DRN-4239298

The complaint

Miss T complains about her mortgage with Clydesdale Bank PLC, trading as Yorkshire Bank. She's unhappy that:

- the interest rate on her mortgage didn't change in line with Bank of England (BOE) base rate;

- the bank wouldn't offer her a lower interest rate product, change her mortgage to a capital and interest repayment basis, extend the term, or agree a lifetime mortgage; and

- she couldn't access her mortgage statements online.

What happened

Miss T took out her mortgage with Yorkshire Bank in 2009. She borrowed £135,000 on an interest-only basis, over a term of 20 years.

The interest rate on the mortgage was fixed at 5.99% for the first two years, until 30 September. The mortgage was then on the bank's standard variable rate (SVR) until May 2021, when Miss T took a new fixed rate.

In 2017, Miss T complained that the bank wouldn't switch her mortgage onto a lower interest rate, or change it to repayment terms or grant a lifetime mortgage instead.

The bank sent Miss T its final response to this complaint on 5 June 2017, giving her six months to refer the complaint to the Financial Ombudsman Service.

In 2018, Miss T complained again about the bank's refusal to agree a lower interest rate, as well as about its lack of help while she was in financial difficulty.

Yorkshire Bank sent Miss T its final response to this complaint on 5 December 2018, again giving her six months to refer the complaint to us if she remained unhappy.

In February 2020, Miss T complained that the interest rate on her mortgage was too high, because it hadn't changed in line with BOE base rate. She said she wanted a cheaper interest rate because she couldn't afford the monthly mortgage payments. She had had a payment holiday, but a lower rate would be of more help and the bank wouldn't agree to one. She felt the bank hadn't done enough to help her.

The bank sent Miss T its final response to this complaint on 30 March 2020. It said that her mortgage was on its SVR, which isn't linked to BOE base rate. It also said it would need to see information about Miss T's accounts in order to consider offering her a new interest rate product or extending the mortgage term.

In May 2020, Miss T referred her complaint to the Financial Ombudsman Service. She wanted the bank to put her mortgage on a lower interest rate and on a capital repayment basis, over an extended term until she's 85 years old in order that the mortgage is repaid, or she wanted the bank to agree a lifetime mortgage. She also wanted to be able to see her mortgage online.

While this complaint was with us, the bank told Miss T that it doesn't offer lifetime mortgages, or the facility for customers to access their mortgage statements online. It also said it could look into switching Miss T's mortgage to a repayment basis and/or a lower interest rate product, but it would need to assess her financial situation first. It invited Miss T to send it information about her income.

By early 2021, Miss T had cleared the mortgage arrears, and in May 2021 she took a new fixed interest rate product at 2.14%, making a significant saving on her monthly mortgage payments.

Our Investigator concluded that we could only consider the changes to the mortgage interest rate in the six years before Miss T made this complaint, although in considering those we would need to bear in mind earlier rate changes. She also said we could only consider Miss T's complaint about the bank's responses to her requests to change the mortgage to a repayment basis and for a lifetime mortgage after 5 June 2017 (when the bank issued its final response about that), and about the bank's refusal to change the mortgage to a lower interest rate after 5 December 2018 (when the bank issued its final response about that).

Both parties accepted the Investigator's conclusions about which parts of this complaint we can and can't consider, so the Investigator went on to consider the parts of the complaint which she could look at.

The Investigator concluded that the bank hadn't done anything wrong in not setting its SVR in such a way that it tracked BOE base rate, or in not offering Miss T a term extension or lifetime mortgage, or in not making online mortgage statements available.

She also concluded that the bank should have offered Miss T an interest rate product sooner than it did, and that it should have done so in February 2020. She recommended that the bank re-work Miss T's mortgage on that basis, and pay her £350 by way of compensation.

Neither Miss T nor the bank accepted that outcome.

