £30 a month. Between April and June 2015 they reverted to just paying their CMP, setting the extra payments back up from July 2015 to be at about £30 a month more than their CMP. They maintained that monthly payment amount (of £250) until March 2022 when the last payment was made.

In March 2022 the term ended, at which time Swift said there was still an outstanding balance of around £11,000 due to the fees and additional interest charged due to the historic arrears. No further payments were made by Ms H and Mr H, so by June 2023 the outstanding balance had risen to over £12,000.

In April 2022 Swift had written to Ms H and Mr H to say it was willing to accept a reduced sum of around £5,500 in full and final settlement of the loan, provided the full amount was received by 28 April 2022. As the sum wasn't received that offer of a reduced settlement expired.

Various complaints had been made over the years, which Swift responded to. And then this complaint was received by the Financial Ombudsman Service on 25 April 2022.

Earlier this year one of my Ombudsman colleagues issued a decision setting out which parts of this complaint we could consider. She said most of the complaint falls outside our jurisdiction, and the only complaint points we could consider were:

- *“The interest rate:*
  - *The rates applied after November 2017 were unreasonable or fair.*
  - *The rate applied after November 2017 didn’t alter to reflect the changes in Bank of England Base Rate.*
- *Matters relating to the end of the term of the loan:*
  - *That Swift wants the balance paid.*
  - *The administration of the loan at that time, including the correspondence and Swift’s response to Mrs H telling it that she couldn’t afford to continue payments.*
  - *The settlement offers made by Mrs H and Mr H and Swift.*
  - *That interest continued to be applied after the term ended.”*

Our Investigator then looked at the parts of the complaint we could consider and didn’t uphold the complaint.

Ms H and Mr H didn’t agree and so it has been passed to me to decide.

### **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.

Although I’ve read and considered the whole file I’ll keep my comments to what I think is relevant. If I don’t comment on any specific point it’s not because I’ve not considered it but because I don’t think I need to comment on it in order to reach the right outcome. I’ll also not be commenting on any of the points that my Ombudsman colleague has already decided we can’t consider.

This service is impartial between, and independent from, consumers and businesses. I’m aware Ms H and Mr H think our Investigator has shown bias towards Swift. We’re required to decide what’s fair and reasonable having assessed all of the available evidence from the parties. I’m satisfied that’s what the Investigator did in Ms H and Mr H’s case. Insofar as our Investigator didn’t agree with them on the outcome of the complaint, that isn’t in itself indicative of bias, however unwelcome they will have found his conclusions.

For completeness I should confirm that I’ve reviewed what my Ombudsman colleague said about our jurisdiction to consider this matter, and I agree with her findings.

### **The interest rate**

I must consider whether from November 2017 onwards, Ms H and Mr H paid an unfairly high rate of interest. As my Ombudsman colleague explained in her decision about our jurisdiction, in considering the fairness of the interest charged since November 2017, it will be necessary for me to consider what is fair and reasonable in all the circumstances of the case. This means that I will need to consider all the matters that contribute to and make up the interest charge added to the loan each month. And in turn that means considering the fairness of the interest rate used as the basis of the calculation.

In order to consider what is fair and reasonable I need to consider all the circumstances. I need to look at the impact of what may or may not have contributed to those charges – including things that happened before November 2017 which influenced the rate charged at that time.

I'm satisfied that this is an essential part of determining whether or not the rate charged from November 2017 onwards was fair and reasonable in all the circumstances. But in the event that I find something unfair about what happened before that date, I can only consider its impact on the interest charged since then – and therefore any redress I would award would only cover interest charged since November 2017. That's because the complaint I'm considering is that interest was unfairly charged from November 2017 onwards.

The loan offer and terms and conditions included in it say the rate on Ms H and Mr H's loan is variable and set out the circumstances in which Swift is entitled to change the rate. I'm satisfied that the rate was clear in the documents. The 2007 loan agreement says:

- the interest rate is *"11.91% p.a. variable"*, and
- *"We may vary the interest rate to reflect any change to the costs of our funds (see clause I overleaf)."*

Clause I says:

- *"We have the power to change the rate of interest we charge under this agreement to reflect a change in the cost of our funds."*

Having considered the agreement very carefully, I'm satisfied it is clear the interest rate is variable, and it may vary in-line with any changes to Swift's cost of funding.

I can understand why Ms H and Mr H think the rate is high – particularly when compared to indices such as Bank of England base rate ("base rate"). But Swift's variable rate was never linked to an external index, and base rate is just one factor that can affect a lender's costs.

I haven't seen any evidence that persuades me that Swift was obligated, contractually or otherwise, to have its variable rate track base rate (or any other benchmark rate). I've also not seen any evidence that implies that would be the case either.

Swift isn't and never has been a mainstream lender. It lent to borrowers with a higher risk profile than would generally be acceptable to the average high-street lender and its pricing reflects that increased risk.

