DRN-4494352

Financial Ombudsman Service

The complaint

Mr K has complained about a mortgage he held with The Royal Bank of Scotland Plc ("RBS"). He's unhappy about the rate of interest he was charged.

What happened

This mortgage was taken out in August 2007. The mortgage offer dated 6 July 2007 indicates Mr K was borrowing just under £80,000 (including fees) over a term of 25 years on a capital repayment basis. The product was a fixed rate of 5.95% until 30 June 2009, after which the mortgage would revert to RBS's standard variable rate ("SVR") which was 7.69% at the time of the mortgage offer.

On 1 July 2009 the mortgage reverted to the SVR in line with the July 2007 mortgage offer, and it remained on the SVR until the property was sold in possession in 2017.

In June 2020 Mr K complained to RBS about the interest rate he'd been charged. He said, in summary, the SVR wasn't clearly explained in the mortgage offer, he believed the interest rate would vary in line with Bank of England base rate ("base rate") and he was treated unfairly as he was charged an unreasonably high interest rate.

One of my Ombudsman colleagues issued a decision about our jurisdiction in April 2022, in which she said:

> *"Considering everything, for the reasons I've explained, I decide that we can consider this complaint – but only in respect of interest charged from 29 June 2014 until The Royal Bank of Scotland Plc stopped charging interest in February 2017."*

One of our Investigators then set out his thoughts on that part of the complaint. He said, in summary:

- He didn't think the terms of Mr K's mortgage contract said it would track base rate.
- In 2009 the SVR decreased, but not by as much as base rate, meaning the difference between the rates went from 2.19 percentage points to 3.50 percentage points. But between March 2009 and February 2017 the SVR changed by the same amount as base rate.
- During the financial crisis there was significant change in the wider market, and this impacted on RBS's funding costs.
- The terms didn't say RBS was obliged to mirror base rate changes.
- He was satisfied the SVR varied in line with the terms of the account.

Overall he didn't uphold the complaint.

Mr K didn't agree with our Investigator's findings and so the case was passed to me to decide.

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 Handbook to take into account the relevant law, regulations, and good industry practice, when reaching my decision.

I’ve given careful consideration to all the submissions made by both parties, but I won’t address each and every point that has been raised. I’ll focus on the matters that I consider most relevant to how I’ve reached a fair outcome in keeping with the informal nature of our service.

Having done all that, I don’t think this complaint should be upheld. I realise this will be disappointing for Mr K. But I hope the reasons I have set out below will help him to understand why I have come to this conclusion.

Since Mr K took out his mortgage, base rate and the SVR have operated as follows:

Effective date	Base rate	SVR	Difference
01/07/2007	5.50%	7.69%	2.19%
05/07/2007	5.75%		
01/08/2007		7.94%	2.19%
06/12/2007	5.50%		
01/01/2008		7.69%	2.19%
07/02/2008	5.25%		
01/03/2008		7.44%	2.19%
10/04/2008	5%		
01/05/2008		7.19%	2.19%
08/10/2008	4.50%		
01/11/2008		6.69%	2.19%
06/11/2008	3%		
01/12/2008		5.19%	2.19%
08/01/2009	1.50%		
01/02/2009		4%	2.5%
05/03/2009	0.50%		

05/03/2009		4%	3.5%
04/08/2016	0.25%		
01/10/2016		3.75%	3.5%

The mortgage terms and conditions set out the circumstances in which RBS can vary the SVR.

Condition 9.1 says:

"9.1 The Interest Rate may be varied at any time by the Bank (whether before or after Release of Loan) except during a period in which the Offer of Loan states that the rate of interest is fixed, or tracks a base rate, or during a period when interest on a capped rate loan is being charged at the maximum rate of interest permitted as shown in the Offer of Loan, for one or more of the following reasons:-

(a) to reflect a change which has occurred, or which the Bank reasonably expects to occur, in bank base rates or interest rates generally;

(b) to reflect a change which has occurred, or which the Bank reasonably expects to occur, in the cost of funds the Bank uses for the Loan;

(c) to reflect a change which has occurred, or which the Bank reasonably expects to occur, in the interest rates charged by other lenders;

(d) to reflect a change in the law or decision by a court;

(e) to reflect a decision or recommendation by an ombudsman, regulator or similar body."

The 2007 mortgage offer sets out that after the fixed rate expired in 2009, the mortgage would revert to the SVR, and the terms and conditions set out that the SVR could be varied in line with the terms of the mortgage. I haven't seen any evidence that persuades me that RBS was obligated, contractually or otherwise, to have its SVR track the base rate.

There was also no obligation on RBS to offer a new preferential rate when an old one expires – or at any other time – in the rules of mortgage regulation. And nothing in Mr K's mortgage offer says that RBS would move him onto a new rate either. To that extent, the mortgage has operated as it should. If any existing customer – including Mr K - had wanted a new preferential interest rate they needed to contact RBS to request that.

Taking all that into account, I don't think it was unfair that Mr K was on RBS's SVR.