Miss T still wanted to be able to see her mortgage online, and thought the SVR she had been charged was unfair, because she understood it should have varied in line with BOE base rate. She also thought she should fairly receive more compensation in the light of the emotional impact the bank's treatment of her had had.

The bank said its eligibility criteria for a product switch include that the mortgage must be up-to-date and not in arrears. It said it had tried to work with Miss T to find a solution, but she hadn't given it the information about her income which it had asked her for. It also said the regulatory guidance the Investigator had referred to about supporting customers in the cost of living crisis hadn't been in force in the period in question here.

As the parties didn't agree, the complaint was referred to me to decide. I came to a different conclusion to our Investigator, so I issued a provisional decision.

My provisional decision

I said:

"[B]efore deciding a fair and reasonable outcome to this complaint, I must first determine which parts of this complaint I have the power to consider.

I share the Investigator's view that I can't consider Miss T's complaint about the bank's responses to her requests to change the mortgage to a repayment basis and for a lifetime mortgage before 5 June 2017. This is because the bank issued a final response letter about that on 5 June 2017, and Miss T didn't refer her complaint to us within six months, the bank hasn't consented to us considering it, and there are no exceptional circumstances to explain the delay in referring the complaint.

I also agree with the Investigator that I can't consider Miss T's complaint about the bank's refusal to change the mortgage to a lower interest rate before 5 December 2018. This is because the bank issued a final response letter about that on 5 December 2018, and Miss T didn't refer her complaint to us within six months, the bank hasn't consented to us considering it, and there are no exceptional circumstances to explain the delay in referring the complaint.

Finally, under the time limit rules I must apply, I find that I can consider Miss T's complaint about the fairness of the bank's SVR in the six years before she complained. However, for clarity, that means I can consider this from February 2014, rather than 2015 as the Investigator set out, because Miss T made this complaint in February 2020. In considering the SVR after February 2014, I take into account earlier changes to the bank's SVR, because those earlier changes affect more recent ones.

I turn now to the merits of the parts of the complaint I can consider.

<u>The level of the SVR</u>

Miss T's mortgage was subject to the bank's SVR between September 2011, when her initial fixed rate ended, and May 2021, when she took a new fixed rate. During that period, the SVR and BOE base rate operated as follows:

Effective date	**BOE base rate**	**SVR**	**Difference**
05/03/2009	0.5%		
30/09/2011		4.59%	4.09%
05/05/2012		4.95%	4.45%
04/08/2016	0.25%		
01/09/2016		4.7%	4.45%
02/11/2017	0.5%		
01/12/2017		4.95%	4.45%
02/08/2018	0.75%		
31/08/2018		5.2%	4.45%
11/03/2020	0.25%		
19/03/2020	0.1%		
02/04/2020		4.55%	4.45%

The bank sets out its entitlement to vary its SVR in its Home Loan General Offer Conditions. They say, under “***Interest – Changes in Interest Rates***”, that:

“*Where the rate of interest you are paying is a variable rate, we may vary this at any time for any of the following reasons:*

1. *if it is reasonable to vary the rate to reflect changes which have occurred, or which we reasonably expect to occur, in interest rates generally or in the residential mortgage market;*
2. *to reflect changes in the Bank of England’s repo rate (sometimes known as the Bank of England’s base rate);*
3. *to reflect changes in our base rate;*
4. *to enable us to maintain the competitiveness of interest rates paid to our depositors or the providers of funds to us;*
5. *to manage margins between interest rates paid to our depositors or the providers of funds to us, and interest rates charged to borrowers from us, in the interests of our business as a whole;*
6. *to reflect changes in costs which we have incurred or in our financial strength;*
7. *to enable us to harmonise, in a reasonable manner, the interest rates being paid by borrowers following any acquisition or transfer of mortgages or any take over of, or merger with, another mortgage provider; or*
8. *if it is reasonable to make the change following a decision or recommendation made by a court, regulatory body, ombudsman or other official body or as a result of a change (or anticipated change) in the law or the interpretation of the law.*”

Miss T complains that the SVR she was paying should have followed changes in BOE base rate. There’s no general obligation on mortgage lenders for their SVRs to track BOE base rate, and I’m satisfied that that isn’t the way Yorkshire Bank’s SVR operated. I’m also satisfied that this was clear in the offer conditions. While BOE base rate is one of the things the bank takes into account in setting its SVR, it isn’t the only consideration.

