DRN-4198584

The complaint

Mr C complains that Skipton Building Society (Skipton) has charged him an unfairly high interest rate on his mortgage.

What happened

Mr C took out a self-build mortgage with Skipton in 2005 – with the funds released in stages to allow Mr C to build the property. Mr C's mortgage started on a three-year base rate tracker, before reverting to Skipton's standard variable rate (SVR) from 2008.

Mr C says the property is habitable and he has lived there since 2012, but because of his personal circumstances, he has been unable to complete the project to the level needed to obtain a final building completion certificate. Until it made a concession to do so in March 2023, Skipton said it could not change Mr C's self-build mortgage to a standard residential mortgage without this certificate. As a result, Mr C remained on Skipton's SVR from 2008 to earlier this year.

Mr C explains that due to the property not being completed, he is unable to approach other lenders for a new mortgage. So, he believes he is a mortgage prisoner.

At the time Mr C first took out his mortgage, Skipton included a term in a number of its mortgages which capped its SVR at 3% above base rate. For ease, it applied the same SVR across its mortgage book rather than just those accounts which had the contractual benefit of the 3% cap. In 2010, after discussions with the regulator, Skipton suspended the cap due to "exceptional circumstances" related to the Bank of England's base rate. Skipton set out that it intended to reinstate the cap once certain criteria had been met – it reinstated the cap earlier this year.

Mr C wrote to Skipton's CEO in 2010 to express his dissatisfaction with its decision surrounding the cap removal and asked it to reconsider. Skipton replied but did not reinstate the cap at that time.

With the cap suspended, Skipton was able to and did increase its SVR above the level it would've been had the cap remained in place.

In 2018, Mr C wrote to Skipton complaining about the cap suspension, its failure to reinstate it (given that in his view, a low base rate was now the norm, not an exception) and its decision to decline his request for a new rate in 2017 without Mr C obtaining a completion certificate. Skipton issued its final response to this complaint in February 2018. It said Mr C had been on the SVR since 2008 and it had increased the SVR in 2010 but Mr C did not ask for a new rate until 2017. It explained that Skipton no longer offered interest rates on self-build mortgages so until Mr C completed the project, it would not be able to offer him a new rate.

In 2020, Mr C wrote to Skipton again. He remained unhappy about the cap suspension and Skipton's failure to reinstate it since. He said Skipton's actions were leaving him no choice but to remain on its SVR which was significantly more than the fixed rates Skipton was

offering new customers. He also complained that Skipton only passed on a partial reduction to its SVR following a 0.65% cut to base rate. Mr C explained that Skipton's actions had led to him using inheritance to make a lump sum payment of £50,000 toward his mortgage balance rather than putting it toward other things.

Skipton responded to Mr C's most recent complaint by referring him back to its final response from 2018. It said it would not reinvestigate matters already considered in that letter and explained that Mr C was now out of time to refer those matters to the Ombudsman Service. It did respond to Mr C's complaint about the partial reduction to its SVR, but did not uphold this element of the complaint. It set out that the base rate was one of many elements that were factored into the pricing of its mortgage book.

Mr C brought his complaint to us in January 2021. Skipton consented to us considering the complaint about the partial SVR reduction, but not the other points raised by Mr C as it thought they were out of time.

One of our investigators looked into the case and found that Mr C's complaint about the 2020 partial reduction to Skipton's SVR had been made in time. But that he had brought the complaints about the suspension of the cap, the level of the SVR since the cap suspension and the refusal of a new interest rate in 2017 out of time under the rules that apply to our service. She did set out that we could consider a complaint about the unfairness of the SVR from 2018 onward as such a complaint is a series of complaints about the interest Mr C was being charged on an on-going basis. Our investigator explained that in deciding whether the SVR charged was fair in the period we could consider, she would need to take into account the history of the SVR and mortgage account before that date in order to determine whether the rate charged from the period we can consider is fair.

Neither party agreed with the investigator's assessment so the complaint was passed to one of my ombudsman colleagues to issue a jurisdiction decision setting out which parts of the complaint, if any, he thought this service had the power to consider under the DISP rules.

A jurisdiction decision was issued in 2022 in which the ombudsman reached the following conclusions:

- Skipton's initial decision to suspend the cap in 2010 was out of time as was its refusal in 2017 to offer Mr C a new rate. Mr C received a final response letter addressing both points in 2018 and he did not refer his complaint to our service within six months of that letter.
- Mr C's complaint points that Skipton has failed to reinstate the cap, has not offered him a new fixed rate and the fairness of the interest rate charged are ongoing matters.
- The failure to reinstate the cap is an ongoing omission, as is the failure to offer a new fixed rate. And the fairness of the interest rate charged is a series of complaints about a series of acts Skipton has carried out on a monthly basis. All of these matters were covered by the 2018 final response. However, the final response only dealt with matters that had happened up to the date of that response. It did not answer a complaint about things that had not yet happened.
- This service has the power to consider whether Skipton ought fairly to have reinstated the cap, ought to have offered Mr C a new fixed rate and whether it was fair and lawful to charge him interest at the rate it did – but only from February 2018 onward.
- The ombudsman explained he had seen no evidence of exceptional circumstances which explains why Mr C couldn't complain in time following the February 2018 response.

