

The complaint

Mr B has complained about the interest rate on a mortgage he held with UCB Home Loans Corporation Ltd. Mr B says the Loyalty Flexible Variable Rate (LFVR) of interest charged by UCB failed to track Bank of England Base Rate (BOEBR) and is therefore in breach of the Unfair Terms in Consumer Contracts Regulations (UTCCRs). To settle the complaint Mr B wants UCB to refund interest he says has been overcharged.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, and in the investigator's letter dated 28 July 2023. All parties have a copy of that letter, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr B being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision.

Our investigator explained to Mr B that we could only consider his complaint in relation to interest charged after 12 April 2015 – which is six years before the complaint was first raised with UCB. However, the investigator was satisfied that UCB had not acted unfairly in its application of the LFVR to Mr B's mortgage.

Mr B disagreed and asked for an ombudsman to review the complaint.

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.

The mortgage was taken out in 2005, initially on a two-year fixed interest rate. In May 2007 Mr B took out another two-year fixed interest rate. On 1 June 2009 the mortgage reverted to UCB's LFVR. There is nothing in either the original mortgage offer or the product switch offer that says LFVR is to be set at tracker rate at a margin above BOEBR.

The mortgage was redeemed on 20 November 2018. This decision covers the period from 12 April 2015 – six years before the complaint was first raised – through to the date of redemption, 20 November 2018.

I note the advisers who were initially representing Mr B in this complaint suggested that Mr B had not read the mortgage documentation and that, as a consumer, Mr B would not have been able *"to discern the meaning of a key term like the interest rate"*. However, given that Mr B arranged the original mortgage himself through his own mortgage broking business, I think that is unlikely he would not have read the documentation or that he would not have understood *"the meaning of a key term like the interest rate"*.

The relevant part of the mortgage terms and conditions relating to interest rate variations states:

5. CHANGES IN INTEREST RATE

5.1 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.

5.2 We will only change the interest rate for one or more of the following reasons:

- (i) to reflect changes in general interest rates, including the interest rates or terms on which similar accounts are offered by other providers of financial services;*
- (ii) to reflect any changes or anticipated changes in the law, regulations or codes of practice or to respond to a decision by a court, ombudsman or regulator;*
- (iii) to reflect changes to our costs, including administrative costs, costs involved in providing services or facilities or changes in the costs to us of borrowing funds;*
- (iv) to reflect a change in the way the property is used or occupied; or*
- (v) to reflect a change in the credit risk relating to the loan.*

5.3 If we increase the interest rate applicable to your mortgage, you can pay off the debt within three months of the rate change notice without the increase taking effect but subject to payment of any charge that may be payable under the mortgage offer, such as early repayment charges. However, to avoid the increase taking effect, you must tell us in writing of your intention to pay off the debt within one month of the rate change notice.

Between 12 April 2015 until redemption on 20 November 2018 the mortgage was on UCB's LFVR, and had been since 1 June 2009.

UCB has provided the Financial Ombudsman Service with detailed information about the reasons why it varied its LFVR 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.

One of the considerations that I am required to take into account is relevant law. I consider that the application of the UTCCRs to the relevant terms in this case falls into that category of relevant law. The way the UTCCRs apply to the relevant terms of Mr B's mortgage contract is ultimately a matter for the courts. But they are a relevant consideration I must take into account when determining what is fair and reasonable in all of the circumstances of this case.

The crux of this is whether any of the terms, contrary to the requirements of good faith, cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. As part of this, relevant considerations are:

- the extent to which the terms are sufficiently clear and transparent;
- the extent to which there were any barriers to Mr B being unable to exit the contract.

At a general level, interest variation clauses such as those that applied to Mr B's mortgage 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 reversionary rate also permits lenders to provide for future changes that justify increases in the rate, and a lender's own funding costs are by nature difficult to foresee.

I accept there is a possibility that a court might conclude that parts of the variation clauses are overly broad or could be more transparent. But I think it is important to be clear that whatever the answer to this question, the central issue I need to decide is whether there has been any unfairness to Mr B from 12 April 2015 onwards.

Our service is required to consider what is fair and reasonable in all the circumstances. That includes, but is not limited to, relevant law. So while I've taken account of the relevant law regarding unfair contract terms, I've also thought more broadly about whether, and the extent to which, the way in which the terms have been used has resulted in unfair treatment for Mr B. So I've considered whether UCB acted fairly overall.

Having done so, I'm satisfied UCB varied the LFVR in line with the mortgage terms and conditions and that UCB exercised those terms fairly. This means that I'm satisfied Mr B was not overcharged interest on the mortgage between 12 April 2015 and 20 November 2018.

When considering whether there was a significant barrier to exit the mortgage it is important to note that there was no ERC applicable to Mr B's mortgage at the point it reverted to the LFVR. So, if UCB had exercised its rights as set by the variation terms, and Mr B was unhappy with that decision, he was free under the contract to re-mortgage to another lender.

Overall I am not persuaded there is any basis to say that the variations UCB made to its LFVR resulted in Mr B being charged an unfairly high rate of interest on the mortgage during the period I can consider. Furthermore the evidence does not lead me to conclude that the interest charged during that period was unfair for any other reason.

My final decision

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 October 2023.

Jan O'Leary
Ombudsman