

## The complaint

Mr and Mrs J have complained about a mortgage they previously held with The Mortgage Business Plc ("TMB"). They're unhappy about the rate of interest they were charged.

Mr and Mrs J have been represented in bringing this complaint. Any reference in this decision to Mr and Mrs J should be taken to mean their representative acting on their behalf where appropriate.

## What happened

This mortgage was taken out in February 2006 through a mortgage broker. The mortgage offer dated 3 January 2006 indicates Mr and Mrs J were borrowing £1.4m (plus fees) over a term of 20 years on an interest only basis. The product was 0.99% above Bank of England base rate ("BoEBR") for the life of the mortgage. That gave an interest rate (at the time of the mortgage offer) of 5.49% variable.

In May 2007 Mr and Mrs J's mortgage broker advised them to move their mortgage onto a new product. A mortgage offer was issued for the new rate which explained it was a fixed rate of 5.99% until 30 June 2009. After which the mortgage would revert to TMB's standard variable rate ("SVR") which at the time of the offer was 7.59%.

On 1 July 2009 the mortgage reverted to the SVR in line with the May 2007 mortgage offer, and it remained on the SVR until the mortgage was redeemed in September 2017 when Mr and Mrs J remortgaged to another lender within TMB's wider banking group.

In 2014 Mr and Mrs J raised a complaint with TMB that was later referred to our service. My Ombudsman colleague that decided the complaint summarised it as:

*"[Mr and Mrs J] complain that The Mortgage Business plc recorded incorrect information on their credit files. They want the business to amend their credit files, refund or adjustment [sic] interest and pay reasonable compensation for distress and damage to their credit rating."*

To resolve that she told TMB to:

1. *"Remove all adverse information relating to this matter from [Mr and Mrs J's] credit files and confirm to them that it has done so.*
2. *Refund all arrears fees and adjust interest accordingly.*
3. *Pay to [Mr and Mrs J] £900."*

But she said there was insufficient evidence that the credit file reporting was the only barrier to Mr and Mrs J obtaining a remortgage so she didn't uphold that point:

*"I note all that [Mr and Mrs J] and their broker say about the re-mortgage. However, there is insufficient evidence to enable me to safely conclude that [Mr and Mrs J] would have successfully completed a re-mortgage at the rate to which they refer if their credit files had not contained the disputed information. There are multiple factors in determining whether a*

*mortgage application is successful and several points at which an application may fail, particularly here, given the amount and type of borrowing. On balance, I am not satisfied that [Mr and Mrs J] have shown they have incurred a financial loss."*

A further complaint was raised with TMB after the mortgage was redeemed, and that was also referred to our service. An Ombudsman colleague summarised that complaint as:

*"This complaint is about a mortgage Mr and Mrs J used to hold with The Mortgage Business Plc (TMB). They re-mortgaged in 2017 to another lender within the same business group, on a lower rate. Mr and Mrs J believe TMB should have helped them do this much earlier, arguably in 2013. They're looking for redress in excess of £170,000, to compensate them for the extra interest they've paid since 2013."*

The Ombudsman didn't uphold the complaint. He said he wouldn't consider the credit file impact again because that had been decided by a fellow Ombudsman. And in respect of Mr and Mrs J getting a new rate within TMB's wider banking group:

*"The way in which closed lenders are expected to help their customers has evolved substantially over time, as the regulator of mortgage business has introduced new rules aimed at reducing the number of borrowers "trapped" on an uncompetitive rate. It's those new rules that allowed TMB to help Mr and Mrs J move lenders in 2017. The same duty and expectation hadn't existed in 2013. Assessed against the requirements of the time, TMB's response in 2013 wasn't unfair or unreasonable."*

The complaint I'm looking at here was raised with TMB on 7 September 2021. Whilst initially the complaint encompassed other issues, it was later narrowed down to only relating to the rate of interest charged by TMB because the other issues (such as the credit file reporting) had previously been decided by our service.

The complaint was looked at by one of our Investigators. He said that Mr and Mrs J had complained too late about the interest they had been charged before 7 September 2015, 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 and Mrs J didn't agree with our Investigator's findings and so the case was passed to me to decide.

In October 2023 I issued a decision about our jurisdiction to consider this complaint. In that I said our service only has the power to consider this complaint in respect of the interest rate charged since 7 September 2015.

I now issue this decision 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 and Mrs J. But I hope the reasons I have set out below will help them to understand why I have come to this conclusion.

