

The complaint

Mr A has complained about a buy to let mortgage he holds with The Mortgage Business Plc ("TMB"). He's unhappy about the rate of interest he's been charged.

What happened

This mortgage was taken out in 2007. The mortgage offer dated 23 February 2007 indicates:

- The mortgage advice was given by a firm of independent financial advisers.
- Mr A was borrowing £170,000 (plus fees) over a term of 20 years on a repayment basis.
- The initial preferential rate product was described as *"The mortgage is at a TrackerTBE803 - Variable rate which is 1.100% above the Bank of England base rate currently 5.250% which ends on 31/05/2009, to give a current rate payable of 6.350%."*
- After which *"Your loan reverts to TMB Standard Variable Rate currently 7.590% after 31/05/2009."*

The contact notes indicate Mr A contacted TMB in May 2009 to query the reversionary rate as he said his illustration had given a product code of TBE664 but his mortgage was on TBE803. A copy of the mortgage offer was sent to Mr A on 8 May 2009 to confirm he was on the correct product.

On 1 June 2009 the mortgage reverted to the standard variable rate ("SVR") in line with the February 2007 mortgage offer, and it remains on the SVR to date.

In October 2009 the mortgage was converted to interest-only at Mr A's request, with the letter confirming that change stating the mortgage interest was being charged at the SVR which it said was 4.84% at that time.

Mr A raised this complaint with TMB on 22 August 2022. He said that his rate had increased with Bank of England base rate ("base rate"), but when base rate had reduced his mortgage hadn't reduced at the same rate. Mr A said TMB now appeared to be treating his mortgage as a base rate tracker mortgage with a pay rate of 4.45% over base rate, which he said was outrageous and should be amended immediately. He said it isn't a tracker mortgage, it is an SVR mortgage and should be charged at 3.5% in line with the Halifax SVR.

There was some back and forth between the parties, with TMB paying £50 compensation to Mr A for some misinformation it had given him about his initial preferential interest rate. Unhappy with TMB's response to his complaint Mr A referred the complaint to our service.

The complaint was looked at by one of our Investigators. He said that Mr A had complained too late about the interest he had been charged before 22 August 2016 (six years before the complaint was made), although he said he would take account of earlier interest rate changes as part of the overall circumstances of the complaint. He then considered the complaint about the interest rate since that date and didn't uphold it.

Mr A didn't agree with our Investigator's findings and so the case was passed to me to decide.

Earlier this month I issued a decision about our jurisdiction to consider this complaint. In that I said:

“For the reasons I’ve explained, our service only has the power to consider this complaint in respect of the interest rate charged since 22 August 2016. I’ll now review the complaint on that basis and issue my decision on it in due course.”

I now issue this decision about the interest rate charged since 22 August 2016 as the final stage of our process.

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 of this case, I’m required by DISP 3.6.4R of the FCA Handbook to take into account the relevant law, regulations, and good industry practice, when reaching my decision.

I’ve given careful consideration to all the submissions made by both parties, but I won’t address each and every point that has been raised. I’ll focus on the matters that I consider most relevant to how I’ve reached a fair outcome in keeping with the informal nature of our service.

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

Before I go any further I should correct a misunderstanding on the part of Mr A. He’s said his mortgage was “*de facto with Halifax*” and said his bank statement showing his direct debit was collected by Halifax supports that. Mr A’s mortgage is with TMB. Whilst that is in the same banking group as Halifax, and I can’t comment on why his bank statement says Halifax, it doesn’t mean his mortgage is with Halifax rather than TMB. For that reason, Halifax’s SVR is irrelevant to this complaint. Mr A has also provided a copy of his 2023 annual mortgage statement which is printed on Lloyds Bank’s paper. Again I can’t comment on why that has happened, but it doesn’t mean his mortgage lender has changed from TMB to Lloyds Bank.

The mortgage terms and conditions set out the circumstances in which TMB can vary the SVR.

Condition 7.6 says:

“We can change the interest rate on any part of the capital at any time, unless the offer, any extra agreement or any flexible options agreement says we cannot. We can change the interest rate for any of the following reasons.

- (a) To reflect changes in the cost to us of raising the money we lend to our customers with mortgages.*
- (b) To reflect changes in rates of interest charged by other major lenders (including the terms on which mortgages are offered by them).*
- (c) To reflect: changes to the law or codes of practice, a decision or recommendation made by, or a requirement of, a court, ombudsman, regulator or similar body or an undertaking given to the Financial Services Authority.*
- (d) To reflect changes to the way we look after the mortgage account or mortgage*

accounts generally (including changes to the technology we use) because of:

- *the steps we have taken to modernise or improve our systems for managing those accounts; or*
- *reasons outside our control.*

(e) To reflect changes to the accounting period.

(f) Because:

- *we are going to take over, take control of or acquire the business of another bank or organisation offering similar services;*
- *we are going to be taken over or our business is acquired by another bank or organisation offering similar services; or*
- *any of these things has happened, and the change will make sure that our customers and the customers of the other bank or organisation are treated in a similar way if they are in similar categories.*

(g) To reflect changes to the way the property is used or occupied.

Where we refer to ‘changes’ in the above list, we mean changes we know will happen or we reasonably believe will happen, or changes which have already taken place.”

Condition 7.7 says:

“We can also change the interest rate for any other valid reason.”

The 2007 mortgage offer sets out that after the tracker rate expired in 2009, the mortgage would revert to the SVR, and the terms and conditions set out that the SVR could be varied in line with the terms of the mortgage. I haven’t seen any evidence that persuades me that TMB was obligated, contractually or otherwise, to have its SVR track the base rate. There was also no obligation on a lender to offer a new preferential rate when an old one expires – or at any other time – in the rules of mortgage regulation. And nothing in Mr A’s mortgage offer says that TMB would move him onto a new rate either. To that extent, the mortgage has operated as it should.

