

The complaint

Mr E and Mr H complain about the interest, fees and charges that Nottingham Building Society (“NBS”) has applied to their mortgage. The basis of their complaint stems from an audit that was carried out on their mortgage account, which concluded they’d been overcharged.

What happened

In 2008, Mr E and Mr H took out a mortgage with NBS for £102,000. This was on a repayment basis over a 15-year term and interest was initially charged at NBS’ Standard Variable Rate (SVR), which was 7.24% at the time – with part of the mortgage being on a discounted rate of 5.20% for the first seven months.

In 2011, Mr E and Mr H applied to make some changes to their mortgage. This included extending the term of their mortgage and switching to a fixed interest rate of 4.19% until 31 January 2014. At which point the mortgage reverted to the SVR.

In 2016, Mr E and Mr H switched their mortgage from the SVR to a fixed rate of 2.35% until 31 August 2021. This is the rate of interest that applied until the mortgage was redeemed in around August 2017.

On 22 October 2018 a solicitor’s firm (who I’ll refer to as “A”) made a complaint to NBS on behalf of Mr E and Mr H. An audit was carried out which concluded that NBS had not calculated the interest on the mortgage in line with the terms set out in the mortgage offer. It also concluded that fees were added to the mortgage which shouldn’t have been.

NBS asked for the calculations made to understand the reasons why A was alleging the interest on the mortgage was mis-calculated. NBS says this was not received so it didn’t investigate the matter further.

A has since ceased trading. Mr E and Mr H referred the matter to this service in 2019 independent of A. They’ve asked our service to investigate a complaint about miscalculated mortgage payments.

NBS didn’t give its consent for us to consider any of the complaint points relating to events that happened more than six years before the complaint was made. Our investigator looked into things and concluded that we could look into the complaint – but only about what had happened from 22 October 2012 onwards. When considering Mr E and Mr H’s complaint about being overcharged on their mortgage from October 2012 onwards, the investigator didn’t think the complaint should be upheld.

Mr E and Mr H asked for an Ombudsman to consider the matter as they say they have been overcharged for the entire term of the mortgage. An Ombudsman issued a decision setting out whether the case is one our service can consider – and the scope of any investigation.

The Ombudsman decided that:

- Our service only has the power to consider how Mr E and Mr H have been treated, including the interest rate and fees they've been charged on the mortgage, since October 2012.
- In considering the fairness of interest charged from 2012, it will be necessary for us to consider what is fair and reasonable in all the circumstances of the case. This means that we will need to consider all the matters that contribute to and make up the interest charge added to the mortgage each month. And in turn that means considering the fairness of the interest rate used as the basis of the calculation.
- We need to look at the impact of what may or may not have contributed to those charges – including things that happened before that time which influenced the rate charged at that time.
- But in the event that we find something unfair about what happened before October 2012, we can only consider its impact on the interest charged since then – and therefore any redress we would award would only cover interest charged since October 2012.

Mr E and Mr H remained unhappy with the outcome reached on the merits of their complaint. As such the case has now been passed to me to issue a final decision on the part of their complaint that has been made in time.

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.

When considering what is fair and reasonable in all the circumstances of this case, I'm required by DISP 3.6.4R of the Financial Conduct Authority's ("FCA") Handbook to take into account the relevant law, regulations, and good industry practice, when reaching my decision.

Having done all that, I don't think this complaint should be upheld. I realise this will be disappointing for Mr E and Mr H, but I do hope the reasons I have set out below will help them to understand why I have come to this conclusion. I do also thank them for their patience as I know they've been waiting a long time for an answer.

The interest applied to the account

Mr E and Mr H have told us that they believe they've been overcharged interest because of what the audit report showed them. The audit report does not make clear how it's calculated that interest has been overcharged.