In the original letter of complaint Mr and Mrs J's representative raised various individual complaint points. However, in an email to our service in May 2022 the representative said:

*"It is correct that our client has previously complained to the FOS in respect of his TMB mortgage. However, the decision issued in 2019, which you refer to below, was in respect of a complaint that TMB failed over a number of years to advise our client of his options with regards to a remortgage and that their failure to do so led to our client paying more interest than he might otherwise have done had he re-mortgaged onto a new fixed rate product earlier (i.e. earlier than 2017 which was when our client re-mortgaged away from TMB to Halifax on a lower rate). This complaint however is concerned with the level at which the interest rate applicable to our client's mortgage was set whilst it was with TMB, in particular the complaint is concerned with a breach of contract, and regulatory obligations regarding the fairness of the rate. It is not therefore in any way related to TMB's alleged failure to assist our client to re-mortgage within the group."*

And;

*"Finally, we note that paragraph 20 of our clients complaint refers to incorrect recording of arrears information on our clients account. We note that this was the subject of a 2015 investigation by your service, and we do not propose that it is investigated here, however it has been included as context to our clients current complaint."*

Due to this confirmation that the only point to be decided is in relation to the fairness of the rate charged by TMB, and following my decision about our jurisdiction, I'll confine my decision to that single issue and will make no comments on the other points that formed part of the original complaint letter.

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 fixed 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 and Mrs J’s mortgage offer says that TMB would move them onto a new rate either. To that extent, the mortgage has operated as it should.

By the time the initial fixed 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 and Mrs J – I don’t think it was treating them unfairly.

There was a process whereby TMB customers could move to another lender within the banking group to access a new interest rate. Mr and Mrs J availed themselves of this option in 2017, and the fact that wasn’t done sooner formed part of the complaint decided by my Ombudsman colleague in 2019 so I won’t comment any further on that here.

Taking all that into account, I don't think it was unfair that Mr and Mrs J were 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 and Mrs J. 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 and Mrs J's mortgage since 7 September 2015, 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 and Mrs J took their mortgage. Having done so, I am not persuaded that anything TMB has done in varying the rate has led to Mr and Mrs J 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 and Mrs J, or their representative.

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 BoEBR.

When Mr and Mrs J took out their fixed rate in 2007, the SVR was 7.59%. Whilst they were on their fixed rate, TMB had reduced its SVR so that by the time they began to pay the SVR it was 4.84%. The SVR then increased to 4.95% in November 2011 and then didn't change again before Mr and Mrs J repaid their mortgage in 2017.

As I say, there's nothing that links the SVR to BoEBR, or says that the SVR must be changed when the BoEBR 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 BoEBR. Between 2007 (when Mr and Mrs J took out their fixed rate product) and June 2009 when their fixed rate period ended, the difference between the BoEBR and the SVR increased from 2.34% to 4.34%

The SVR increased slightly in 2011, and then stayed constant until Mr and Mrs J paid off their mortgage with TMB in 2017. There were no changes to the BoEBR in 2011, and while there were changes to the BoEBR in 2016 and 2017 there were no changes to the SVR.

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

BoEBR 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 BoEBR.

In 2011, TMB increased its SVR by 0.11% outside of any changes to BoEBR. It has told us this was due to an increase in the cost of holding equity as per its requirements under Basel II and has provided evidence of these increases. It has also shown that its margins overall had reduced to below the levels they were before the financial crisis. To meet these increased costs, driven in part by changes to regulatory requirements, it chose to increase its SVR. I am satisfied the terms provide for this scenario and that TMB has evidenced it exercised its contractual right to vary the SVR fairly.

Following the change in 2011, Mr and Mrs J's SVR remained static at 4.95% until they paid off their mortgage with TMB in 2017. The BoEBR did reduce in 2016 before subsequently increasing in 2017, but TMB was not obligated to track BoEBR, or reduce its SVR solely because the BoEBR had reduced. And as I have set out above, TMB's cost of funding was multi-faceted, with the BoEBR being only one of a number of influencing factors.

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 and Mrs J in the six years leading up to their complaint. I'm satisfied that it was not unfair that they were 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.

Finally, I note that Mr and Mrs J's representative argues that TMB has breached what it says was an implied term, not to exercise its discretion to vary the SVR dishonestly, for an improper purpose, capriciously, arbitrarily, or in a way that no reasonable lender acting reasonably would do. For the reasons set out above, if there was such a duty in the present case, I'm satisfied that TMB did not breach it since it approached the question of varying the SVR fairly and in line with the terms of the contract.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 4 December 2023.

Julia Meadows  
**Ombudsman**