- The reduction of the SVR in 2020 by less than the reduction in base rate had been brought within six months of the 2020 final response letter so was in time.

Following my colleague's decision on jurisdiction, Skipton agreed to send its business file for us to consider the merits of the parts of Mr C's complaint that had been made in time.

One of our investigators looked into the merits of Mr C's complaint and found:

- It was reasonable for Skipton to decline to offer Mr C a new fixed rate without a completion certificate. The property being unfinished and without this documentation would have a detrimental impact on the lender's security.
- In considering the interest applied to Mr C's mortgage from February 2018 onward, she was satisfied Skipton had acted within the mortgage terms and conditions and that it had applied those conditions fairly.

Mr C disagreed with the investigator's outcome. I've summarised his reasons below:

- The mortgage terms and conditions provided prior to the mortgage being agreed did not specify that a completion certificate would be required ahead of any change to the mortgage product.
- The cumulative impact of a widening gap between the base rate and Skipton's SVR is a breach of the original terms and conditions of the mortgage. The mortgage originally guaranteed that the SVR would be no more than 3% above base rate. This implies both a limit to the premium over base rate that can be charged and that on reaching that limit, the SVR will track the base rate. The exceptional circumstances used by Skipton to remove the cap should not also mean the mortgage ceased to track base rate.
- Skipton cannot justify why it has not reinstated the cap given that the circumstances that led it to remove it in the first instance can no longer be called exceptional.
- While the property does not have a completion certificate, it is habitable and is no different to what one might find if they visited an existing property which was undergoing renovation – a scenario that doesn't usually prevent a consumer from accessing a new mortgage product.
- The most recent valuation supports that he has a low LTV and therefore the risk posed to Skipton was low.
- The rate recently offered by Skipton is more costly than had it offered him a rate in 2018 or 2020. Given Skipton has granted this new rate without a completion certificate, then it must have been possible for it to do so previously.

As the complaint could not be resolved informally our investigator notified the parties that the case would be passed to an ombudsman – providing a final deadline in which to submit any further comments or evidence they would like the ombudsman to consider before issuing a final decision. As the deadline has now expired, it is appropriate for me to issue my final decision.

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.

When considering what is fair and reasonable in all the circumstances, I am required by DISP 3.6.4R of the Financial Conduct Authority's ("FCA") Handbook to take into account:

> '(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what [I consider] to have been good industry practice at the relevant time.'

I also focus on what I think is material and relevant to reach a fair and reasonable outcome. So, although I have read everything that has been supplied to me, I may not address every point that has been raised.

Having done all that, I don't think this complaint should be upheld. I realise this will be disappointing for Mr C. But I hope the reasons I have set out below will help him to understand why I have come to this conclusion.

Skipton previously raised an objection to our service considering Mr C's complaint, in short, it thought Mr C had brought his complaint too late under the DISP rules. In response to Skipton's objection, my colleague issued a jurisdiction decision setting out which parts of Mr C's complaint this service had the power to consider.

I have summarised my colleague's findings above. And having assured myself of the parts of Mr C's complaint I have the power to consider, I will now address those points in turn.

Skipton's failure to reinstate the cap

Mr C considers Skipton's original rationale for suspending the cap to no longer apply – not that he agreed with its original decision in any event.

Skipton cited "exceptional circumstances" as the grounds for suspending the cap in 2010 and set out the criteria which must be met before it could consider reinstating the cap. Its decision to suspend rather than remove the cap was a voluntary one and it chose to set out two key measures that must be met before the cap would be voluntarily reinstated.

I can see that the criteria for the cap to be reinstated have now been met and Skipton's current SVR is now capped at 3% above base rate as promised to its customers. So, it appears Skipton has acted as Mr C would hope – it has recognised that exceptional circumstances cease to apply, and it has reinstated the cap, albeit not as soon as he would've liked.

Mr C disagrees with Skipton's definition of 'exceptional circumstances' and its clear he thinks it should've reinstated the cap sooner. But given Skipton could have removed the cap completely rather than suspend it and that it consulted with the FCA on the appropriate criteria for reinstating the cap, I am not persuaded Skipton has acted unfairly or in breach of the mortgage terms and conditions Mr C agreed to.

I note that in his most recent submissions, Mr C is arguing that the original terms of the mortgage limit the SVR to 3% above base rate. And that while Skipton may have been entitled to suspend the cap, it was not permitted to stop tracking base rate. But I disagree with Mr C. His mortgage ceased to be a base rate tracker from 2008. And while Skipton's SVR was initially capped at 3% above base rate – this is not the same as a tracker rate. Instead, it means Skipton had to ensure that, prior to 2020, its SVR did not exceed 3% above base rate. Not that it had to track its every move.

