DRN-4309747

The complaint

Mr C complains about his mortgage with UCB Home Loans Corporation Ltd. He's concerned about the impact of a payment deferral and whether UCB re-calculated his payments accurately, including whether it has fairly charged the interest rate.

What happened

Mr C has two buy to let mortgages with UCB. In 2020 he asked UCB to apply coronavirus payment deferrals to his accounts. UCB agreed a three month deferral, ending in July 2020. Mr C requested a further three months, and again UCB agreed – taking the deferral to six months in total, ending in October 2020.

In October 2020 UCB wrote to Mr C to say that both his mortgages were in arrears. It accepts that this was an error – it hadn't recorded the second deferral period correctly on its systems, so his loans were wrongly treated as being in arrears rather than an agreed deferral for the period August to October 2020. It said the mortgages were already in arrears before the payment deferrals began, but the arrears should not have been treated as increasing while the deferrals were in place. It said it would correct the entries it had made on Mr C's credit file and paid him £250 compensation.

UCB then re-calculated Mr C's monthly payments. Mr C was surprised that the monthly payment on one of his accounts had reduced despite the deferral, and questioned this with UCB. Mr C also questioned why the interest rate on his mortgages had not reduced despite reductions to the Bank of England base rate in March 2020.

UCB explained that the last time the monthly payments had been calculated, his mortgage balance was higher than the original amount borrowed, so it had put that part of the balance on repayment terms. But by October 2020 the balance had reduced to below the original borrowing, so the entire balance was put back on interest only terms. UCB said it would carry out a further calculation at the end of 2020 to factor in the deferred payments, and Mr C's mortgage payment would increase at that point. UCB also said that the interest rate was correct – although Mr C's mortgages were on variable rates, the rates were not linked to the Bank of England base rate.

Mr C wasn't happy, and brought his complaint to us. He also said he'd understood – and been led to believe – that the interest rate on his mortgages would track base rate throughout their terms.

Our investigator said we could only consider the complaint about the interest rate in respect of interest charged since 1 September 2018, since Mr C had previously complained about this several times and hadn't referred his complaints to us within the time limits allowed for in UCB's responses. The most recent response prior to this complaint was sent on 31 August 2018, and so his complaint about the fairness of the interest rate before that point is out of time. But in considering the fairness of the interest rate since September 2018, it's necessary to consider all the circumstances of the complaint, including things that happened before then to the extent they influence the fairness of what was charged during the period in time. And she said we could consider the complaint about the issues arising from the payment deferral in 2020, since that part of the complaint had been made in time.

I issued a jurisdiction decision agreeing with the investigator. Another investigator then considered the merits of Mr C's complaint. He said UCB had charged interest in line with Mr C's mortgage agreements and the interest rate he'd been charged wasn't unfair. And he said that UCB had made a fair offer to put right the problems Mr C had experienced at the end of his payment deferrals.

Mr C didn't agree and asked for an ombudsman to review his complaint. He said that the mortgage offers said that when his initial fixed rate ended, the interest would typically be no more than 2% above the Bank of England base rate, but this hadn't happened.

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 reminded myself of what I said in my earlier jurisdiction decision. Nothing that has happened since has led me to revise my findings, and so in this decision I will only be considering the fairness of interest charged since 1 September 2018 – taking into account, where appropriate, things that happened before that date where they impact the fairness of interest charged since then, as part of all the circumstances of the complaint. I'll also consider the fairness of what happened at the end of the payment deferrals.

Mr C has two mortgages. One was taken out in 2006, and was on a two year fixed rate until 2008, followed by a two year tracker rate until 2010. From 2010 it reverted to the Loyalty Investment Flexible Variable Rate (LIFVR). The other mortgage was on a three year fixed rate from 2007 to 2010, and thereafter the Investment Flexible Variable Rate (IFVR).

