

## **The complaint**

Mr N complains that he hasn't been given the interest rate he agreed to as part of his product switch with Aldermore Bank Plc. He's also unhappy with delays to the product switch and that he's received conflicting information about the new mortgage terms.

## **What happened**

Mr N had an existing commercial mortgage with Aldermore. In November 2021 he contacted Aldermore asking for a more competitive interest rate. Aldermore offered Mr N a bespoke product described as "CM variable 3.75%" subject to the formal approval of its credit team.

Through the course of further emails, Aldermore shared information about the product including the term of the mortgage and applicable early repayment charges (ERC). Mr N confirmed he wanted to progress with this in December 2021.

When Mr N asked for documentation such as the keys facts and mortgage illustration, there was some delay in Aldermore providing this. And when it did, the figures weren't accurate – Aldermore says this was due to the bespoke nature of the product and that any automated letters would be affected.

In January 2022 Aldermore informed Mr N that the property would need to be re-valued before it could formally approve the product switch. Arranging this took some time, with Mr N agreeing to the surveyor in early March 2022 and the valuation review taking place in April 2022. The mortgage product switch finally took place on 3 May 2022.

Mr N complained that he was sent inaccurate information, there were delays to the product switch, and about the interest rate applied. He says the product switch should've taken place in January 2022 and the applicable interest rate in May 2022 (when the switch did occur) should have been 3.75%.

Aldermore accepted there had been issues with it providing accurate documentation and letters in a timely manner and offered Mr N £600 compensation in total. But it said Mr N had been provided with the product he agreed to.

When Mr N complained to our service the investigator didn't uphold the complaint. In summary they thought Mr N had been provided with the product he agreed to and that the compensation Aldermore had offered was fair in the circumstances.

Mr N didn't agree, he said the product he agreed to had an interest rate of 3.75% and that he was told this already included the Bank of England base rate ("the base rate"), but the interest rate applied to his mortgage in May 2022 was around 5%. He added that Aldermore has continued to provide him with inaccurate information which is stressful.

The matter was passed to me for a decision by an ombudsman, and I asked for some further information. Aldermore provided a breakdown of what interest rate it had applied to Mr N's account - this was a margin of 3.75% above the base rate.

Mr N also confirmed that he had understood the interest rate was variable and that it could vary with the base rate, but that he'd understood it would start at 3.75%.

Mr N has since added that he's received a letter saying an ERC is applicable to his mortgage product until May 2027 which he says isn't what was agreed. In March 2023 Aldermore offered Mr N a further £50 compensation for this error and confirmed he has an ERC applicable until 2 May 2025. Again, it explained its automated letters are incorrect because Mr N has a bespoke product which doesn't exist on its system.

I issued my provisional decision on 21 April 2023 explaining why I intended to uphold the complaint. In summary I said that this was essentially a bespoke unregulated commercial mortgage, the terms of which were negotiated by email, and therefore what was agreed in these emails formed the basis of the mortgage contract. I concluded that while both parties may have intended something different, I thought the parties had agreed to a margin of 3.65% above the base rate. This accounted for the base rate of 0.1% at the time being included in the interest rate quoted. I also explained why I thought the compensation offered to Mr N in relation to customer service was fair in the circumstances.

Aldermore accepted my provisional findings. However, Mr N didn't agree - he said he still thought the interest rate on his account in May 2022 should have been 3.75% including the base rate because Aldermore hadn't informed him at any point that the interest rate would be different before the product switch. He also provided new evidence - two emails, one from 10 February 2022 where Aldermore wrote *"the rate is 3.75%, which includes the BBR"* and on 19 July 2022 where Aldermore confirmed the applicable interest rate was 3.75% in May 2022.

Upon reviewing this new evidence, I wrote to both parties again explaining that this changed my findings. I explained to Aldermore that its email on 10 February 2022 re-confirmed the applicable interest rate was *"3.75%, which includes the BBR"*. And that as the base rate had changed twice since the negotiations in November 2021, this suggested 3.75% was the applicable interest rate rather than there being a margin. I asked both parties to comment on my amended intended outcome that Aldermore should backdate Mr N's interest rate to 3.75% from 3 May 2022. I also said that it was reasonable for Aldermore to have gone on to vary the interest rate to reflect changes to the base rate.

Aldermore didn't respond by the deadline provided. Mr N accepted how I intended to put matters right in relation to his mortgage account, but he asked that I increase the compensation on the basis that Aldermore had continued to provide poor customer service by sending him inaccurate information and not updating his communication details.

### **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.

Having done so, I'm upholding this complaint. I'll explain why.

Aldermore has explained that the mortgage terms it offered to Mr N were bespoke. This means that the product doesn't exist on its systems – it had to be entered manually to complete on the mortgage.

This is an unregulated commercial mortgage – the terms of which were negotiated between Mr N and Aldermore during their emails in November and December 2021. With further emails in February 2022 confirming the applicable interest rate, arrangement fee and maximum mortgage term. There's clearly been some confusion about what both parties

thought the terms of the mortgage would be. So, I've looked at these emails to determine what was agreed.