That said, our service is required to consider what is fair and reasonable in all the circumstances. That includes, thinking more broadly about whether the way, and the extent to which, the terms have been used has resulted in unfair treatment for Mr K. I think that is the ultimate question I need to answer in deciding whether to uphold this case.

In answering this question, I have explained that although I'm only able to consider the fairness of interest charged to Mr K's mortgage between 29 June 2014 and 8 February 2017, it's necessary for me to consider historic changes to RBS's SVR.

I've considered all the available evidence and all of the changes RBS made to the SVR since Mr K took his mortgage. Having done so, I am not persuaded that anything RBS has done in varying the rate has led to Mr K being treated unfairly. I have set out why below.

For reasons of commercial confidentiality, I haven't set out in detail the evidence RBS has provided in full. Nor has our service provided copies of it to Mr K.

Our rules allow me to accept information in confidence, so that only a description of it is disclosed, where I consider it appropriate to do so. In this case, I do consider it appropriate to accept the information and evidence RBS has provided in confidence, subject to the summary of it I have set out in this decision.

The 2007 mortgage offer makes clear the SVR is a variable rate. There's no suggestion in either the offer or the terms and conditions that it's directly linked to or tracks base rate.

When Mr K took out his fixed rate in 2007, the SVR was 7.94% (it had increased from the 7.69% shown in the mortgage offer). Whilst he was on his fixed rate, RBS had reduced its SVR so that by the time he began to pay the SVR it was 4.00%. The SVR then decreased to 3.75% in October 2016 and then didn't change again before RBS stopped charging interest when the property was sold in possession with a shortfall.

As I say, there's nothing that links the SVR to base rate, or says that the SVR must be changed when base rate changes. Nor is there anything in the terms and conditions that obliges RBS to change the SVR at any time – the terms allow RBS to make changes in certain limited circumstances, but don't require it to do so.

Between August 2007 (when Mr K took out his mortgage) and February 2017 when RBS stopped charging interest on the debt, RBS's SVR had mirrored all changes to base rate bar two. And while the SVR still reduced during this time, it didn't reduce by the same proportion as the reduction in the base rate. Therefore, the difference between base rate and the SVR increased from 2.19% to 3.5%.

Despite this increase in 'margin,' the SVR Mr K was paying when his mortgage reverted in 2009 was still lower than what it was when he agreed to the mortgage in 2007 and it was in line, if not lower, than the market average for the time.

I've already set out that this wasn't a tracker mortgage, so RBS was not contractually obligated to track base rate. Nor is it the case that Mr K's mortgage had a 'cap' preventing RBS's SVR from increasing beyond a certain 'margin' above base rate. So, there was nothing in the contract that expressly prohibited RBS from setting the SVR at a level whereby the margin between the SVR and base rate would change. But that doesn't mean that RBS could set the SVR at whatever level it chose. The term enabling RBS to vary the SVR itself has to be fair (to prevent businesses taking advantage of customers), and RBS had to ensure that in varying the SVR it only did so for one of the reasons set out in the contract.

To evidence its decisions at the time and reliance on the above terms, RBS has told us that despite a reduction in base rate, its total group funding costs increased considerably over the years 2008-2009. As such, it has said it was not able to pass on the full reductions in base rate to its SVR customers.

At this time, the mortgage market was going through a period of significant change as a result of the global financial crisis. This impacted the funding costs of businesses, including RBS, and was reflected in changes to a number of lenders' interest rates charged across the market at the time. This was clear at the time and has been the subject of analysis by both the Bank of England and the Financial Conduct Authority since. Whilst base rate did reduce significantly during this period, the cost to lenders of funding their businesses changed, as did their prudential requirements. These were made up of several factors that are not directly linked to base rate. With this in mind, and in conjunction with the information RBS has been able to provide, I am satisfied it had legitimate reasons to vary its SVR in the way that it did.

Whilst the evidence provided is limited due to the passage of time, I have not seen any evidence to suggest the changes RBS made were arbitrary, excessive, or unfair. Rather, the evidence I’ve seen satisfies me that RBS acted in line with its terms and conditions to protect its legitimate interests while balancing its obligation to treat Mr K fairly. And I’m further satisfied that, albeit limited, the information RBS has been able to provide for this period is corroborated by evidence of wider market conditions at the time.

Overall, I’m satisfied that RBS has shown that it was entitled to rely on the terms and conditions to make the changes to the SVR it did make, and that there was no obligation on it to make changes to the SVR at other times. Taking that into account, I don’t think there’s evidence either that RBS relied on changes it was not entitled to make in setting the SVR charged at the start of the period I can consider, or that it acted unfairly in making further changes to the SVR during that period.

That being the case, I don’t think there is any basis to say Mr K was charged an unfairly high rate of interest on his mortgage during the period I can consider, and I’ve seen no evidence to say that the interest he was charged during that period was unfair for any other reason.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K to accept or reject my decision before 8 January 2024.

Julia Meadows
Ombudsman