

## The complaint

Mr and Mrs M have complained about their secured loan that was being administered by Target Servicing Limited. They've said the loan was sold to them as having a variable rate, but that when the Bank of England base rate was at an all-time low the interest rate didn't reduce.

## What happened

In November 2006 Mr and Mrs M took out a secured loan with a lender that I'll refer to as P. They borrowed £25,000 over a 25-year term. The initial interest rate was 6.73% variable, which gave an initial contractual monthly payment of £172.44.

The credit agreement showed that if all payments were made in full and on time, and the interest rate remained the same, that Mr and Mrs M would pay £26,732 in interest (on top of the £25,000 loan amount) over the term of the loan.

In 2009 the loan was transferred from P to a lender I'll refer to as P1. P1 later appointed Target to administer the loan on its behalf.

Any reference to "the lender" in this decision should be taken to mean P or P1 as appropriate. And in relation to P1 that should also mean Target acting on P1's behalf.

The following changes were made to the interest rate over the life of the loan:

Date	Existing interest rate	Rate change	New interest rate
Inception			6.73%
March 2007	6.73%	+ 0.50%	7.23%
June 2007	7.23%	+ 0.25%	7.48%
September 2007	7.48%	+ 0.25%	7.73%
October 2007	7.73%	+ 0.50%	8.23%
March 2008	8.23%	- 0.25%	7.98%
January 2009	7.98%	- 0.50%	7.48%
April 2020	7.48%	- 0.65%	6.83%

Mr and Mrs M raised a complaint in 2019 that the rate seemed to increase in-line with the Bank of England base rate ("BoEBR") but didn't fall when the BoEBR decreased.

P1 responded to that complaint on 17 September 2019. It said that the interest rate had varied down as well as up, and it hadn't always gone up when BoEBR increased. The complaint was referred to us in October 2019 and one of our investigators issued their opinion on the complaint in November 2019. Mr and Mrs M didn't ask that the complaint be referred to an ombudsman and so the case was closed.

The loan account was closed in May 2021 after negotiations over a short settlement agreement (that is, P1 accepting less than the true redemption figure due at that time), with P1 writing off the remainder of the debt.

Mr and Mrs M raised a further complaint in January 2022 about the interest rate they had been charged. P1 responded to that on 1 February 2022, saying that it wouldn't be reconsidering the time period covered in the 2019 complaint, and since then the rate hadn't increased; the only change was a decrease which had happened in April 2020.

Our investigator said we won't be looking at the 2019 complaint again, so we'd only be dealing with a complaint covering the period since 18 September 2019. He then went onto consider the merits of that complaint and didn't uphold it.

Mr and Mrs M responded to say they wanted the complaint to be referred to an ombudsman.

In July 2023 I issued a decision explaining that I will only be dealing with a complaint covering the period since 18 September 2019, until the loan was redeemed in May 2021. And then earlier this month I issued my provisional findings about the merits of that part of the complaint.

### **What I've decided – and why**

My provisional findings said:

*"I must consider whether from 18 September 2019 onwards, Mr and Mrs M paid an unfairly high rate of interest. As our investigator explained, in considering the fairness of the interest charged since 18 September 2019, it will be necessary for me to consider what is fair and reasonable in all the circumstances of the case. This means that I will need to consider all the matters that contribute to and make up the interest charge added to the loan each month. And in turn that means considering the fairness of the interest rate used as the basis of the calculation.*

*In order to consider what is fair and reasonable I need to consider all the circumstances. I need to look at the impact of what may or may not have contributed to those charges – including things that happened before 18 September 2019 which influenced the rate charged at that time.*

*I'm satisfied that this is an essential part of determining whether or not the rate charged from 18 September 2019 onwards was fair and reasonable in all the circumstances. But in the event that I find something unfair about what happened before that date, I can only consider its impact on the interest charged since then – and therefore any redress I would award would only cover interest charged since 18 September 2019. That's because the complaint I'm considering is that interest was unfairly charged from 18 September 2019 onwards.*

*To assess the fairness of the interest rate terms, it is helpful to first set out the relevant terms themselves.*

Mr and Mrs M's loan agreement says the interest rate is 6.732% per annum variable. It then says in section 2.2 of the loan conditions:

*"We may, at Our discretion, from time to time, vary Our interest rates to reflect a change which has occurred, or which We reasonably expect to occur, in interest rates generally (although there will be no obligation upon Us to do so), or, to redress any reduction in Our profitability caused by changes to legislation."*

The loan Terms and Conditions set out that the loan would be on a variable rate of interest and that rate could go up as well as down. I haven't seen any evidence that persuades me that the lender was obligated, contractually or otherwise, to have the variable rate track the BoEBR. There's also nothing in the Terms and Conditions that entitled Mr and Mrs M to a new interest rate. To that extent, the loan has operated as it should.

