

## **The complaint**

Ms G complains about the interest she's been charged on her mortgage with UCB Home Loans Corporation Ltd. In particular, she says the interest rate is unfairly high and UCB has never offered her a new fixed rate.

## **What happened**

Ms G has a mortgage with UCB, taken out in 2004. She had an initial tracker rate which ran for two years, and in 2006 she took another two year tracker rate, set at 0.49% above the Bank of England base rate until 2008. The 2006 rate switch offer said that from 2008 Ms G's mortgage would revert to UCB's Loyalty Flexible Variable Rate (LFVR)

Between 2008 and 2020, Ms G was on the LFVR. In March 2020, Ms G took a new fixed rate on her mortgage.

Ms G complained. She said she had never been offered a new fixed interest rate before March 2020. She said she had asked about a new rate many times over the years, but had been told there was nothing UCB could offer her. She also complained that the interest rate she had been charged was unfairly high and didn't reflect the Bank of England base rate.

UCB said it wrote to Ms G in 2006 reminding her that her interest rate was coming to an end, and she got in touch to arrange a new one. It wrote again in 2008, and this time Ms G didn't apply for a new rate until 2020. It said it was up to Ms G to apply for a new rate if she wanted one. It said that it had charged interest fairly, and the LFVR wasn't linked to the Bank of England base rate. It said Ms G could have applied for a new rate at any time between 2008 and 2020. And it said Ms G's complaint was out of time.

Our investigator agreed that part of Ms G's complaint had been made out of time. But she said we could consider the fairness of the interest rate charged, and whether UCB should fairly have offered her a new interest rate, from April 2014 onwards. That's six years before Ms G first made this complaint.

Ms G said she had contacted UCB many times since April 2014 to ask for a new rate, but had repeatedly been told there was nothing available. But our investigator wasn't persuaded that Ms G had asked for a new rate before 2020 – and said that there were times when she wouldn't have been eligible for a new interest rate. She also didn't think UCB had charged Ms G unfairly while she was on the LFVR. Ms G didn't agree and asked for an ombudsman to make a final 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.

Although both parties accepted what the investigator said about this, I'll start by saying that I agree that I can only consider the fairness of interest charged from April 2014 onwards. That's because we can only consider a complaint about things that happened within six

years of it first being made – unless Ms G complained within three years of when she knew or ought reasonably to have known of cause for complaint, or unless there are exceptional circumstances that explain why she didn't complain in time. We can also consider a complaint brought of time if the firm complained about consents, but UCB hasn't consented in this case – as it's entitled to do.

I'm satisfied that Ms G ought reasonably to have known of cause for complaint about the interest she was charged around the time she was charged it, and would have known that the rate was not changing in line with the Bank of England base rate. She also ought reasonably to have known that she was on the LFVR not a preferential rate and that UCB hadn't made one available to her after the end of her previous rate. And I've not seen evidence of any exceptional circumstances that prevented her complaining before she did.

For those reasons, I will only consider the fairness of the interest Ms G was charged from April 2014 onwards. But in considering that, I will need to take into account changes to the LFVR before that date to the extent that they impacted on the fairness of the LFVR charged after that date – as they are part of all the circumstances of the complaint.

I've looked carefully at the LFVR – including historic changes, since Ms G's mortgage was taken out. That's because the fairness of the LFVR since April 2014 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 LFVR 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 relevant law, including the Unfair Terms in Consumer Contracts Regulations 1999.

Having done so, I don't think UCB varied the LFVR in a way it wasn't permitted to do. It was varied for reasons allowed under the mortgage conditions, and where it 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 LFVR fell – but not to the same extent as base rate – between 2007 and 2009, as well as when it was increased in 2010.

Nothing in the mortgage terms and conditions, or Ms G's mortgage offer, says that the LFVR that would apply after the end of the tracker rate in 2008 was linked to base rate, or that it would have to change at the same time or to the same extent as base rate. In changing the LFVR, UCB acted within the terms and conditions. I'm therefore satisfied that the level of the LFVR applicable from April 2014, and the changes made to it thereafter, were fair and reasonable in all the circumstances.

I have also borne in mind that while Ms G's mortgage was subject to the LFVR, there were no early repayment charges, for example – so she 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.

Ms G said she did ask UCB about making changes to her interest rate. She says she asked many times, but was always told – until 2020 – that no interest rate was available to her.

I've considered what Ms G says about this. And I've also considered UCB's records. I can't consider anything that happened before April 2014. Since then, there were a few occasions where UCB recorded contact with Ms G in 2014, 2015 and 2016 – its notes record discussions about making payments (Ms G was receiving support for mortgage interest at the time, and had to pay the remainder by standing order as UCB couldn't take direct debits for part of a monthly payment). But there's nothing recorded about a discussion about

interest rates.

From 2016 to 2020, UCB has no record of contact from Ms G. And then in 2020 she does ask for – and is given – a new interest rate.

Ms G told our investigator that she asked UCB for a new interest rate in 2014. There's no record in UCB's notes of that request. I appreciate Ms G remembers making it – but that was many years ago and memory can be unreliable. I bear in mind that at no stage has UCB stopped offering rates to existing customers. And while Ms G has been in arrears – to a very minor extent – from time to time, it doesn't appear that was enough to make her ineligible for a new rate.

Around this time, Ms G was asking UCB about letting out the property. It said it could consider a request for consent to let, but if Ms G wanted to formally switch to a buy to let mortgage, she'd need to apply to another lender (such as UCB's sister company, The Mortgage Works) because UCB no longer offered new lending.

It's possible Ms G is mis-remembering this conversation – which was some years before her complaint – and now recalls (genuinely, but mistakenly) that it was about the interest rate on her existing mortgage rather than changing it to another mortgage. It's also possible that the passage of time has caused her to mis-remember what happened for another reason.

Ms G has said she asked UCB about rates on other occasions, but she hasn't been able to give us specific details about those conversations.

Because memory is unreliable, and because the conversation Ms G recalls was so long ago, I have to place considerable weight on the documentary evidence of the time. UCB's notes don't record that Ms G asked about an interest rate. If she had asked, given that UCB had them available and she was eligible for one, I can't see why it would have withheld one from her.

There's no requirement for UCB – or any lender – to contact an existing customer to invite them to apply for a new rate. If the borrower wants to make a change to their mortgage, it's up to them to apply. There are good reasons why a lender shouldn't just impose a new rate on an existing mortgage. Not all customers want a new rate – they may be thinking of selling, or switching to buy to let, or want to be able to make new payments. And sometimes customers just overlook the need to apply. UCB knew that Ms G knew how to ask for a new rate if she wanted to do so – because she had done so before, in 2006, and because it reminded her on her annual statements.

I've taken into account what Ms G has said, and her recollections. But even so, I'm not persuaded that I can safely find that Ms G asked UCB for a new rate and was turned down between April 2014 and April 2020. In the absence of such a request it wouldn't be appropriate for UCB to impose a new rate on her mortgage, and there was no obligation for it to remind her that she needed to apply. In all the circumstances, I don't think it was unfair that Ms G's mortgage remained on the LFVR between 2006 and 2020. As I've already found that there was nothing unfair about what she was charged on the LFVR, I don't therefore uphold this complaint.

### **My final decision**

For the reasons I've given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 5 October 2023.

Simon Pugh  
**Ombudsman**