

## **The complaint**

Mr and Mrs M complain about the interest rate Firstplus Financial Group plc charged them on their secured loan. They say the rate was unfairly high.

## **What happened**

Mr and Mrs M took out a second charge mortgage, or secured loan, with Firstplus in 2006. They borrowed £30,000, plus a payment protection plan loan, over a term of 20 years, on a variable interest rate.

The loan was transferred to Elderbridge several years ago, and Elderbridge remains the lender. On 27 August 2021, Mr and Mrs M complained to Elderbridge about the interest rate on the loan. They said they felt they had been unfairly overcharged interest over the life of the loan.

Elderbridge referred the complaint to Firstplus. In February 2022, Firstplus issued its final response to Mr and Mrs M's complaint. It said Mr and Mrs M had left it too late to complain about interest applied more than six years before they made their complaint, but it would offer some compensation in respect of the six-year period leading up to the complaint.

Firstplus offered to reduce Mr and Mrs M's loan balance by £2,539 and pay an additional £150 for inconvenience – although it said it didn't accept there had been any unfairness in the interest rates applied and this was a goodwill offer.

In March 2022, Mr and Mrs M referred their complaint to the Financial Ombudsman Service. They told us they didn't accept Firstplus's offer. They thought they should receive substantially more compensation, as well as 8% annual interest on the refund. They also said they're in severe financial difficulty.

Our Investigator said Mr and Mrs M had complained too late about the interest they had been charged before 27 August 2015 – that is, more than six years before they complained – although he said he would take account of earlier rate changes as part of the wider circumstances of the complaint. The Investigator went on to consider whether Firstplus had made a reasonable offer of compensation, and concluded that it had.

Mr and Mrs M didn't accept that. They didn't think they were too late to complain and said they had had no idea they had been overcharged interest on this loan until they came across a group on social media. They didn't think the rate change letters sent to them over the years were enough to tell them the interest rate wasn't as low as it should have been, and they still wanted 8% interest on Firstplus's refund offer. They also pointed to the health problems they and their family have had since 2010 and the stress this has caused them. They asked for an Ombudsman to make a decision.

I issued a decision setting out the parts of this complaint the Financial Ombudsman Service can and can't consider. I concluded that Mr and Mrs M had complained too late about the interest rate that was charged on their loan in the early years, and that we can only look into the rate applied since 27 August 2015, which is six years before they made this complaint.

I also said that in considering the interest rate for that period, we would take into account all the circumstances of this case – which include the fairness of the rate applied before 27 August 2015, insofar as this influenced the rate applied after that date.

Following my decision about our jurisdiction in this case, our Investigator made some further enquiries of Firstplus about the offer of compensation it had made to Mr and Mrs M. The further information received didn't lead the Investigator to change his view about how this complaint should fairly be resolved, and Mr and Mrs M had been clear that they didn't accept Firstplus's offer.

The complaint was therefore referred back to me to determine the outcome of the parts of it that I can consider.

### **My provisional decision**

I reached the same overall outcome as our Investigator, and in order to set out my findings in more detail I issued a provisional decision. I concluded that Firstplus's offer of compensation was fair, and I said:

“Mr and Mrs M say that the interest rate on their loan has always been unfairly high and has only ever increased, even though base rates were very low between 2008 and when they made this complaint in 2021. They consider they have been overcharged and are due a refund.

In response to Mr and Mrs M's complaint, Firstplus said that the interest rate on their loan was variable and wasn't tied to an external index such as Bank of England base rate (BOEBR) or the Finance House Base Rate (FHBR), although such indices may be relevant factors in setting the rate. It also said it had made variations to the rate over the years against a backdrop of rising costs and increased credit risk, and the rate on Mr and Mrs M's loan has varied both up and down a number of times, always in line with the loan terms.

The loan terms and conditions set out Firstplus's entitlement to vary the interest rate on Mr and Mrs M's loan. They say, at clause 7:

“We may from time to time vary our interest rate. We may increase or reduce our interest rate to reflect a change which has occurred, or which we reasonably expect to occur in interest rates generally or to ensure that our business is carried on prudently, efficiently and competitively. The interest rate on your account will not in any twelve month period, vary by more than twice the variation in the Finance House Base Rate published by the Finance and Leasing Association during the same period. If for any reason, the Finance and Leasing Association ceases to publish the Finance House Base Rate we may refer the variation in our interest rates to any other Base Rate which in our reasonable opinion best matches that rate.”