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 M. I think that is the ultimate question I need to answer in deciding whether to uphold this case.

When considering everything I'm satisfied the lender has operated within the relevant terms and conditions, I'll explain why.

I've considered all the available evidence and all of the changes the lender has made to the variable rate since Mr and Mrs M took their loan. Having done so, I am not persuaded that anything the lender has done in varying the rate has led to Mr and Mrs M being treated unfairly. I have set out why below.

Target has not been able to provide detailed information for the period whilst the loan was with P. It is possible that there is evidence relevant to its decision making at that time that is no longer in existence. This is not surprising given that the events in question took place so long ago and relate to a lender that was dissolved in 2009.

While this limits the depths to which I can assess the lender's decisions to, or not to, vary its variable rate prior to 2009, Target has been able to give us some broad information, relevant to that period. I have looked at that alongside what I understand about what was happening in the wider market at the time.

At this time, the mortgage market was going through a period of significant change as a result of the global financial crisis. This impacted the funding costs of businesses, including P, and was reflected in changes to a number of lenders' interest rates charged across the market at the time. Whilst the base rate did reduce significantly during this period, the cost to lenders of funding their businesses changed.

It is clear P had some significant funding issues at the time as ultimately P entered insolvency and was dissolved. So it seems reasonable to say P didn't have the profitability to be in a position to reduce rates. Whilst the evidence provided is limited, I have not seen any evidence to suggest the changes P made (or didn't make) were arbitrary, excessive, or unfair. And I'm further satisfied that, albeit limited, the information Target has been able to provide for this period is corroborated by evidence of wider market conditions at the time.

Since P's collapse and the transfer of the loan to P1 in 2009, the interest rate remained unchanged until 2020. Whilst the August 2016 BoEBR 0.25% decrease wasn't reflected in a change to the interest rate, neither were the subsequent 0.25% increases in November 2017 and August 2018 respectively. As I've already explained, there was no contractual obligation for Mr and Mrs M's interest rate to track BoEBR and, in any event, I think

*Mr and Mrs M were likely in a better position with their interest rate remaining unchanged in that period as whilst there was one decrease that was only for around 15 months before BoEBR reverted to its previous level, whereas the subsequent increase lasted for 19 months. In April 2020 the interest rate reduced by 0.65%, just as the BoEBR had done in March 2020, and from then the interest rate remained unchanged until the loan was redeemed in May 2021.*

*Because of P's collapse, its loans were transferred to P1 which isn't an active lender and so is unable to offer new interest rates to any of its customers. So, all its other customers were in the same position as Mr and Mrs M – and they weren't treated any less favourably than any other customer. That aside, it isn't at all unusual in the second charge loan market for lenders to not offer new preferential rates to existing customers so even if P had remained as an active lender it is likely Mr and Mrs M would have needed to refinance the loan anyway if they wanted to obtain a new rate.*

*The loan Terms and Conditions set out that Mr and Mrs M's loan would be charged a variable rate of interest, and that could go up as well as down. I haven't seen any evidence that persuades me that the lender was obligated, contractually or otherwise, to have its variable rate track the Bank of England base rate. There's also nothing in the Terms and Conditions that entitled Mr and Mrs M to a new interest rate. To that extent, the loan has operated as it should.*

*So to conclude, I'm not persuaded that the lender has operated the terms in an unfair manner when setting and varying the interest rate that applied to Mr and Mrs M's mortgage, and I've seen no evidence to say that the interest they were charged during the period I'm able to consider was unfair for any other reason.*

*I do understand why Mr and Mrs M wanted to have paid a lower rate than they did. But, as I've said, neither lender was obliged to offer new rates. Neither lender stood in the way of them moving their mortgage to another lender to take a lower rate – there was no notable early repayment charge, for example.*

*Having considered everything I can't find that Mr and Mrs M were treated unfairly here, and I can't therefore uphold this complaint."*

Both parties confirmed receipt of my provisional decision and had nothing further to add.

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

Having done so, and having reviewed my provisional findings afresh, I see no reason to depart from the findings I reached in my provisional decision.

### **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 M to accept or reject my decision before 26 September 2023.

Julia Meadows

**Ombudsman**