#### The terms of the mortgage product

Mr N has explained how he thought the product would operate – he expected the mortgage interest rate to be 3.75% including the base rate when it began (in May 2022). He's had a variable rate product before and understood the interest rate could change.

Aldermore says the product was a variable rate product 3.75% and appears to have applied this as a margin above the base rate. I.e. when the base rate was 0.75% on 3 May 2022, it applied an interest rate of 4.5%. When the base rate increased by 0.25% on 5 May 2022, Aldermore increased the interest rate on Mr N's mortgage (with notice) by the same amount, and so on.

I think the emails between Mr N and Aldermore in November / December 2021 and February 2022 are material here as they show them negotiating the terms of the mortgage.

Below is a summary of their emails:

- 18 November 2021: Mr N informed Aldermore that he'd received two mortgage offers with an interest rate of 3.5% above the base rate. Mr N says he could make capital repayments if Aldermore could match this. On the same day Aldermore acknowledged this margin of 3.5% and says it's unlikely it will be able to match it. It also says it will establish what "...the most competitive margin we could offer you..." would be.
- 23 November 2021: Aldermore described the lowest interest rate it could offer as an *"Initial rate (gross) 3.75% CM Variable"* and said beneath this that the *"Bank of England Base rate 0.15%"*.
- Mr N asks about whether the interest rate(s) include the base rate and on 25 November 2021 Aldermore says: *"The CM Variable rate includes BBR, the other fixed rates do not"*.
- They then discuss the ERC and on 26 November 2021 Aldermore says *"Early Redemption Charges – 3.00% in Year 1, 2.50% in Year 2 and 1% in Year 3. As usual, up to 10% of the outstanding balance can be repaid in any 12-month period without incurring an early redemption charge."*
- 6 December 2021: Aldermore confirmed the Arrangement fee is 1.25%.
- 8 December 2021: Mr N confirmed he wanted to proceed with the CM Variable 3.75% product for a term of 15 years.
- 10 February 2022: Aldermore provided Mr N with an illustration (dated 9 February 2022), however the content of the email contradicts this document. The illustration says (among other things) that the interest rate is *"Variable rate of 3.75% over BBR of 0.5%"* with an arrangement fee of 1.5%. Whereas the body of the email says that the *"rate is 3.75%, which includes the BBR"* and *"the arrangement fee is 1.25%, not 1.5%"*.
- 14 February 2022: Aldermore re-confirmed the arrangement fee would be 1.25% and that the monthly payment would be different to the illustration document. It was explained that due to the nature of the bespoke offer the illustration document

couldn't be amended.

I've needed to look at this situation and the emails as a whole to take a view on what's been agreed as it appears Mr N and Aldermore were talking at cross purposes.

In these emails, Mr N and Aldermore are initially discussing base rate tracker products with Mr N's comparators being tracker products with a margin.

Aldermore has said in the emails that the interest rate includes the BOE base rate and refers to the interest rate as 'gross', so I think it would be fair to conclude the interest rate quoted of 3.75% included the base rate on that day, rather than being in addition to it.

I initially thought this ought to be taken in the context of discussing the margin, but now Mr N has provided the emails from February 2022 I've reached a different conclusion. I can see in its email on 10 February 2022, Aldermore confirmed that the interest rate was *still* 3.75% despite there being two base rate increases since the negotiation in November 2021 (on 16 December 2021 and 3 February 2022). Aldermore also continued to use the language that the base rate was "*included*" and specifically says *that "nothing has changed since we previously discussed terms with you"*. If a margin were agreed, then this margin would have changed when the base rate did, as the rate Aldermore quoted remained the same. But it's clear neither party thinks the agreement has changed.

So, I don't think a margin is agreed, rather I've concluded that Mr N and Aldermore have agreed a variable interest rate which starts at 3.75%. And as Aldermore didn't give Mr N any notice before the product switch that its variable interest rate had changed, I think it should have applied a rate of 3.75% from 3 May 2022.

In relation to the illustration document dated 9 February 2022 – I don't think it's appropriate to give weight to how the interest rate is described given that Aldermore has confirmed the document has inaccuracies due to it being unable to amend the illustration to reflect the bespoke product its offering Mr N. So, I've given more weight to how Aldermore has described the product in its emails.

I understand this may not have been what Aldermore intended to offer but given that this was a negotiation rather than sharing the details of an existing product, I think what it wrote to Mr N forms the basis of the mortgage contract. And therefore, that these are the terms applicable to Mr N's mortgage.

As the product is referred to as a "variable rate", I think there's an implied term that Aldermore can vary the rate. However, I haven't been provided with the applicable terms setting out the circumstances in which Aldermore can do so. To date, Aldermore has only varied the interest rate to reflect changes in the base rate. I think this is a legitimate reason to vary the interest rate as it reflects changes to Aldermore's own underlying costs. Mr N has also accepted he understood the rate could vary with the base rate.

For clarity, I think the terms (explicit and implied) of the contract that have been agreed are as follows:

- A variable rate starting at 3.75% (which can be varied with reasonable notice to reflect legitimate changes to Aldermore's underlying costs).
- A 15-year term with an applicable ERC (for overpayments above 10% of the outstanding balance) until 2 May 2025. As detailed in Aldermore's email dated 26 November 2021.