I’ve considered whether the bank’s SVR variation terms were unfair and whether it applied them in a way which resulted in unfairness, and in doing so I’ve also considered relevant law and regulations. Having done so, I’m satisfied that the bank hasn’t managed its SVR unfairly, and Miss T hasn’t been overcharged interest as a result.

This is because I’m satisfied the SVR has been varied in line with the terms and conditions of the mortgage, for reasons those terms allowed. And having considered the circumstances of those changes, I think they were all fair and reasonable.

The difference between the bank’s SVR and BOE base rate in fact remained the same during the whole period Miss T’s mortgage was on the SVR, at 4.45% as set out in the table above, with the exception of the May 2012 increase. The bank told its customers when it increased its SVR in May 2012 that the increase reflected the higher costs in funding mortgages at that time.

The mortgage offer conditions allowed the bank to vary its SVR to respond to these sorts of changes. While BOE base rate didn’t change in the months leading up to the May 2012 SVR increase, it doesn’t automatically follow that the bank’s costs also didn’t change. The bank has provided the Financial Ombudsman Service with information about its funding costs at that time and how those costs informed its decision to increase its SVR. Having taken that into consideration, I don’t find that its decision to vary its SVR in the way it did in 2012 was unfair.

The other changes the bank made to its SVR followed changes to BOE base rate, and were also allowed for under the mortgage conditions. I don't find that they were made unfairly.

<u>The bank's refusal to agree to a rate switch, change the mortgage to a capital and interest repayment basis, extend the term, or agree a lifetime mortgage</u>

Miss T has asked the bank about ways to reduce her mortgage outgoings many times over the years. However, as I said above, I can only consider the bank's responses to those requests after 5 December 2018 in respect of an interest rate product, and after 5 June 2017 in respect of other changes to the mortgage terms.

Miss T says lower monthly mortgage payments would have been much easier to manage, and the bank failed to help her when she was struggling. The bank says it didn't offer interest rate products to borrowers who are in arrears, and it wanted to be satisfied that Miss T could afford her mortgage before agreeing to make changes to it. It also says it doesn't offer lifetime mortgages.

It's reasonable, in principle, for lenders only to offer interest rate products to customers who meet certain criteria. And it's not uncommon for lenders to require that a mortgage be up-to-date with payments before they will offer an interest rate product. I've seen Yorkshire Bank's rate switch criteria, and they include this requirement.

I think it's reasonable that the bank would want to be satisfied that the mortgage would be sustainable before agreeing to a new interest rate product – and to do that it would need to see that the mortgage would be affordable at the revised monthly payment.

This is an important consideration because, while a fixed interest rate would usually result in lower monthly payments, it would also come with an early repayment charge if the mortgage needed to be brought to an end early – such as in circumstances where the mortgage is no longer affordable and the lender repossesses the property. So a fixed interest rate which a borrower can't maintain can end up costing more in the end.

Miss T has clearly found herself in a very difficult position financially but has prioritised her mortgage payments and budgeted carefully. In February 2020, the mortgage had nevertheless been in arrears for several years, and at that point the arrears stood at just under £3,000. The bank's records show that Miss T was in regular contact with it and was expecting her circumstances to change later in 2020, but at the time her income was still irregular, as it had been throughout the period I'm considering here. There are notes in the bank's records about council tax and utilities arrears in 2019, and while Miss T had been trying to bring the mortgage back up-to-date, she had been unable to do so.

