

## **The complaint**

Mr C complains that TSB Bank plc trading as Whistletree hasn't charged a fair rate of interest on his mortgage.

## **What happened**

Mr C took out a mortgage with the former Northern Rock bank – it was a Together mortgage, meaning it consisted of a main mortgage and linked unsecured loan. Following the collapse of Northern Rock, Mr C's mortgage was transferred to the nationalised successor lender, and then on to Whistletree in 2016.

Mr C borrowed around £120,000 on the main mortgage. The interest rate was fixed for five years at 5.99%. From January 2012, it reverted to a rate guaranteed to be below the lender's standard variable rate (SVR). In practice, this means that Mr C has been charged 0.01% less than the SVR since 2012. The mortgage offer said the SVR was variable, but that it was 7.34% when Mr C took the mortgage out in April 2007.

In 2021, Mr C took legal advice from a firm which provided him with a "mortgage assessment report". The report said that it expected the SVR to be charged at a fixed margin over the Bank of England base rate – which it said was the difference between the SVR and the then base rate at the time the mortgage was taken out in 2007. Based on this, the report assumed that Mr C ought to have been charged 2.09% above base rate following reversion to the SVR in 2012 – and on that basis, said that he had been overcharged interest ever since then.

Having received this report, Mr C complained to us, and we referred his complaint to Whistletree. It said the complaint was out of time because Mr C had complained about the same issues in 2020.

Our investigator agreed that a complaint about matters before 2020 was out of time, but she said we could consider the fairness of interest charged since then. She didn't think Whistletree had acted unfairly. Mr C didn't agree and asked for an ombudsman to review his complaint.

## **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.

I can see that Mr C has complained to Whistletree before. It sent him a final response on 17 March 2020, dealing with a complaint that Mr C felt the mortgage had been mis-sold and that he had been trapped in it ever since, and that it hadn't varied in line with the Bank of England base rate. Whistletree didn't uphold his complaint. It said that it had acted fairly in charging interest over the years.

The rules of the Financial Ombudsman Service require a complaint to be referred to us within six months of the date the firm complained about responds to a complaint, unless

there are exceptional circumstances. Mr C didn't refer his complaint to us within six months of Whistletree's final response. He says that was because his solicitors were dealing with matters at the time, so he left things to them.

But I don't think that amounts to exceptional circumstances which prevented Mr C referring his complaint to us; rather, he decided not to because of the involvement of his solicitors.

Separately Mr C has also said he didn't receive the 17 March 2020 letter. But I'm not persuaded of that; it was correctly addressed, and Mr C himself sent it to us with his initial complaint in April 2022.

I therefore agree with our investigator that we can only consider the fairness of interest charged since 17 March 2020 – but that in doing so, it's necessary to look at all the circumstances of the complaint, including things that happened before that date but which potentially influenced the fairness of the interest charged after that date.

Mr C primarily relies on the "mortgage assessment report" prepared for his solicitors. He says this shows that he was overcharged interest. And so it does – *if* the assumption in the report that the SVR will always be 2.09% above base rate is correct.

But I don't think that assumption *is* correct. The mortgage offer says

*This secured mortgage is based on the following interest rate periods:*

- *A fixed rate of 5.99% until 1 January 2012*

*Followed by*

- *A variable rate which is guaranteed to be below Northern Rock Standard Variable Rate, which is currently 7.34%, for the remainder of the term of the mortgage.*

*If Northern Rock's standard variable rate changes, we will review the interest rate applicable to your mortgage on the first day of the following month. We will then notify you in writing of your new interest rate and payment, which will take effect from the first day of the month following the review. We will follow this procedure whether Northern Rock's standard variable rate rises or falls.*

I think that's clear. There is no linkage between the SVR and Bank of England base rate, and the SVR does not track base rate – whether by a margin of 2.09% or otherwise.

The assessment report says the "*calculated rate is compared to the expected rate which is based on the mortgage offer letter ... Where it is used, the lender SVR will be calculated as a margin over the Bank of England base rate on the day of the offer letter.*" The report says Mr C was overcharged simply because it's disregarded the actual interest rate he was charged, and replaced it with a rate 2.09% above base rate.

It's not clear to me why the assessment report took that approach. It doesn't explain why it does so, or why the report author thought the SVR should be 2.09% above base rate. Nor does it explain any other reason why the interest actually charged to Mr C might have been wrong.

As I've quoted above, the offer letter does not mention the Bank of England base rate at all, let alone say that the SVR is set at a margin of 2.09% above base rate (or any other margin). It simply says the SVR is variable. On the day the mortgage was taken out, the SVR was

7.34%, but was subject to change in the future.

I can't therefore see any basis on which the assessment report could conclude that the interest rate on Mr C's mortgage should have been no more than 2.09% above base rate after 2012. That's not what the mortgage offer says.

I appreciate Mr C is very invested in the assessment report and what it says, but I'm afraid it's simply not correct. There is no basis on which I can safely conclude that the SVR should have been no more than 2.09% above base rate from 17 March 2020, or that Mr C was overcharged because that didn't happen.

But as well as considering the assessment report, I've also thought more broadly about whether the interest rate was fair. I've considered relevant information provided to us by Whistletree and the predecessor lender explaining changes to the SVR over time. The mortgage terms and conditions say that the SVR can be changed, but only in certain circumstances – for example, where the lender's costs change. I'm satisfied that the changes made to the SVR over the years were made in line with the terms and conditions.

I'm therefore not persuaded that Whistletree has treated Mr C unfairly. He's been charged interest as the mortgage offer says – at a fixed rate until 2012, and 0.01% below the SVR since then. The SVR is variable, isn't linked to the Bank of England base rate, and was varied by the successive lenders when permitted by the terms and conditions. I don't think that resulted in unfairness in the interest rate charged since 17 March 2020, and so I don't uphold this complaint.

### **My final decision**

For the reasons I've given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 October 2023.

Simon Pugh  
**Ombudsman**