- An arrangement fee of 1.25%.

Aldermore has sent Mr N several letters with different terms and interest rates on, some of which it accepts are inaccurate and others which it says are correct. As these are post-completion and contested by Mr N, I don't think any of these amount to a change to the agreed terms of the mortgage.

Mr N has added that he recently took out a business loan to help with his finances due to the financial strain the issues with his mortgage have put on him. I haven't seen sufficient evidence to show that Mr N has incurred the additional costs of a loan as a result of the error(s) made by Aldermore so I'm not making an award for this.

#### Customer service and delays

It isn't in dispute that Aldermore has sent inaccurate and conflicting information to Mr N, particularly in its automated letters. I agree this has contributed to the confusion it caused to Mr N in relation to his understanding of what terms were being applied to his mortgage. This has understandably been stressful for him as the interest rate directly affected his monthly payment amounts. This led him to spend additional time and effort corresponding with Aldermore to clarify and contest the terms of his mortgage and to identify what interest rate Aldermore was applying to his mortgage in practice.

Whilst this is a commercial buy to let mortgage, and so the same requirements don't apply in terms of the format of documentation as they would in a regulated residential mortgage, Aldermore still ought to have set out the key terms clearly as it's important for both parties to understand what they're agreeing to.

I don't think Aldermore did enough to make sure the terms of the product were clear or that it responded appropriately when Mr N asked for this to be set out for him. For example, Aldermore could have sent Mr N a more detailed letter setting out the key elements of the mortgage before it began.

Mr N has more recently raised a concern about receiving inaccurate information in relation to when an ERC ceases to be applicable to his mortgage. And I understand Aldermore has offered him a further £50 compensation to apologise for this. As this stems from the same issue – i.e. what the terms of Mr N's mortgage are, and errors in its automated letters due to it being a bespoke product, I think it is something I can consider as part of this complaint. I think this is in the interests of bringing this matter to a close for both parties, this isn't something either party objected to in response to my provisional decision.

Having considered this matter as a whole – in particular, the lack of clear and consistent communication about the terms of Mr N's mortgage, I think the total offer to date of £650 compensation is fair in the circumstances. This recognises the repeated errors and confusion caused as a result of Aldermore's poor communication with Mr N in relation to his mortgage over a sustained period. I understand Mr N has referenced the ongoing nature of the stress this has caused him and that he has underlying health conditions. It isn't our role to penalise businesses, and I think that once Mr N became aware that Aldermore's automated letters would be inaccurate, the impact on him upon receiving these was lower. This doesn't mean I think it was unreasonable of Mr N to still question Aldermore to check what the actual position was, but the redress I'm awarding already reflects the additional costs he's incurred. So, I think £650 is in line with our published award guidelines.

Mr N has also complained of delays to his product switch, he says this meant he had a higher interest rate and therefore higher repayments between January and May 2022 as a result. Having reviewed this point, I don't think Aldermore need to backdate the product

switch to January 2022. This is because Aldermore was entitled to ask for the property to be re-valued. The majority of the time taken in relation to arranging the valuation was outside its control and having considered the timeline here I don't think Aldermore caused any unreasonable delays.

Mr N has recently raised that his communication preferences haven't been updated as requested, this is a new issue that would need to be raised separately.

### **Putting things right**

Aldermore has in practice applied a margin of 3.75% to Mr N's mortgage, which means it's applying an interest rate of 3.75% above the base rate. As I've concluded the agreement was for the total rate to be 3.75%, Aldermore should backdate the starting interest rate to 3.75% (rather than 4.5%) from 3 May 2022.

At each increase that it provided notice of, it should reduce the new interest rate by 0.75% to reflect the same increase with a lower starting reference point. For example, when Aldermore increased the interest rate by 0.25% on 5 May 2022, it can still do this, but that changes the applicable interest rate from 3.75% to 4% rather than to 4.75%.

Aldermore should also reimburse Mr N the difference between what he's paid and should have paid, applying a rate of 8% interest on this amount (the overpayments) from the date each payment was taken to the date it's reimbursed to Mr N.

### **My final decision**

My final decision is that I uphold this complaint and that Aldermore Bank Plc should do the following to put matters right:

1. Apply an interest rate of 3.75% to Mr N's mortgage from 3 May 2022.
2. Regarding the variations Mr N has been notified of to date, Aldermore can implement the percentage changes as set out in its letters, but these must reflect the lower starting interest rate. In practice this means the applicable interest rate will be 0.75% lower than in its notice letters / than it has been applying.
3. Reimburse Mr N the difference between what he's paid Aldermore and should have paid to date.
4. Pay Mr N interest at an annual rate of 8% simple on the amount in point 3, from the date each payment was taken to the date it's reimbursed to Mr N.\*
5. Pay Mr N £650 compensation if it hasn't already done so.

\*If Aldermore considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr N how much it's taken off. It should also give Mr N a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 26 July 2023.

Stephanie Mitchell  
**Ombudsman**