

The complaint

Mr B complains that his mortgage lender, NRAM Limited, hasn't charged him a fair rate of interest.

What happened

In 2007, Mr B took out a mortgage with Northern Rock. He borrowed £160,000 on interest only terms over ten years. For the first two years the mortgage was on a tracker rate at a margin of 0.54% above the Bank of England base rate. From 2009, it reverted to the standard variable rate (SVR). From 2014, a discount of at least 0.25% off the SVR would apply while the mortgage was up to date.

Following the global financial crisis and Northern Rock's collapse, Mr B's mortgage was transferred to NRAM. In November 2019, the mortgage was transferred on to a new lender.

In late 2019, Mr B complained to NRAM about the interest rate applied to his mortgage. As this complaint only concerns the period before the loan was transferred to the new lender in November 2019, I'll only consider things that happened up to then. Anything that has happened since Mr B made this complaint would need to be raised with the new lender.

Mr B complained that NRAM had acted unlawfully and in breach of the mortgage terms and conditions in setting the level of the SVR it had applied to his mortgage. He said the SVR was too high. He complained that he'd been told by an NRAM staff member that the SVR had been set at that level to repay a debt to the UK government, which was not something permitted by the terms and conditions. As his mortgage was owned by a nationalised entity, it was not subject to the sorts of commercial considerations which the terms and conditions referred to. And he complained that his mortgage rate had almost doubled. Mr B pointed to the terms and conditions, which he said linked his mortgage rate to the Bank of England base rate, and his mortgage offer, which he said implied his mortgage rate would track the Bank of England base rate.

Another ombudsman said that we could only consider the fairness of interest charged for the six years before Mr B first complained – that is, from November 2013 onwards. But that in considering the fairness of interest charged over that time, it would be necessary to consider all the circumstances of the case – including things that happened before November 2013 insofar as they are relevant to the fairness of interest charged after that date.

Our investigator then considered the merits of Mr B's complaint, and didn't recommend that it should be upheld. Mr B didn't agree with that, and asked for an ombudsman to review his complaint. I've set out in more detail the arguments he's made below.

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.

Time limits applicable to this complaint

I've said that another ombudsman has already decided that we can only consider the fairness of interest charged in the six years before Mr B first complained – that is, since November 2013. I agree with her conclusions. That's because, at its heart, Mr B's complaint is that NRAM has acted unfairly in charging him interest at a higher margin above base rate than he thought was implied by the terms of his mortgage offer.

In order to be aware of cause for complaint, it's not necessary to know of every argument that could be made. It's enough to know that something has gone wrong, which has caused loss, and for which NRAM was responsible. Even if he didn't become aware of all the arguments he's now making until more recently – such as the terms and conditions documents I refer to below – I'm satisfied Mr B would have been aware from 2009 that he was being charged more interest than he expected to be charged. And I'm satisfied that was enough to say he ought reasonably to have known of cause for complaint.

There are no exceptional circumstances explaining why Mr B did not complain before he did. And NRAM hasn't consented to us considering that part of the complaint which is otherwise out of time. That means we can only consider the fairness of interest charged in the six years before he first complained. I also agree with my fellow ombudsman that in considering those matters, we can take into account all the circumstances of the case – including matters that happened before November 2013 but which impacted on the fairness of the interest charged after that date. For example, if there was no contractual power to change the interest rate in 2009, it might not be fair to charge interest based on that change from November 2013.

The reversion to SVR and the increase in the interest rate Mr B was charged in 2009

In his initial letter to NRAM, Mr B complained that his mortgage rate had almost doubled because of NRAM's unfair increases to the SVR.

In fact, however, that's not the case. Mr B's mortgage wasn't subject to the SVR to start with. Between 2007 and 2009, he was on a rate that tracked the Bank of England base rate plus 0.54%. In early 2009, when his tracker rate expired, base rate was 2% and so Mr B's interest rate was 2.54%. From March 2009 he was no longer subject to the tracker rate and moved to the SVR, which at that time was 4.79%. So Mr B's mortgage interest rate did not almost double because NRAM increased the SVR – it increased because Mr B moved off the tracker rate and on to the SVR, in line with the mortgage offer.

