

The complaint

Mr A complains that Yorkshire Building Society, trading as Chelsea Building Society, has treated him unfairly by repeatedly taking legal action against him in respect of his mortgage. He also complains that the mortgage balance is higher than it should be, because the interest rate didn't reduce in line with Bank of England base rate.

What happened

Mr A remortgaged to Chelsea in 2006. He borrowed £62,000 plus fees over a 20-year term, on a capital and interest repayment basis. The initial interest rate was fixed at 5.59% until June 2008. Interest was then payable at Chelsea's standard variable rate (SVR).

Mr A had some difficulties maintaining the mortgage payments over the years, and arrears built up from 2019 after he became unemployed.

Chelsea took legal action, and in February 2022 there was a Court hearing. The Judge issued a Suspended Possession Order (SPO), requiring Mr A to make the contractual monthly mortgage payment plus £39.34 each month, beginning later that month, in order for Mr A to remain in his property.

A month later, in March 2022, there was another Court hearing. Chelsea had taken further action because Mr A hadn't made the payment required by the February Court Order. He had, however, paid slightly more than the right amount just before the February hearing. So the Judge amended the February SPO so that the first payment needed to be made by 23 March 2022. Mr A made that payment.

On 25 March 2022, Mr A wrote to Chelsea complaining about the interest rate on his mortgage. He thought the rate he had been charged was excessive and that reductions in the Bank of England base rate should have been reflected in his mortgage interest rate. He also later complained that Chelsea was threatening legal action and eviction.

In April 2022, Mr A received notice of eviction. Eviction was scheduled for 19 May 2022. Mr A applied to the Court for the eviction to be cancelled, because he had made the payments required under the amended SPO.

On 16 May 2022, there was another Court hearing. The warrant for possession was set aside, because the Judge agreed that Mr A had made the necessary payments and so Mr A hadn't breached the SPO. The Judge also said that Chelsea should provide Mr A with an up-to-date statement of account and an explanation if any of the arrears figures it had provided were wrong.

Mr A has continued to make payments in line with the SPO. In response to his complaint, Chelsea said the interest rate it had applied to his mortgage was correct, and its SVR isn't a tracker tied to Bank of England base rate. It apologised for having continued with legal action when it shouldn't have done, said it would look at covering any costs Mr A had incurred as a result, and offered him £250 compensation.

Mr A referred his complaint to the Financial Ombudsman Service. Our Investigator said Mr A had complained too late about the interest added to his mortgage more than six years before he complained, so we can't consider all of his complaint. She went on to consider the parts of the complaint which she thought aren't time-barred, and ultimately concluded that Chelsea had made a fair offer to resolve Mr A's complaint.

Mr A asked for a review. He felt strongly that Chelsea had failed him, and he wanted his complaint to be considered in full.

The complaint was referred to me. I found that Mr A's complaint about the interest rate Chelsea charged on his mortgage before 25 March 2016 was time-barred. I said I can consider the interest rate since then, but also bearing in mind earlier rate variations as part of all the circumstances of the complaint. I also said that I can consider Mr A's complaint about Chelsea's treatment of him in respect of the mortgage arrears and legal action. I then issued a provisional decision about the parts of the complaint I can consider.

My provisional decision

I came to a different conclusion to our Investigator, so I issued a provisional decision to give the parties the opportunity to make any further comments or other submissions they wanted me to consider before I made my final decision. My provisional conclusions were as follows:

"I'll deal with Mr A's complaint points in turn, under two broad headings.

The interest rate

Mr A complains that Chelsea has charged too much interest on his mortgage, because the rate it applied was excessive and didn't reflect the level of the Bank of England base rate.

Mr A's mortgage has been subject to Chelsea's SVR since June 2008. The SVR isn't the same as Bank of England base rate, and Chelsea didn't indicate that it would be. The mortgage conditions set out Chelsea's entitlement to change its SVR and the circumstances in which it might do so. Those included to reflect, in a proportionate manner, changes in the Bank of England base rate, to maintain its competitiveness, and to reflect changes in its operating costs.

Since 2006, when Mr A took out this mortgage, Chelsea's SVR has broadly reduced and increased at around the times when Bank of England base rate reduced and increased. In the period prior to 2008, the difference between the base rate and Chelsea's SVR remained constant. In the period between February 2008 and March 2009, the difference between the SVR and base rate increased from 1.99% to 5.29%. This period was a time of significant change in the wider market as a result of the financial crisis. This impacted on the funding costs of businesses and was reflected in changes to a number of lenders' interest rates charged across the market at that time.

Between March 2009 and December 2016, Bank of England base rate remained at 0.5%. Chelsea reduced its SVR on a number of occasions, reducing the difference between its SVR and Bank of England base rate. From that point on, changes to Chelsea's SVR largely mirrored changes to Bank of England base rate.

In 2010, Chelsea merged with Yorkshire Building Society and it now operates as a trading name. Yorkshire has provided this Service with information explaining why Chelsea's SVR has varied as it has, over time. There is limited evidence available going back that far (which is unsurprising), however the evidence that is available indicates that its costs did increase at the relevant times.