In June 2007 the interest rate increased to 12.26%, and then in July 2007 it increased to 12.51%. It remained at 12.51% until May 2020, at which point it reduced to 12.16% when Swift says it reduced the rate across its loan portfolio as a goodwill gesture to borrowers in the light of the impact of Covid-19.

Our service is required to consider what is fair and reasonable in all the circumstances. That includes thinking more broadly about whether the way, and the extent to which, the terms have been used has resulted in unfair treatment for Ms H and Mr H. I think that is the ultimate question I need to answer in deciding whether to uphold this case.

Ms H and Mr H may be unhappy that Swift increased its interest rates to cover increased costs to the business and that this was at the expense of its customers. But that doesn't mean it was unfair. The cost of running a business will change and can increase. It is

broadly accepted that businesses might therefore need to increase interest rates to meet those costs.

Under the terms of Ms H and Mr H's loan, Swift could change the interest rate, but only for the specific reason set out in those terms; to reflect a change in the cost of its funds.

I've considered all the available evidence and all of the changes Swift made to the interest rate since Ms H and Mr H took their loan. Having done so, I am not persuaded that anything Swift has done in varying the rate has led to Ms H and Mr H being treated unfairly. I have set out why below.

For reasons of commercial confidentiality, I haven't set out in detail the evidence Swift has been able to provide in full or provided copies of it to Ms H and Mr H. Our rules allow me to accept information in confidence, so that only a description of it is disclosed, where I consider it appropriate to do so. In this case, I do consider it appropriate to accept the information and evidence Swift has provided in confidence, subject to the summary of it I have set out in this decision.

I've already set out that this was not a tracker loan, so Swift was not contractually obligated to track the base rate. Nor is it the case that Ms H and Mr H's loan had a 'cap' preventing Swift from increasing this variable rate beyond a certain 'margin' above the base rate. So, there was nothing in the contract that expressly prohibited Swift from setting this loan rate at a level whereby the margin between the loan rate and base rate would change. But that doesn't mean that Swift could set the loan rate at whatever level it chose. The terms enabling Swift to vary the loan rate itself must be fair (to prevent businesses taking advantage of customers), and Swift had to ensure that in varying the loan rate it only did so for one of the reasons set out in the contract.

To evidence its decisions at the time and reliance on the above terms, Swift has told us that despite a reduction in the base rate, its overall funding costs increased considerably over the term of the loan.

Swift has provided relevant explanations and reasoning behind the decisions made to not vary the interest rate between July 2007 and May 2020. This is supported by evidence that shows the direct impact of its increased cost of funding and how this correlated with its decision to not lower the interest rate. In fact, after July 2007, even though its cost of funding was constantly increasing, Swift didn't pass any more of these costs on to its customers, instead maintaining the interest rate at the July 2007 level. So, although the interest rate diverged from the cost of funding, this was only for the customers' benefit.

Considering all of the information and evidence available to me, I have not seen any evidence to suggest the way Swift set the interest rate was arbitrary, or unfair. Rather, the evidence I've seen satisfies me that Swift acted in line with its terms and conditions to protect its legitimate interests while balancing its obligation to treat Ms H and Mr H fairly. And I'm further satisfied that the evidence Swift has been able to provide for this period is corroborated by evidence of wider market conditions at the time.

At this time, the mortgage and secured loan market was going through a period of significant change as a result of the global financial crisis. This impacted the funding costs of businesses, including Swift, and was reflected in changes to a number of lenders' interest rates charged across the market at the time. This was clear at the time and has been the subject of analysis by both the Bank of England and the FCA since. Whilst the base rate did reduce significantly during this period, the cost to lenders of funding their businesses changed, as did their funding requirements. These were made up of several factors that are not directly linked to base rate. With this in mind, and in conjunction with the evidence Swift

has been able to provide, I am satisfied it had legitimate reasons to set its interest rate at the level it did.

In the aftermath of the global financial crisis, there were long lasting effects on the financial economy which ultimately changed the financial and regulatory landscape. This included heightened concerns that a reduced availability of funding and the resulting rollover of risk would adversely affect the performance of financial institutions and lenders, especially those – like Swift – that aren't deposit taking institutions.

Whilst Swift was not obligated to do so, it lowered the interest rate in May 2020. I understand Ms H and Mr H don't feel that was the case, but it can be seen from the annual statement that was issued in March 2021. That says:

*"The rate of interest applicable to your mortgage during the period of this statement was:*

<i>28 Mar 2020</i>	<i>12.51%</i>
<i>1 May 2020</i>	<i>12.16%</i>

Swift has said it didn't write out to its customers at the time as it did the interest rate change as a gesture of goodwill due to the situation with Covid-19, and it didn't want to overload the already struggling postal service with extra letters. That seems reasonable.

Ms H and Mr H's loan payments remained the same but I can see less interest was charged when the rate was reduced. As Ms H and Mr H were already overpaying each month at that time they've not been financially disadvantaged by their CMP remaining the same, instead that has been to Ms H and Mr H's benefit as it means they were paying more to their outstanding loan balance each month.