Has Skipton fairly applied interest to Mr C's mortgage

Mr C considers Skipton to have charged him an unfairly high rate of interest, specifically in 2020 when it chose to only pass on a partial reduction to the SVR. Part of this complaint point overlaps with Mr C's arguments surrounding Skipton's failure to reinstate the cap and its decision not to offer him a new rate until earlier this year. But it is a complaint point in its own right, so I shall address it as such.

The mortgage didn't revert to the SVR until 2008. I've already explained that I'm only considering the complaint points raised from the period February 2018 onwards. But my investigation into the complaint needs to consider all the circumstances relevant to the case. That includes the changes made to the SVR over the entire term of the mortgage because those changes are potentially relevant to the rate that applied from February 2018 onwards.

Between 2005 when Mr C took out his mortgage, and 2020 when he made this complaint, Skipton's SVR broadly followed the increases and decreases of the Bank of England. But there were times that the variations to Skipton's SVR differed either wholly or in part from the changes to base rate. This in itself is not a surprise or a cause for concern, Mr C's mortgage ceased to be a base rate tracker in 2008.

Skipton says each of these variations were in line with its terms and conditions and it has provided this service with confidential evidence of its financial position across this time. As it is commercially sensitive information, I've decided to exercise the power within our rules that allow me to receive information in confidence. But in summary, the evidence shows Skipton's decision making for each of these variations and support that those decisions were justified and balanced the needs of both Skipton and its customers, this includes its decision to suspend the cap in 2010.

The terms Skipton relied on to make these variations could have been clearer in setting out the relationship between the Society's power to increase the rate and the mechanism and amount by which it would do so. And its noted that the terms do not require Skipton to give a reason should it chose to reduce the rate payable. However, even after the variations, Skipton's SVR remained broadly in line with the SVR rates of other lenders. And reviewing the evidence provided by Skipton against the relevant terms and conditions, I am not persuaded that it has exercised the terms unfairly in choosing to vary its SVR.

I'm aware Mr C feels Skipton should have passed on the full base rate reduction in 2020 and considers its decision not to has led to him paying an unfairly high rate of interest. But Mr C's mortgage does not track base rate, so Skipton was not contractually obligated to pass on a reduction. And while base rate is a factor in the costs Skipton incurs to fund its mortgage book, it is not the only influencing factor. There are a multiple factors that Skipton has to take into consideration when choosing to vary or hold its SVR and having considered the evidence supplied by Skipton, I am satisfied its decision to pass on a partial reduction to its SVR customers was fair and in line with its terms and conditions. So, it follows that I don't uphold this element of Mr C's complaint.

Skipton's decision not to offer Mr C a new rate prior to 2023

Until very recently, Skipton has maintained that it was unable to offer Mr C a new rate until he obtained a completion certificate. However, it changed its position on this earlier this year.

Mr C thinks this shows Skipton could and should have offered him a fixed rate sooner – and that he has suffered a financial loss as a result.

In deciding this part of Mr C's complaint, it is important to do so in the context of the product Mr C took out with Skipton and how such a product is intended to work. Put simply, Mr C embarked upon a project to build a house and needed a lender to fund that project. Such lending would be considered specialist and the risks for the lender differ from a traditional residential mortgage.

A self-build mortgage operates differently as funds are released in stages as each phase of the build is completed and it is fair to say that it is the intention of both parties that the project would be completed and then the property either sold (repaying the self-build mortgage) or a new residential mortgage taken out to allow the consumer to reside in the completed property.

Mr C says his original mortgage paperwork did not specify that he would be unable to switch to a new mortgage type while the project remained unfinished. I assume the suggestion here is that, because of this omission, Skipton is incorrect when it says its policy is not to offer new rates on self-build mortgages if the property lacks a completion certificate.

I do not disagree with Mr C's observation that his mortgage terms and conditions do not contain this as a requirement. But the terms in question are to govern his original mortgage, they are not intended to set out eligibility criteria for switching to other products offered by Skipton. So, I would not expect to see such a condition in Mr C's original mortgage contract.

It is also important to note that Skipton had stopped offering this type of mortgage to new customers, so it did not have an alternative 'self-build' fixed rate to offer Mr C. And as Mr C's property did not have a completion certificate, he was unable to move on to a traditional residential mortgage with either Skipton or a new lender.

While Mr C says the risk to Skipton was minimal as he had a low LTV, it does not change the fact that without a completion certificate, the value of the property, and therefore Skipton's security, was reduced. It is difficult to sell a property that has not reached completion on the open market. Any potential buyer would need to accept the risk that the property may not have been built to standard, was not marketable as a completed build and that they may struggle to obtain a mortgage on the property or insure it with standard buildings insurance.

Skipton's decision to offer a rate to Mr C in 2023 despite the above was a concession, not something it was obligated to do either by the terms of Mr C's mortgage agreement or the relevant rules and regulations that apply to mortgage lenders. So, it would not be appropriate for me to say that Skipton treated Mr C unfairly by not offering him a fixed rate sooner.

My final decision

For the reasons I have set out above, I do not uphold Mr C's complaint against Skipton Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 August 2023.

Lucy Wilson
Ombudsman