The LIFVR and the IFVR are reversionary rates UCB applies to its buy to let mortgages. Although the rates are slightly different, they have changed in the same way at the same times since 2010.

The mortgage terms and conditions say:

> *We may change the interest rate applicable to the debt at any time except during any fixed rate period under the offer document giving you three days written notice of our intention to do so.*
>
> *We will only change the interest rate for one or more of the following reasons:*
>
> *(i) To respond to changes or anticipated changes in law, regulation or codes of practice, or to Court or Ombudsman's decisions* [sic]*;*
>
> *(ii) To ensure we meet all the requirements of the Financial Services Authority, any other regulators, and any relevant monetary authority;*
>
> *(iii) To reflect a change in the way the property is used or occupied in accordance with condition 14 (vii)*
>
> *(iv) To act upon our legitimate commercial interests, including but not limited to:*

(a) Changes in prevailing market rates;

(b) Costs associated with specific changes in relevant market conditions including technological changes and changes in services or facilities provided;

(c) To reflect a change in the credit risk relating to the loan.

(v) If we vary the interest rate for any other reason, we will notify you at least 30 days in advance and waive any early repayment charge payable on your mortgage for 60 days starting on the date of the notice we send to you, to allow you to repay your mortgage without charge.

There's nothing in the terms and conditions which says that either the LIFVR or the IFVR are linked to or track the Bank of England base rate. The terms say that UCB *may* change the interest rate to take account of changes in market rates; they don't say it *must* change the rate to reflect changes to base rate.

The mortgage offers don't say that the LIFVR or IFVR will track the Bank of England base rate either. Mr C has pointed to the product switch offer he received when taking out a tracker rate on one of the mortgages in 2008. That offer says:

> *Your loan will be on:*
>
> *Loyalty 2 Year Enterprise ERC Free Tracker. A tracker rate which is variable and will be 0.94% above the Bank of England base rate unless the Bank of England base rate is 2.75% or less in which case the Tracker Rate will be 2.75% plus 0.94%. The Tracker Rate will apply from completion until 2 years from the end of the month in which you take the loan (the Benefit Period), after which our Loyalty Investment Flexible Variable Rate, currently 6.89%, will apply for the remainder of the term. Any variation to the Tracker or Loyalty Investment Flexible Variable Rate as a result of the change in the Bank of England base rate will take place on the first day of the following month.*

I think this says that Mr C's mortgage will be on a rate which tracks the Bank of England base rate (subject to a minimum of 2.75% and a margin on 0.94%) for two years. And after that it will be on a variable rate which does not track the base rate.

I don't think Mr C can reasonably have understood that that LIFVR would be no more than 2% above base rate – because

- There is no mention of a margin of 2% over base rate anywhere in the offer. The tracker rate was at a margin of 0.94%, not 2%.

- The direct relationship with base rate is only during the two year tracker period

- The offer says the LIFVR was currently 6.89% - which is substantially more than 2% above what base rate was at this time. So the gap between base rate and the LIFVR was not 2% even at the time Mr C agreed to this rate.

The offer does say that any variation to the LIFVR as a result of changes to base rate will take effect the following month. But that applies *if* UCB makes a change to the LIFVR following a change in base rate – it does not require it to do so at all, let alone to track base rate by 2%.

The mortgage offer on the other mortgage simply says

> *A fixed rate of 6.14% will apply for 3 years from completion (the Benefit Period) after which our Investment Flexible Variable Rate, currently 8.04%, will apply for the remainder of the term.*

There is no mention of the Bank of England base rate at all, either in connection with the initial fixed rate or the IFVR. And at 8.04%, the IFVR was more than 2% above base rate at the time Mr C took the mortgage out.

That means that, from 2010, neither of Mr C's mortgages were linked to base rate and there was no obligation on UCB to charge no more than 2%. In charging Mr C the IFVR and LIFVR at more than 2% above base rate from 1 September 2018, therefore, UCB has not acted unfairly.