In summary, having carefully considered the information Swift has provided about its reviews and the costs of its funding, I don't find that it has been unreasonable or unfair in not reducing the interest rate it charged Ms H and Mr H. The rate wasn't a tracker and Swift's funding costs rose rather than fell.

I also note that there was no notable early repayment charge on Ms H and Mr H's loan if they wanted to come out of the contract before the end of the term. So, had Ms H and Mr H been in a position to get a better deal or a different type of loan, there wouldn't have been any notable contractual barrier to them doing so.

### **The end of the loan term**

I need to make it clear that I can't consider why there is a balance remaining at the end of the term as that issue wasn't referred to us in time and so was excluded by my Ombudsman colleague when she considered our jurisdiction to consider this complaint.

To be clear the final response letter that was issued in July 2018 had two complaint points that dealt with this point:

- *“Swift are now saying to pay off the debt within 4 years I would have to now pay in the region of £450 per month. This I cannot do meaning I would still owe £11,000.00 at the end of the 15-year term.”*
- *“I need a resolve on this, I do not want this loan to run on as at the end of the term it may be more than £11,000.00 you would say I owe. I have paid over and above what was asked for. I think I have paid my part of the bargain.”*

As my Ombudsman colleague explained, the 2017 complaint wasn't referred to us in time and so we can't consider it.

That means, the starting point for me to consider this part of the complaint is that a balance of around £11,000 was owing at the end of the loan term as I'm unable to consider a complaint that it was wrong.

Once the loan term ended in March 2022 the sum outstanding at that time became immediately due for payment. As Ms H and Mr H didn't have the funds available to pay that full amount as a lump sum Swift looked at options, such as a short settlement agreement or ongoing monthly payments.

In February 2022 Ms H confirmed the £250 monthly payment remained affordable.

In April 2022 Ms H and Mr H offered £1,000 in full and final settlement of the debt, which was declined by Swift. After some further discussions Ms H and Mr H offered to pay half the balance in full and final settlement. Swift agreed to that and issued a letter confirming its agreement.

I understand Ms H and Mr H didn't want to proceed with that agreement as they felt they'd already overpaid the account and instead they wanted to refer their complaint to our service. That was entirely their prerogative, but Swift didn't have to keep its offer open pending the outcome of the complaint with this service.

It may be, if Ms H and Mr H go back to Swift now, it is willing to accept some form of reduced settlement. But that isn't something I can get involved in here as contractually Ms H and Mr H owe the full debt (which is increasing each month with the addition of interest and no payments being made) so that would need to be a matter of discussion between the parties. If, once that discussion is had, Ms H and Mr H are unhappy with the outcome of it then that would be a new complaint they could make at the time to Swift.

I think it is important to make it clear that interest will continue to accrue on this debt until it is repaid in full. That is entirely normal and as I would expect. Just because the loan term has ended doesn't mean the loan now becomes interest-free. This is covered in the loan terms under *“You will also have to pay interest on unpaid sums and unpaid costs, expenses, and charges and unpaid default interest as shown in clauses A and L overleaf.”* The outstanding balance is an *“unpaid sum”* and so interest is due on it until the sum is repaid in full.

Swift has said if Ms H and Mr H are unable to repay the full outstanding balance as a lump sum, then it may be able to continue to allow them to instead make monthly payments as a concession to assist them. The alternative to that would be Swift taking legal steps to recover the debt, so it seems reasonable that Swift is prepared to consider the monthly payments option as an alternative.

Swift isn't saying Ms H and Mr H have to make payments of £250 a month, and if that sum is no longer affordable then that is something Ms H and Mr H need to discuss with Swift directly. But if they can't pay a lump sum, and can't make a suitable level of monthly payment, then Swift has the option to take legal steps to recover the debt so I would urge Ms H and Mr H to talk to Swift as a priority. As the interest continues to accrue each month it is important something gets put in place soon as otherwise the balance will just continue to increase.

I would urge Ms H and Mr H to contact Swift to discuss their options, either directly or with the help of someone trained to give them free debt advice - such as StepChange or Citizens Advice. The parties will need to work together and that means Ms H and Mr H will need to be open about their situation, and Swift will need to listen to what they have to say and, fairly and sympathetically, see if there's a way to work with them to agree a way forward. That's not to say Swift needs to agree to anything Ms H and Mr H ask for and I would again remind Ms H and Mr H that this loan account is already overdue and as it is secured on the property then there are steps Swift could take to recover the money so I would urge them to work with Swift as a priority on this.

If Ms H and Mr H were unhappy with the outcome of those discussions with Swift then that could be a new complaint they could make at the time. But we can't get involved unless Swift has had a chance to discuss the options with Ms H and Mr H, and then had the opportunity to deal with a complaint from Ms H and Mr H about those discussions.

Having considered everything, whilst I can see how difficult things have been for Ms H and Mr H, I don't think Swift treated them unfairly in any aspects of the complaint points I was able to look at.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R and Ms H and Mr H to accept or reject my decision before 15 December 2023.

Julia Meadows  
**Ombudsman**