By the time the tracker rate ended in 2009 TMB was what is known as a “closed book” lender – which means that it doesn’t take on new mortgage business and doesn’t offer new interest rates to existing customers. So if any existing customer had wanted a new rate, TMB had nothing to offer them. As I’ve said, there is no obligation on a lender to offer new rates to existing customers, and since TMB didn’t make rates available to any customer – not just Mr A – I don’t think it was treating him unfairly.

Taking all that into account, I don’t think it was unfair that Mr A was on TMB’s SVR.

That said, 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 Mr A. I think that is the ultimate question I need to answer in deciding whether to uphold this case.

In answering this question, I have explained that although I’m only able to consider the fairness of interest charged to Mr A’s mortgage since 22 August 2016, it’s necessary for me to consider historic changes to TMB’s SVR.

I’ve considered all the available evidence and all of the changes TMB made to the SVR since Mr A took his mortgage. Having done so, I am not persuaded that anything TMB has done in varying the rate has led to Mr A being treated unfairly. I have set out why below.

For reasons of commercial confidentiality, I haven’t set out in detail the evidence TMB has provided in full. Nor has our service provided copies of it to Mr A.

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 TMB has provided in confidence, subject to the summary of it I have set out in this decision.

The 2007 mortgage offer makes clear the SVR is a variable rate. There's no suggestion in either the offer or the terms and conditions that it's directly linked to or tracks the base rate. Whilst I understand Mr A has commented on the fact TMB told him, in 2022, that his interest rate is base rate plus 4.50%, that's not the case. The SVR is a standalone variable rate, it isn't directly linked to and doesn't track the base rate. TMB has accepted that it gave incorrect information to Mr A and paid him £50 compensation for its mistake.

When Mr A took out his tracker rate in 2007, the SVR was 7.59%. Whilst he was on his tracker rate, TMB had reduced its SVR so that by the time he began to pay the SVR it was 4.84%. The SVR then increased to 4.95% in November 2011. Following the change in 2011, TMB's SVR remained static at 4.95% until September 2018, and from then the changes TMB made to the SVR were largely made soon after changes were made to the base rate, and by the same amount.

As I say, there's nothing that links the SVR to base rate, or says that the SVR must be changed when the base rate changes. Nor is there anything in the terms and conditions that obliges TMB to change the SVR at any time – the terms allow TMB to make changes in certain limited circumstances, but don't require it to do so.

The SVR was reduced between 2008 and 2010 – around the same time as (though not to the same extent as) falls in the base rate. Between 2007 (when Mr A took out his tracker rate product) and May 2009 when his tracker rate period ended, the difference between the base rate and the SVR increased from 2.34 percentage points to 4.34 percentage points.

The SVR increased slightly in 2011 to 4.95% when base rate didn't change. That led to the differential increasing to 4.45 percentage points, and whilst there were changes to the base rate in 2016 and 2017 (one down and one up) there were no changes to the SVR. The SVR then increased to 5.2% in September 2018. It reduced to 4.7% in April 2020 and 4.55% in May 2020. It increased to 4.70% in February 2022, 4.95% in March 2022, 5.20% in May 2022, 5.45% in June 2022 and 5.70% in August 2022. Mr A raised this complaint with TMB on 22 August 2022 so that is the point I can consider up until.

TMB has explained that it made these changes to the SVR to reflect changes in the cost of funding its mortgage business. It's provided us with evidence that shows that its costs changed over time, and that the changes to the SVR it made from time to time reflected the changes to its costs. I'm aware from my wider knowledge of the mortgage market that there were significant funding pressures across the mortgage market around the time of the financial crisis and its aftermath, from 2008 to 2010, and that there was an increasing disconnect between the base rate and mortgage funding costs. This reinforces my view that the evidence shows changes TMB made at this time to the SVR reflected changes in its costs, which reduced but not to the same extent as reductions in the base rate.

TMB has also shown that its costs increased in 2011, and that its costs remained broadly constant in 2016 and 2017. And since then, it has only changed the SVR following changes to the base rate.

I've taken into account that TMB is a closed book lender, and doesn't lend new mortgages to new customers. But that doesn't mean its costs are fixed; until mortgages it has lent are repaid, TMB has to cover the ongoing costs of raising the funds it lent, which are themselves subject to change.

Overall, I'm satisfied that TMB has shown that it was entitled to rely on the terms and conditions to make the changes to the SVR it did make, and that there was no obligation on it to make changes to the SVR at other times. Taking that into account, I don't think there's evidence either that TMB relied on changes it was not entitled to make in setting the SVR charged at the start of the period I can consider, or that it acted unfairly in making further changes to the SVR during that period.

I also note that throughout this period TMB's SVR was not substantially out of line with SVRs across the mortgage market. Although the SVR was higher than the preferential rates offered by other lenders, there was no obligation on TMB to offer preferential rates and the SVR wasn't substantially out of line with the reversion rates of other lenders. I think this is also a relevant factor in considering whether TMB acted fairly in setting the SVR at the level it did.

I've explained that I can only consider the fairness of the interest rate TMB charged Mr A in the six years leading up to his complaint. I'm satisfied that it was not unfair that he was on the SVR in that period. And I'm satisfied – having taken into account both the changes to the SVR TMB made in this period, and the changes it made more than six years before the complaint but which influenced the level of the SVR in this period – that the level of the SVR was not unfair either. I don't therefore 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 A to accept or reject my decision before 11 January 2024.

Julia Meadows
Ombudsman