Mr B says that this was not permitted – he has described it as a “monstrous obscenity” and evidence of widespread fraud and criminality. In saying that, Mr B has pointed to the mortgage offer. He has given us a copy of a witness statement he has prepared, to which he has added a copy of the mortgage offer. He has annotated the offer in pencil. I have reproduced his annotations in red below. The offer says, with Mr B's annotations:

This secured mortgage is based on the following interest rate periods:

- *a variable rate which is 0.54% above the Bank of England [sic], currently 5.25% (A), until 1 March 2009 giving a current rate payable of 5.79%. = 0.54% OVER BASE RATE FOR 2 YEARS*

If the Bank of England Base Rate changes, we will review the interest rate applicable to your mortgage on the first working day of the following month. We will then notify you in writing of your new interest rate and payment, which will take effect from the first day of the month following the review. We will follow this procedure whether the Bank of England Base Rate rises or falls.

followed by

- *the Northern Rock Standard Variable Rate, currently 7.34%, (B) for a period of 5 years 1 month IMPLIES RATE OF 2.09% OVER BASE = (B) – (A)*

= 2.09% OVER BASE FOR 5 YEARS 1 MONTH

followed by

- *Northern Rock's Variable Loyalty Discount Rate, which is Northern Rock's Standard Variable Rate, currently 7.34%, with a discount of at least 0.25%, which will apply, provided that payments are kept up to date, for the remainder of the mortgage giving a current rate payable of 7.09% (C). IMPLIES RATE OF 1.84% OVER BASE = (C) – (A)*

= 1.84% FOR REMAINDER

If your mortgage payments are not up to date then Northern Rock's Standard Variable Rate will apply.

Mr B believes that his mortgage offer contained an implied term that the SVR (and so also the discount rate) was set at a particular margin over the Bank of England base rate.

But I don't agree about that. There's nothing in the mortgage offer which says that either the SVR or the discount rate track, or are set at a particular margin above, Bank of England base rate. There's nothing in the mortgage terms and conditions which says that either. And I don't think such a term can reasonably be implied into the mortgage offer either. The offer explicitly says that the interest rate tracks the Bank of England base rate until 1 March 2009, after which it reverts to a variable rate.

Given that the first part of the mortgage was explicitly linked to Bank of England base rate, there's no good reason why that wouldn't be made explicit for the second and third parts too – if that was the intention. I think the absence of a reference to Bank of England base rate as part of the interest rate applicable to the mortgage after 1 March 2009 is evidence that it was NOT linked to base rate – not a reason for implying a term that it was.

I'm therefore satisfied that, after 1 March 2009, there was no linkage between Mr B's mortgage and the Bank of England base rate. The increase in the interest rate on 1 March 2009 was not because NRAM increased the interest rate in breach of an implied term that it would track base rate by 2.09%, 0.54% or any other margin. The increase was because Mr B's mortgage was no longer linked to the Bank of England base rate, and reverted to the SVR – exactly as the offer said it would.

Between 2007, when the mortgage was taken out, and 1 March 2009 the SVR had reduced from 7.34% to 4.79%, and that is why Mr B was charged 4.79% from 1 March 2009 onwards. This was not a breach of the mortgage contract, still less a "monstrous obscenity" indicative of fraud or criminal behaviour – it was the correct application of the terms and conditions and the mortgage offer in line with what was agreed when Mr B took the mortgage out.

Mr B's mortgage offer said he would pay a tracker rate set at 0.54% over Bank of England base rate until 1 March 2009, and that from 1 March 2009 he would pay the SVR. And that's what happened.

The mortgage terms and conditions

Mr B also says that the interest rate applicable to his mortgage is unfair and unlawful because Northern Rock and then NRAM was in breach of the terms and conditions.

Mr B points to a section of what he says are the relevant mortgage terms and conditions describing the “Standard Variable Mortgage Base Rate”.

This section says

“Standard Variable Mortgage Base Rate” means such rate as we from time to time decide to set as the base from which to calculate interest on our variable rate mortgage loans (disregarding the restrictions on what we can charge under condition 7 or Section B of the Offer). The current Standard Variable Mortgage Base Rate which applies to your Loan is set out in Section A of the Offer. We may change this rate from time to time under condition 7 or Section B of the Offer. If we transfer or dispose of the Offer, the person to whom we make the transfer may change the rate to its own base rate which it applies to its variable rate mortgage loans. That rate will then be the Standard Variable Mortgage Base Rate under the Offer and the person to whom we make the transfer may make further changes to that rate under condition 7 or Section B of the Offer.

Mr B says this means the SVR – and therefore his mortgage – is linked to Bank of England base rate. And because the requirements of condition 7 were not met, NRAM was not entitled to increase the SVR in 2009 by changing the margin over Bank of England base rate.