I find that the bank reviewed Miss T's situation a number of times with a view to switching her mortgage onto a new interest rate product – but didn't go ahead due to the mortgage arrears and Miss T's financial circumstances. In all the circumstances, I don't consider that this was unreasonable, nor was it unreasonable for the bank to want up-to-date information about Miss T's finances before making its decision.

The bank's records show that it had suggested capitalising the mortgage arrears, as I would expect in the circumstances, but Miss T hadn't wanted to go ahead. It also agreed payment arrangements and offered payment deferrals, and gave her details of organisations offering free debt advice. I note that Miss T was for the most part able to communicate with dedicated points of contact at the bank.

Extending the mortgage term on an interest-only basis wouldn't have affected the monthly mortgage payments, because Miss T would still have been expected to pay the same amount of interest each month. The bank did look at switching part of the mortgage onto a repayment basis, on the basis that Miss T would use her pension lump sum to clear the part which would remain interest-only – but it wanted documents from Miss T before making a decision, and Miss T decided not to proceed. Switching to a capital and interest repayment basis would also increase the payments, because it would mean Miss T paying off some of the capital each month too – so it would have been important to make sure that was affordable for her. And the bank doesn't offer lifetime mortgages, so that wasn't an option open to Miss T.

In all the circumstances, I don't find I can fairly conclude that the bank should have agreed to make the changes to Miss T's mortgage which she considers it should. I think it offered support and set out the options that were available to her. I don't consider that it should have switched the mortgage onto a fixed interest rate in early 2020, when the mortgage was still in arrears and Miss T was still struggling to keep up with the payments. While she had been making some inroads into the arrears in 2019, in 2020 Miss T was still finding it difficult to manage the payments, and I think at that stage the mortgage was not yet on a sustainable footing; it was far from clear that moving the mortgage onto a fixed rate with an early repayment charge attached would make it sustainable, outweighing the risk of an early repayment charge becoming payable. I don't, therefore, find that the bank should backdate a fixed interest rate on the mortgage.

<u>Online access to mortgage statements</u>

I recognise that Miss T would find this service very helpful, but the bank has said it doesn't offer it, and there's currently no obligation on it to do so. I'm not the regulator, and I can't fairly require the bank to put this in place. It is required to send Miss T regular information about her mortgage, and Miss T can contact it when she wants specific information."

For the reasons above, I said that I didn't intend to uphold the parts of this complaint which I could consider.

I invited Miss T and Yorkshire Bank to provide any further submissions they wanted me to consider before making my final decision.

Responses to my provisional decision

Miss T didn't accept my provisional decision. She still thought the bank hadn't treated her fairly and it should have offered her a lower fixed interest rate sooner, and said the stress she had gone through as a result of the bank's lack of support hadn't been recognised.

Yorkshire Bank didn't respond to my provisional 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.

I've carefully considered Miss T's further comments and arguments. Having done so, while I realise Miss T will be disappointed, I've come to the same conclusions I set out in my provisional decision, for the same reasons.

Miss T made overpayments to her mortgage in 2019 and 2020, and I can understand why she considers that this demonstrates she could have afforded to pay a lower interest rate on the mortgage: payments at a lower rate would, of course, have been lower. The mortgage was, however, still in arrears in 2020 and had been in arrears for several years. While making inroads into the arrears was a positive sign, I would expect the bank to have taken account of Miss T's overall financial situation before deciding whether to offer her a new interest rate product. The available evidence satisfies me that it did so.

The bank's records show that it explored various options with Miss T, as I set out in my provisional decision. Miss T's financial situation was changing in 2020 and it's clear that she was still struggling to maintain payments to the mortgage. Against this background and in the overall circumstances, I don't find I can fairly say that the bank should have offered her a new interest rate product, which would have come with an early repayment charge and the risk of costing Miss T more in the long run.

I also don't find that the bank failed to support Miss T. It knew about her health difficulties and arranged for dedicated points of contact for her, it reviewed her situation a number of times, and it set out the options it had available to her.

I make no order or award.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 25 August 2023.

Janet Millington
Ombudsman