

The complaint

This complaint is about a series of mortgage accounts Mr M holds with UCB Home Loans Corporation Ltd (UCB). There are two broad components to the complaint; briefly:

- that for about ten years prior to 2018, UCB failed to inform Mr M he might be eligible for access to new rates on his mortgages, and on occasions told him no alternative rates were available. This left him paying rates that he generally considered too high and not in line with those from competitors (“the 2018 complaint”); and
- during the same ten-year period, the rates UCB charged were actually higher than the mortgage contracts allowed it to charge (“the 2020 complaint”).

What happened

The broad circumstances of this complaint are known to Mr M and UCB; they’ve been set out in correspondence between both parties. I’m also aware that the investigator issued a detailed response to the complaint which has been shared with all parties, and so I don’t need to repeat all of the details here.

Instead, I’ll provide a brief summary of the key points, in my own words and then focus on the reasons for my decision. If I don’t mention something, it won’t be because I’ve ignored it. It’ll be because I didn’t think it was material to the outcome of the complaint.

Both mortgages were taken out before mortgage regulation was introduced in October 2004. Both have been the subject of further advances, and so there are six sub-accounts in all across the two mortgages. Both mortgages are secured on properties that are not Mr M’s main residence. Each sub-account had interest rate products attached to it from time to time, but on varying dates (the most recent being in 2011) each reverted to a standard variable rate (SVR) on which they remained until 2018. Following the 2018 complaint, UCB has allowed Mr M access to new interest rate products.

The thrust of Mr M’s complaint is about what happened during the period he was being charged interest at SVR. He believes firstly that he was unfairly denied access to better rates, and secondly that the variable rate(s) UCB charged were higher than the mortgage contracts allowed.

In May 2022, I issued a jurisdiction decision which explained why we could only consider the 2020 complaint – i.e. whether the rates UCB charged were actually higher than the mortgage contracts allowed it to charge – and that our remit to do so, was confined to interest-charging events since 4 July 2014.

There was another proviso to this, which was that if we found that an interest-charging event that occurred before 4 July 2014 contributed to an interest-charging event rate after that date that was not permitted under the contract, and therefore unfair, our remit allowed us to consider the potential impact of the earlier interest-charging event on UCB’s treatment of Mr M from 4 July 2014 onwards.

The case was then looked into by one of our investigators, who wasn't persuaded UCB had treated Mr M unfairly. Mr M has asked for the complaint to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

At a general level, interest variation clauses such as those that applied to Mr M's mortgages have a legitimate purpose and are common in financial services consumer contracts, particularly those of long or indeterminate duration, such as mortgage agreements.

A fair variation term can benefit both consumers and lenders, by providing flexibility and a wider choice to consumers and enabling firms to provide competitively priced products, knowing they can vary the interest rates they charge to reflect changes in circumstances, particularly in their own cost of funding. A reversion rate also permits lenders to provide for future changes that justify increases in the rate, and a lender's own costs of funds are by nature difficult to foresee.

The time period I'm looking at (2014 to 2018) followed on from a time of significant change in the wider market as a result of the financial crisis in 2008/09. This had impacted on the funding costs of businesses and was reflected in changes to a number of lenders' interest rates charged across the market at the time.

I'm also mindful that the FCA has noted the adverse impact the financial crisis had on lenders' costs during that period, and that it hasn't seen that SVR variation terms have generally been relied on unfairly to cause widespread detriment to consumers (see for example the May 2018 Guidance Consultation GC18/2 Fairness of Variation terms in financial services consumer contracts under the Consumer Rights Act 2015 paragraphs 2.8 to 2.10).

UCB has provided the Financial Ombudsman Service with detailed information about the reasons why it varied its SVR in the way that it did. The information UCB has given us is commercially sensitive, so can be treated as confidential. The information has been reviewed in line with UCB's mortgage documentation, relevant law and regulations.

I've considered whether UCB acted fairly overall. Having done so, I'm satisfied UCB varied the SVR in line with the mortgage terms and conditions and that UCB exercised those terms fairly. This means that I'm satisfied UCB has not overcharged interest on Mr M's mortgage accounts since 4 July 2014.

Whilst the base rate had reduced significantly during this period, the costs to lenders of funding their businesses changed, as did their prudential requirements. These are made up of several factors that are not directly linked to base rate. There was a substantial increase in risk to all lenders during that period, and that led to them having to mitigate that risk in

different ways. So there are objectively justifiable reasons why UCB did not reduce the applicable rate at the same level as the reduction in Bank of England base rate.

Overall I am not persuaded there is any basis to say that the variations UCB made to its SVR resulted in Mr M being charged an unfairly high rate of interest on his mortgages during the period I can consider. Nor does the evidence lead me to conclude that the interest rate applied during that period was unfair for any other reason.

Lastly, there was no early repayment charge applicable to Mr M's mortgage accounts at the various points they reverted to SVR. So, if UCB had exercised its rights as set by the variation terms, and Mr M was unhappy with the decisions it made, he was free under the contract to seek a re-mortgage with another lender. In saying that, I am aware that Mr M's properties were the subject of negative equity, which will have impacted on his ability to re-mortgage to another lender. But that was not a barrier imposed by UCB.

My final decision

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 October 2023.

Jeff Parrington
Ombudsman