Mr and Mrs M have referred to base rates generally in this complaint. The interest rate on Mr and Mrs M's loan, the FHBR, and BOEBR, have varied as follows:

<b>Effective date</b>	<b>Finance House Base Rate</b>	<b>Bank of England base rate</b>	<b>Loan rate</b>
01/07/2004	5%		
04/08/2005		4.5%	

11/05/2006			7.668%
03/08/2006		4.75%	
01/11/2006	5.5%		
09/11/2006		5%	
11/01/2007		5.25%	8.136%
01/03/2007	6%		
11/03/2007			8.412%
10/05/2007		5.5%	
11/05/2007			8.868%
05/07/2007		5.75%	
11/08/2007			9.144%
01/09/2007	6.5%		
01/10/2007	7%		
01/11/2007	6.5%		
06/12/2007		5.5%	
17/01/2008			9.42%
07/02/2008		5.25%	
01/03/2008	6%		
02/03/2008			8.412%
10/04/2008		5%	
21/05/2008			8.868%
13/08/2008			9.144%
08/10/2008		4.5%	
01/11/2008	6.5%		
06/11/2008		3%	
01/12/2008	5.5%		
04/12/2008		2%	
01/01/2009	4%		
08/01/2009		1.5%	
01/02/2009	3%		
05/02/2009		1%	
01/03/2009	2.5%		
02/03/2009			8.412%
05/03/2009		0.5%	
01/04/2009	2%		
01/06/2009	1.5%		
01/09/2009	1%		
25/09/2009			9.144%
02/03/2010			8.412%
01/01/2012	1.5%		
01/07/2012	1%		
04/08/2016		0.25%	
01/09/2016	0.5%		
20/10/2016			7.912%
02/11/2017		0.5%	
01/01/2018	1%		
02/08/2018		0.75%	
31/12/2019	Publication ends		
11/03/2020		0.25%	
19/03/2020		0.1%	
10/04/2020			7.262%

The rate history above shows that Mr and Mrs M's loan interest rate didn't always increase and never fall, so I don't accept Mr and Mrs M's argument that it never fell. But it also shows that the loan interest rate didn't consistently follow movements in FHBR and BOEBR – particularly after both FHBR and BOEBR began to fall sharply from late 2008 onwards. So the loan rate didn't change in line with "interest rates generally" as clause 7 of the terms said it may.

Clause 7 also said the loan interest rate could change to "ensure that our business is carried on prudently, efficiently and competitively". I think that, however, is very broad, and only one of the letters I've seen that Firstplus sent to Mr and Mrs M notifying them of a change in the interest rate (in September 2009) said the rate was changing for this reason.

Having considered the loan agreement and the way Mr and Mrs M's loan interest rate has operated over the years, while I'm satisfied that clause 7 made it clear that Mr and Mrs M's loan interest rate was variable, I'm not satisfied that the reasons the rate could be varied were as clear and unambiguous as they could have been, or that the rate was consistently varied fairly. I also note that the agreement said Mr and Mrs M would be required to pay additional interest, plus a fee, if they settled their loan early. This could have resulted in unfairness had Mr and Mrs M been considering repaying early or moving their loan to another lender, although I haven't seen anything to indicate that they have tried to do so.

Firstplus has said it recognises that Mr and Mrs M may not fully have appreciated the way the loan was intended to operate when they took it out, although it doesn't accept that it has applied interest unfairly. It has made an offer of compensation, and I need to decide whether I think that offer represents a fair and reasonable resolution to this complaint. In all the circumstances of this complaint, I think it does.

Firstplus's offer to refund £2,539 of interest is based on the interest rate that would have applied to Mr and Mrs M's loan had the rate reflected changes in the FHBR more closely since December 2008 – when both FHBR and BOEBR began to fall sharply following the financial crash – and had the rate reflected changes in the BOEBR since January 2020, when the FHBR had stopped being published. Firstplus has also applied a 'floor' – a rate below which Mr and Mrs M's loan rate can't fall – in its calculations.

Firstplus has provided its calculations and the data behind those calculations, all of which I've carefully considered. This information shows that Firstplus's offer of compensation is based on an interest rate of 5.019% (the rate floor) having been applied to Mr and Mrs M's loan from 27 August 2015 to 31 December 2021.

I think the approach Firstplus has applied is a reasonable one, and I don't consider that I can fairly require it to increase its offer. I have considered whether striking out the interest rate variation term would result in a fairer outcome, but I don't think it would, since doing so would mean Mr and Mrs M had a fixed interest rate on their loan, and it's clear from the loan agreement that that's not what they signed up to and is not what they should reasonably have expected.