But I’m afraid I don’t agree about that either. There’s nothing in this section, or anywhere else in the document, which says that the Standard Variable Mortgage Base Rate is the same as, or linked to, the Bank of England base rate. Because those two separate rates both use the words “base rate” as part of their name does not mean they are the same thing, or that the one is linked to the other. The Bank of England base rate is set by the Bank of England. Mortgage lenders could choose to – but were not obliged to – set their own rates by reference to the Bank of England base rate. Or they could set their own base rates. I think this extract makes clear that the Standard Variable Mortgage Base Rate is a base rate set by Northern Rock from time to time as a reference rate for its mortgages. There is no explicit link – and no reasonable basis for implying a link – to Bank of England base rate. Merely using the same word “base” does not imply such a link.

And even if I was wrong about that, and the Standard Variable Mortgage Base Rate was linked to Bank of England base rate, it wouldn’t make any difference to the outcome of this complaint. That’s because the extract I’ve quoted above comes from “Northern Rock’s Mortgage Offer General Conditions Edition 1 – 07/2001”. This is not part of the terms and conditions applicable to Mr B’s mortgage.

It appears NRAM may have given Mr B a copy of this document during legal proceedings in 2018 or 2019. If so, that was a mistake. These are not the terms and conditions applicable to his mortgage – and so the Standard Variable Mortgage Base Rate doesn’t apply.

The mortgage offer letter dated 21 February 2007 says that the following documents make up the mortgage contract:

- The Offer of Loan
- Mortgage Conditions 2001
- Mortgage Offer – General Conditions

- Tariff of Charges.

Mr B points to this, and to the mortgage deed registered with the Land Registry, to show that the “Northern Rock’s Mortgage Offer General Conditions Edition 1 – 07/2001” are applicable to his mortgage – because the offer letter says “Mortgage Conditions 2001”. But I don’t think that’s the case.

The mortgage deed says

*THE MORTGAGE CONDITIONS: NORTHERN ROCK PLC MORTGAGE
CONDITIONS 2001 (filed at HM Land Registry under reference ...)*

Northern Rock had two documents specific to each borrower – the mortgage offer, which set out the amount lent and the terms on which it was lent, and the mortgage deed, which set out the property offered as security for the lending. And each of those bespoke individual documents also had a set of generic terms and conditions, applicable to all borrowers. The mortgage deed had the “Mortgage Conditions”, and the mortgage offer had the “Mortgage Offer – General Conditions”.

The “Mortgage Conditions 2001” is the document filed at the Land Registry and which is the general terms applicable to the mortgage deed. It includes things such as the obligation to keep the property insured and in good repair and limitations on dealing with it until the mortgage is repaid.

The “Mortgage Offer – General Conditions” is the document which sits alongside the mortgage offer. It includes things such as the terms on which payment must be made, how interest is calculated, and how the interest rate can be varied from time to time.

Therefore the “Mortgage Conditions 2001”, referred to in the offer letter and the mortgage deed, is not the same document as “Northern Rock’s Mortgage Offer General Conditions Edition 1 – 07/2001”. The reference to the “Mortgage Conditions 2001” in the offer letter and mortgage deed is not evidence that “Northern Rock’s Mortgage Offer General Conditions Edition 1 – 07/2001” applies to Mr B’s mortgage.

The extract above regarding the Standard Variable Mortgage Base Rate comes from the 2001 edition of the “Mortgage Offer – General Conditions” (entitled “Northern Rock’s Mortgage Offer General Conditions Edition 1 – 07/2001”), not the 2001 edition of the “Mortgage Conditions”.

“Northern Rock’s Mortgage Offer General Conditions Edition 1 – 07/2001” is an earlier edition of the “Mortgage Offer – General Conditions”. By the time Mr B took out his mortgage in 2007, this document had been superseded by the “Mortgage Offer General Conditions Edition 3 – 2/2005”, which was the version of the “Mortgage Offer – General Conditions” applicable to his mortgage.

Mr B’s mortgage was never subject to “Northern Rock’s Mortgage Offer General Conditions Edition 1 – 07/2001”. If NRAM sent him a copy of that document in 2018 or 2019, that was a mistake – he should have been given the “Mortgage Offer General Conditions Edition 3 – 2/2005”.

Mr B suggests that the “Mortgage Offer General Conditions Edition 3 – 2/2005” is a later forgery to hide a link to the Standard Variable Mortgage Base Rate and a link to the Bank of England base rate. But I’ve seen no evidence of that and I’m aware from other complaints that this was the edition applicable to mortgages taken out around the same time as Mr B’s. In any case, as I’ve said, even if the Standard Variable Mortgage Base Rate was applicable

to Mr B's mortgage – which it isn't – it wasn't linked to Bank of England base rate, and the fact that both rates had the word "base" in their name isn't enough to suggest otherwise.