I've taken the fact the audit has assumed a reversionary margin of 2.09% (the difference between the Bank of England ("BoE") base rate and NBS' SVR) to mean NBS has varied its SVR unfairly – by not maintaining that margin during the mortgage term. So, it appears the audit suggests NBS's SVR ought to have tracked the BoE base rate with the margin stated.

The starting point here is that there is no general obligation on mortgage lenders for their SVRs to track the BoE base rate, and I'm satisfied that this isn't the way NBS' SVR operated.

More generally, I don't think the concept of an SVR, or a variable reversion rate is a fundamentally unfair one. It's a common feature of the UK mortgage lending market. A reversion rate allows a lender to attract new customers with a preferential initial rate, while building in the flexibility a variable rate allows to manage its longer-term costs. Many borrowers treat the reversion point as an opportunity to shop around for another preferential rate – either with their existing lender or moving to another lender.

I've considered whether there were any barriers to Mr E and Mr H exiting the mortgage. There was no ERC applicable to Mr E and Mr H's mortgage whilst they were on the SVR. So, they were free to re-mortgage elsewhere without having to pay a charge to end the existing contract with NBS. Had Mr E and Mr H re-mortgaged elsewhere, they may have incurred some costs to switch to a new lender, but I'm not persuaded this would be considered a significant barrier to exit, as any borrower would incur these costs if they decided to move to a new lender.

I've reviewed the documentation from the point of sale, including the original Mortgage Offer dated September 2008 and the applicable Mortgage Conditions. I've also reviewed the documentation available from the 2011 and 2016 product transfers. Having done so, I haven't seen anything that says NBS would link the SVR to the BoE base rate or that compels it to. Nor is there anything that suggests that the SVR would be a particular margin above or below the BoE base rate.

It follows that I'm not persuaded that there was any requirement for the SVR to track the BoE base rate or maintain any margin between them. That said I've gone on to consider whether NBS has varied its SVR fairly in line with the Mortgage Conditions. And whether it follows that from 22 October 2012 onwards, Mr E and Mr H paid an unfairly high rate of interest.

NBS sets out its ability to vary its SVR in its 'Mortgages – General Conditions'. *This says the following, under:*

“2. Changing your variable rate of interest”:

- 2.3 *Except where your variable rate is the tracker mortgage rate or tracker variable rate, we can change your variable rate at any time if we reasonably believe that we need to make the change for one or more of the following reasons:*
- a because there has been or is expected to be a change in the Bank of England's rate (called its “repo” rate) or in interest rates offered by our competitors in the mortgage market.*
 - b to respond to changes to costs associated with providing the relevant product or service, including our administrative costs.*
 - c to maintain our financial stability for the benefit of all our members, having proper regard to our status as a mutual society, or to comply with regulatory requirements.*
 - d to enable us to maintain the competitiveness of interest rates paid to our investors, while having proper regard to the interests of our borrowing members, in the interests of our business as a whole.*
 - e to enable us to harmonise, in a reasonable manner, the interest rates being paid by our borrowers following any acquisition or transfer of mortgages or any takeover of, or merger with, another mortgage provider.*
 - f because of a change in law, a decision by a court, ombudsman, regulator or similar person, or to comply with any code or statement of practice which applies to us.*

If we increase the rate, the amount of the increase will not be greater than we reasonably believe is justified by the reason or reasons for making the change.”

I think the reasons listed in the terms and conditions that NBS may vary the interest rate may be considered broad and open to interpretation. It follows that there is a possible lack of transparency of when a particular term would be engaged.

But even if the terms are considered to be unfair, that wouldn't necessarily mean that there has been unfairness. Under our rules I am required to consider what is fair and reasonable in all the circumstances. That includes, but is not limited to, relevant law – specifically the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR).

So, I've also thought more broadly about whether the way in which the terms have been used has resulted in unfair treatment for Mr E and Mr H in the interest charged to them from 2012. In doing so, I've considered the historic context which may have contributed to the interest rate charges from 2012 onwards and whether NBS had legitimate reasons for varying the rate in the way it did.