I think that recalculating the interest rate based on how FHBR and later BOEBR operated is appropriate in the light of the specific reference in the loan terms to FHBR and any other base rate if FHBR ceased being published. I also consider including an interest rate floor in this recalculation is fair, to reflect the riskier nature to lenders of second charge lending as opposed to first charge, and to reflect that interest rates on second charge borrowing are generally higher as a result. Including a floor ensures that the interest rate doesn't become the same as or lower than what we'd likely see for first charge lending

across the same period. The interest rate floor is dependent on several factors, including the initial interest rate on the loan, the average standard variable rate (SVR) for secured first charge lending at the time, and the average SVR at the point this complaint was first made. It ensures there will always be an appropriate difference between the average SVR on first charge mortgages and the interest rate applied to Mr and Mrs M's loan.

I must also keep in mind that I can only make any award or direction in respect of a limited period, from 27 August 2015. The time limits I have to apply mean I can't direct Firstplus to extend compensation further back than that.

Mr and Mrs M have said that Firstplus should pay them interest at 8% on the compensation, and they have seen on online forums that other borrowers have received this. The Financial Ombudsman Service's approach to compensation includes making interest awards where appropriate, and we may in some cases award simple interest at an annual rate of 8% where a complainant has been out of pocket as a result of a financial business's mistake.

However, I don't think that applies in Mr and Mrs M's case. They have been in arrears on their loan for a number of years. As a result, in late 2015 Firstplus suspended interest on the loan. This means that since late 2015 the loan interest has accrued in a separate account, so that all of Mr and Mrs M's payments went towards the capital balance rather than the interest, and additional interest wasn't added to the interest charges. It also means that Mr and Mrs M haven't been paying the interest on the loan since 2015 – and so they aren't out of pocket as a result of the level of the interest rate that has been applied to this loan.

In the period I can consider, therefore, since 27 August 2015, Mr and Mrs M haven't actually paid any more interest than they would have done had their loan been subject to a lower interest rate, and they haven't been out of pocket as a result of the payments they've made. The loan interest will become payable once the capital balance has been repaid, and that hasn't happened during the period I've considered in this complaint. It follows that I don't consider Firstplus should add interest to its offer in this case, and that I find crediting the £2,539 to the loan rather than paying it to Mr and Mrs M direct is fair and reasonable.

Finally, if Mr and Mrs M are unhappy with the interest rate on their loan since the date to which Firstplus has calculated its offer of compensation (which is 31 December 2021) or in future, they may take that up with the current lender in the first instance. Firstplus has said that they can contact their current lender if they want to look into moving the loan elsewhere, and it would see whether it could help – and it would also cover any early settlement charges on the loan."

I invited Mr and Mrs M and Firstplus to let me have any more evidence or arguments they wanted me to consider before I make my final decision.

Mr and Mrs M asked for an extra month to respond, because they had found some correspondence from around 2015/2016 that Firstplus had sent them after they made some enquiries about the loan balance. They wanted to look to see if they had any further documents. They also said an average borrower wouldn't necessarily understand how base rate changes might affect the interest rate on a loan, and they had expected Firstplus to treat them fairly.

Firstplus said it didn't agree with everything I had said in my provisional decision, but it had nothing more to add and it was still prepared to settle this complaint in line with the offer of compensation it had made and which I had provisionally found to be fair.

## **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.

Having done so, while I realise Mr and Mrs M will be disappointed, I've come to the same conclusion as I did in my provisional decision.

Mr and Mrs M want more time to look for documents which they think may be relevant to their complaint. I've considered what they've said but, as I said when I set out the scope of the Financial Ombudsman Service's power to consider this complaint, I found no record of Mr and Mrs M having made a complaint about the fairness of the interest rate on their loan any earlier than 27 August 2021. Mr and Mrs M have said they don't remember making a complaint in around 2015/2016. Any questions they may have asked Firstplus about the rate or any discussions they had about it in 2015/2016 wouldn't extend the time period I can consider and make an award for – because there's nothing to indicate, either in Firstplus's records or from what Mr and Mrs M have said, that they made a complaint at that time.

I also explained when I issued my decision about the Financial Ombudsman Service's jurisdiction in this case why I considered that Mr and Mrs M ought reasonably to have realised that they had cause for complaint more than three years before they complained in 2021. I still consider that they had enough information available to them reasonably to have known what interest rate they were being charged, and that they could have complained sooner had they wished to do so.

For these reasons, and given that Firstplus hasn't made any further points for me to consider, I confirm my provisional decision.

## **My final decision**

My final decision is that Firstplus Financial Group plc has made a fair offer of compensation. To settle this complaint, it should reduce Mr and Mrs M's loan balance by £2,539, pay Mr and Mrs M £150 for their inconvenience, and pay any early settlement charge Elderbridge may apply should Mr and Mrs M move their loan elsewhere within six months of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 11 January 2024.

Janet Millington

**Ombudsman**