I'm satisfied that the SVR had been varied in line with the terms and conditions of the mortgage, for reasons those terms allowed. It's possible that some of the terms might be considered unfair under relevant legislation, but what I ultimately need to decide is whether the changes made to the SVR over time have resulted in any unfairness to Mr A. In all the circumstances, I don't think they have. I don't find that Chelsea has managed its SVR unfairly, or that Mr A has been overcharged interest as a result of the SVR having been set at the level it has.

Chelsea's treatment of Mr A and legal action

Mr A has struggled to maintain the contractual monthly payments to his mortgage for several years, and arrears began to build up from 2019. He has nevertheless been making regular payments and paying what he can. He has said that he had an arrangement in place to pay Chelsea £450 a month from August 2020 onwards, and he was keeping to that agreement.

Chelsea's records, however, say that while Chelsea agreed to accept monthly payments of £450 for a time, that wouldn't be enough to repay the arrears within the remaining mortgage term. Payments at that level only included just over £6 a month towards the arrears. Chelsea also wasn't satisfied that Mr A could afford as much as £450, and wanted to discuss his financial situation with him to try to come to an affordable solution.

I've looked very carefully at what both Mr A and Chelsea have said and provided, and I think Chelsea made clear to Mr A what its concerns were and why it wanted to understand his financial circumstances. It received a completed income and expenditure form from Mr A in November 2021, but no payment arrangement was reached after that, and so it went ahead with legal action. I don't think Chelsea's decision to take this action was unreasonable in the circumstances. The mortgage was in arrears and had been for some time, and no sustainable arrangement had been reached to repay them in a reasonable time.

The first Court hearing was in February 2022, and the resulting SPO required Mr A to make the contractual monthly mortgage payment plus £39.34 each month. But the Judge didn't take account of a £500 payment Mr A had already made that month, so there was another hearing in March 2022, as a result of which the first payment due under the SPO was amended from February 2022 to 23 March 2022.

Mr A paid in time but was nevertheless sent an eviction notice and had to go back to Court again in May 2022 to have the warrant set aside. Chelsea later explained to Mr A that the eviction notice should never have been issued, and the solicitors who were acting on its behalf hadn't told it about the March 2022 hearing and the outcome. So Chelsea had pressed on with possession action on the basis – wrongly – that Mr A hadn't made the payments required under the February 2022 SPO.

There's no dispute that Chelsea made a mistake. It shouldn't have proceeded with further action following the March 2022 hearing. Chelsea has apologised and offered Mr A £250 by way of compensation. It has also written off all costs involved in issuing the warrant for possession and any legal costs arising from it, and said it will consider any costs Mr A incurred in challenging the eviction notice.

In the circumstances, I don't think Chelsea's offer goes far enough. Its mistake had a serious impact on Mr A. Mr A thought he was going to be evicted from the home where he has lived for many years and, as well as being caused significant and avoidable upset and

worry, he had to go back to Court again to have the eviction cancelled. It's also clear that he has lost any trust that his mortgage lender will treat him fairly in future.

Mr A has said that Chelsea's treatment of him constitutes discrimination, but I don't find anything to support that. I think Chelsea made a mistake and treated him poorly, but I can see no basis on which I might fairly conclude that that was because of any particular protected characteristic of Mr A's.

In all the circumstances, I consider that £750 would be a fair award in recognition of the impact on Mr A of Chelsea's mistake. Chelsea has already offered to consider reimbursing any costs Mr A incurred as a result of having had to challenge the eviction notice. I think reimbursing any such costs is reasonable, and Mr A should provide Chelsea with details of any such costs in order that it can do so."

In response to my provisional decision, Mr A said he still felt he had been treated very badly and unacceptably by Chelsea. He had been paying more than required, yet Chelsea still tried to evict him. He also said he still felt strongly that Chelsea charged him too much interest, and it had added legal costs to his mortgage for action taken in 2021 and 2022.

Chelsea accepted my provisional decision and had nothing further to add.

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 carefully considered Mr A's further comments, and having done so I haven't changed my mind about how this complaint should fairly be resolved.

I recognise that Mr A remains very unhappy about the interest rate Chelsea applied to his mortgage and the way it treated him in taking legal action. He has, however, largely repeated his earlier arguments about that, and so I see no reason to come to a different conclusion to the one set out in my provisional decision.

I explained in my provisional decision why I didn't think Chelsea was unreasonable in taking legal action beginning in late 2021 given the mortgage arrears and payment arrangements. It was entitled to add the resulting costs to Mr A's mortgage. It should not have taken further court action after the March 2022 hearing and it says it has written off all the costs arising from that action. I remain of the view that that's fair, and if there are any such costs which it hasn't already written off or refunded, it should refund them now.

Chelsea made a mistake and treated Mr A very poorly, and I have found that it should compensate Mr A for the impact that had on him. I consider that £750 is a fair and reasonable award in all the circumstances.

My final decision

My final decision is that I uphold this complaint. Yorkshire Building Society, trading as Chelsea Building Society, should pay Mr A £750 compensation. It should also reimburse any costs Mr A incurred as a result of challenging the April 2022 eviction notice, on receipt of relevant invoices or other evidence of costs which he wouldn't otherwise have had to pay, and refund any costs arising from the court action taken following the March 2022 hearing which it has passed on to Mr A and which it has not already refunded.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or

reject my decision before 18 December 2023.

Janet Millington
Ombudsman