I don't think it's plausible that the "Mortgage Offer General Conditions Edition 3 – 2/2005" are a later fabrication to remove the word "base" – which, as I've said, doesn't have the significance Mr B attaches to it in any case. "Base rate" was a common phrase in the banking industry denoting a particular bank's (or building society's) standard or default rate. It does not follow that because in 2001 Northern Rock described its default mortgage rate as its "mortgage base rate" that there was any linkage with the Bank of England base rate.

I therefore see nothing sinister in removing the word "base" between the two editions – if anything, it helps to avoid confusion with the Bank of England base rate of the sort which has led Mr B to make this complaint.

Mr B also says that the "Mortgage Offer General Conditions Edition 3 – 2/2005" includes the following wording, and this means that the "Northern Rock's Mortgage Offer General Conditions Edition 1 – 07/2001" apply:

"Mortgage Conditions" means the mortgage conditions entitled "Northern Rock Mortgage Conditions 2001"

As I've explained, the Mortgage Conditions 2001 *do* apply to his mortgage – they are the conditions associated with the mortgage deed concerning the security over his property. But they are not the same as "Northern Rock's Mortgage Offer General Conditions Edition 1 – 07/2001" – the conditions associated with the mortgage offer and repayment of the loan – which do not apply, because they had been superseded by the 2005 edition before Mr B took his mortgage out. This reference is to the Mortgage Conditions, not the Mortgage Offer General Conditions.

Further supporting evidence can be found in the mortgage offer itself – the definition of the Standard Variable Mortgage Base Rate I've quoted above says that further information is given in Section A and Section B of the mortgage offer. But not only does Mr B's mortgage offer not mention the Standard Variable Mortgage Base Rate – it does not even contain a Section A or a Section B.

For those reasons, I'm satisfied that Standard Variable Mortgage Base Rate described in the "Northern Rock's Mortgage Offer General Conditions Edition 1 – 07/2001" document is not relevant to Mr B's mortgage, since his mortgage has never been subject to those conditions. Mr B's mortgage offer is governed by the 2005 General Conditions, not the 2001 General Conditions.

There is no mention of the Standard Variable Mortgage Base Rate in the "Mortgage Offer General Conditions Edition 3 – 2/2005" – which are the applicable conditions governing the interest rate charged to Mr B. Nor is there any mention of it in his mortgage offer. And therefore the Standard Variable Mortgage Base Rate has no relevance to Mr B's mortgage, whether or not it was linked to the Bank of England base rate.

There is nothing in the "Mortgage Offer General Conditions Edition 3 – 2/2005" which suggests that the SVR Mr B was subject to is linked to or tracks the Bank of England base rate. And therefore when Mr B reverted to the SVR on 1 March 2009 – or at any time thereafter – nothing in the terms and conditions required NRAM to set the SVR at 2.09% above Bank of England base rate, 1.84% above Bank of England base rate, or any other margin above Bank of England base rate.

The level of SVR Mr B was charged

When Mr B took out his mortgage in 2007, the SVR was 7.34%. By the time he reverted to the SVR in March 2009, it had reduced to 4.79%. During this period, Northern Rock and then NRAM had reduced the SVR as Bank of England base rate fell – though the SVR did not fall by as much as base rate.

Date	Bank of England base rate	SVR	Difference between base rate and SVR
01/02/2007	5.00%	7.34%	2.09%
10/05/2007	5.50%		
01/06/2007		7.59%	2.09%
05/07/2007	5.75%		
01/08/2007		7.84%	2.09%
06/12/2007	5.50%		
01/01/2008		7.69%	2.19%
07/02/2008	5.25%		
01/03/2008		7.59%	2.34%
10/04/2008	5.00%		
01/05/2008		7.49%	2.49%
08/10/2008	4.50%		
01/11/2008		7.34%	2.84%
06/11/2008	3.00%		
01/12/2008		5.84%	2.84%
04/12/2008	2.00%		
01/01/2009		5.34%	3.34%
08/01/2009	1.50%		
01/02/2009		5.09%	3.59%
05/02/2009	1.00%		
01/03/2009		4.79%	3.79%

The “Mortgage Offer General Conditions Edition 3 – 2/2005” say

“Standard Variable Rate” means such rate as we from time to time decide to set as the base from which to calculate interest on our variable rate loans (disregarding the restrictions on what we can charge under condition 7 or the Offer). The current Standard Variable Rate which applies to your Loan is set out in the Offer. We may change this rate from time to time under condition 7 or the Offer. If we transfer or dispose of the Offer, the person to whom we make the transfer may change the rate to its own base rate which it applies to its variable rate mortgage loans. That rate will then be the Standard Variable Rate under the Offer and the person to whom we make the transfer may make further changes to that rate under condition 7 or the Offer.