When Mr E and Mr H took out their mortgage in late 2008, the margin between the BoE base rate was 2.24%. By 2009, the difference (or margin) between the BoE base rate and NBS' SVR increased to 5.49%. Whilst NBS' SVR did reduce during this period, it didn't fall by the same proportion as the reduction in the BoE base rate.

The changes to the margin largely occurred between 2008 and 2009. This period was a time of significant change in the wider market as a result of the global financial crisis. This impacted on the funding costs of businesses – which are not generally tied to the BoE base rate – and was reflected in changes to a number of lenders' interest rates charged across the market at the time.

NBS has said it thinks it acted fairly and in line with clause 2.3(a) of the general conditions, along with giving consideration to clauses 2.3(c) and 2.3(d). It's explained that as a mutual building society, it is required to balance the needs of its savers and borrowers.

NBS has explained it no longer holds any specific evidence about why it varied the SVR in the way it did during the global financial crisis. I don't think that's unreasonable due to the passage of time that has passed. I have considered the information NBS has been able to provide alongside what I understand about what was happening to the wider market at the time, and I have consulted analysis from other sources such as the BoE and the FCA.

During this period, there was a significant change in the wider lending market as a result of the global financial crisis. This impacted on the funding costs of businesses, which was reflected in changes to a number of lenders' interest rates charged across the market at that time. Considering this, I don't think NBS has acted unreasonably by not passing on all of the reductions in the BoE base rate to its SVR.

On balance, I'm satisfied NBS acted reasonably and in line with the terms and conditions of the mortgage in varying the SVR the way it did. Whilst the reductions during this period didn't mirror reductions to the base rate, I don't think the terms or general requirements of fairness obliged NBS to make the reductions in that particular way. And I don't think, taking into account all the circumstances in the round, that these changes resulted in unfair treatment for Mr E and Mr H or that NBS acted in a way other than to protect its legitimate interests.

In 2015, NBS reduced its SVR outside of any BoE base rate changes and from then – until 2017 when the mortgage was redeemed, a margin of 5.24% was maintained, with any changes to the SVR during that time being made soon after changes were made to the BoE

base rate and by the same amount. These changes were permitted under the terms of the contract, and I consider they've been made fairly.

Considering everything, I'm not satisfied that NBS has acted unfairly or unreasonably in the circumstances.

The fees and charges applied to the account

I've explained that our service can only consider the fees and charges applied to the mortgage from 22 October 2012 onwards. So, any of the fees mentioned in the audit that pre-date this, fall outside the remit of this decision.

The audit states that some fees applied during this period (Unpaid Direct Debit charge, Financial Counselling and the charge for a Solicitors Letter) have been overcharged as they are disproportionate to the actual cost to the lender of applying them. The audit also said the regulator had fined some lenders for charging excessive fees in 2010. The audit also goes on to say that a charge in relation to 'contact about payments' is unwarranted on the basis that it's unclear what specifically that charge relates to.

I've considered the fees that have been applied to Mr E and Mr H's mortgage over the term, and I've not found them to be excessive or disproportionate. NBS was not one of the lenders fined by the FCA 2010, and so the regulator's findings highlighted in the audit are not relevant to the charges applied to Mr E and Mr H's mortgage.

I'm satisfied the fees and charges that NBS has applied have been set out clearly in its tariff of charges documents, and also on Mr E and Mr H's mortgage statements. NBS' charges are not out of line with those charged by other similar lenders in the market and based on the evidence I've seen I'm not persuaded they're disproportionate.

Summary

I appreciate the audit findings have led Mr E and Mr H to believe they should expect a large refund from NBS. I know this will come as a disappointment to Mr E and Mr H, but I haven't seen anything to suggest NBS has overcharged them in the way the audit claims. As a result, I don't uphold this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mr H to accept or reject my decision before 1 August 2023.

Arazu Eid
Ombudsman