I've also thought about changes UCB did make to the IFVR and LIFVR – including historic changes, since Mr C's mortgages were taken out. That's because the fairness of the LIFVR and IFVR since September 2018 isn't the result only of decisions UCB made during that period, but also potentially the result of decisions it made earlier. In doing so, I've considered the information UCB has provided to us about its reasons for varying the LIFVR and IFVR in the way it did and the mortgage conditions applicable, alongside external reference rates such as Bank of England base rate, and wider economic conditions. I've also kept in mind the law, including the Unfair Terms in Consumer Contracts Regulations 1999 – though as buy to let mortgages these are not consumer contracts.

Having done so, I don't think UCB varied the LIFVR or IFVR in a way it wasn't permitted to do. They were varied for reasons allowed under the mortgage conditions, and where they didn't vary in line with Bank of England base rate changes, UCB has provided details of its funding costs and how those costs informed its decisions to vary the rate. This includes the period where the rates fell – but not to the same extent as base rate – between 2007 and 2009, as well as when they were increased in 2010. All of those instances are before the rates became applicable to Mr C's mortgages, but nevertheless impacted the level of the LIFVR and IFVR he reverted to in 2010.

Nothing in the mortgage terms and conditions, or Mr C's mortgage offers, says they were linked to base rate, or that UCB would have to change at the same time or to the same extent as base rate. In changing the LIFVR and IFVR, UCB acted within the terms and conditions. I'm therefore satisfied that the level of the LIFVR and IFVR applicable from September 2018 was fair and reasonable in all the circumstances.

I have also borne in mind that while Mr C's mortgages were subject to the LIFVR and IFVR, there were no early repayment charges, for example – so he could have re-mortgaged elsewhere or asked UCB about any fixed or tracker rates it was offering without having to pay an early repayment charge. In practice, I don't think Mr C would have been able to move elsewhere, or take new interest rates with UCB, because his mortgages were in arrears from October 2010 onwards – but that wouldn't have been something either party could have predicted would be the case when he took the mortgages out.

Mr C also complains that UCB didn't reduce the LIFVR or IFVR following the reductions to the Bank of England base rate at the start of the coronavirus pandemic in 2020. UCB has explained that it did reduce the interest rates on its residential mortgages, but not its buy to let mortgages. That's because its costs – and therefore the interest rates it charges – aren't directly linked to base rate. Around this time, because of the impact of the pandemic, its own costs were impacted in such a way that it wasn't able to pass the base rate reductions on to all customers, so it prioritised those on residential rather than buy to let mortgages.

I don’t think that was unreasonable. As I’ve explained, there’s nothing in either the terms and conditions or the mortgage offers that links Mr C’s mortgages to base rate. The terms and conditions give UCB the right to change the interest rate – but only in certain circumstances – but they don’t require it to do so. I don’t therefore think that UCB treated Mr C unfairly by not reducing the LIFVR and IFVR when base rate reduced in March 2020.

Finally, I turn to the impact of the mistakes UCB made at the end of Mr C’s payment deferrals in October 2020. It accepts it ought to have ensured that the deferrals were recorded on its systems so that the missed payments were not treated as increasing the existing arrears – and it should not therefore have sent him the arrears letters it did while he was on the deferral.

UCB has apologised to Mr C for this. It has paid him £250 compensation. And it has amended his credit files so that they reflect what should have happened – that his mortgages were on a payment deferral and the existing arrears were not increasing. I’m satisfied that’s a fair and reasonable way to put things right. It ensures that he is not in a worse position than he would have been had it handled the deferrals correctly, and fairly compensates him for the impact and upset of receiving incorrect arrears letters and having to contact UCB to get things put right.

My final decision

For the reasons I’ve given, I don’t uphold this complaint because I’m satisfied UCB Home Loans Corporation Ltd has already made a fair and reasonable offer to resolve things.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 6 October 2023.
Simon Pugh
Ombudsman