Condition 7 says:

7. Changing the Interest Rate

7.1 We may reduce the Standard Variable Rate at any time.

7.2 We may increase the Standard Variable Rate at any time if one of more of the following reasons applies:

(a) there has been, or we reasonably expect there to be in the near future, a general

trend to increase interest rates on mortgages generally or mortgages similar to yours;

(b) for good commercial reasons, we need to fund an increase in the interest rates we pay to our own funders;

(c) we wish to adjust our interest rate structure to maintain a prudent level of profitability;

(d) there has been, or we reasonably expect there to be in the near future, a general increase in the risk of shortfalls on the accounts of mortgage borrowers (whether generally or our mortgage borrowers only), or mortgage borrowers (whether generally or our mortgage borrowers only) whose accounts are similar to yours;

(e) our administrative costs have increased or are likely to do so in the near future.

We have received evidence about how the SVR was reviewed over time, and the decisions Northern Rock and NRAM took from time to time to reduce it, as well as evidence about NRAM's broader circumstances and commercial strategy at the time which form the context in which it took those decisions. Part of our rules – known as DISP 3.5.9 R (2) – permits me to receive information in confidence where appropriate, such that only an edited version, summary or description is disclosed to the other party. In this case, I consider that to be appropriate and so we have not shared that evidence with Mr B. But I will summarise it in this part of my decision.

The relevant period is from late 2007 to early 2009, when the Bank of England base rate fell sharply, and to record lows, during the global financial crisis. At the same time, the UK mortgage market was going through a period of significant change and upheaval. The funding model of mortgage lenders changed at this time, as did the prudential and regulatory requirements imposed on them. During this period the SVR was reduced – but the margin above base rate increased. So in 2007 the SVR was 7.34% and Bank of England base rate was 5.25% - a differential of 2.09%. But by 1 March 2009, Bank of England base rate was 1.00% (reducing to 0.5% on 5 March) while the SVR was 4.79% - a differential of 3.79% increasing to 4.29%.

Around the time of the start of the financial crisis, Northern Rock's mortgage lending business was largely funded by wholesale funding, the cost of which was defined by reference to LIBOR rather than Bank of England base rate. Before the financial crisis, LIBOR generally followed base rate – and so changes to LIBOR tended to take place broadly in line with changes to base rate, meaning changes to base rate tended to be reflected (albeit indirectly) in changes to cost of funding. And the same was largely true of Northern Rock's retail funding streams, which also contributed to funding its mortgage lending business – in general, where base rate increased it would need to increase the rates paid on its savings accounts to continue to attract and retain funds from savers to use in its lending.

However, during the financial crisis, there was an increasing disconnect between base rate and LIBOR – with the result that reductions in base rate were not matched by reductions to the same extent in LIBOR or cost of funding. Access to wholesale funding became harder and more expensive as wholesale funders became more concerned by risk of default – meaning that where funding was available, margins over LIBOR increased even as LIBOR itself decreased. At this time Northern Rock's credit rating was impaired, and it became increasingly difficult for it to raise and service its wholesale funding. At the same time, it saw a substantial reduction in the retail deposits it held as customers moved elsewhere.

Northern Rock received a government loan in September 2007 to try to avert its collapse. There were conditions attached to the loan which impacted Northern Rock's wider strategy

and cost of funds. Then in February 2008, Northern Rock was nationalised and restructured.

Following the nationalisation, as part of state aid rules, there were limits placed on the size and scope of the business. Assets – such as parts of its loan book – perceived to be higher quality (in risk and prudential terms) were transferred to the private sector and those perceived to be lower quality retained in the nationalised vehicle that became NRAM (which did not have access to retail funding). This process increased the overall credit risk of the retained book – which also impacted cost of funding.

As with any lender, NRAM was required to balance the needs of servicing its funding streams (notably the government loan) with the interests of its customers. During this period, it reduced its SVR on several occasions. Although it didn't reduce the SVR to the same extent that base rate reduced, I've explained that its costs were not directly linked to, and were increasingly separate from, base rate at this time.

I've not seen any evidence that the reductions it made to the SVR were arbitrary or unfair, or led to an excessive SVR being charged. While NRAM's SVR was at the higher end of mortgage SVRs across the industry at this time, it was not an outlier. Many lenders charged lower SVRs – but many lenders charged higher SVRs, including mainstream lenders. While rates charged by other lenders did not directly impact NRAM's own cost of funding, that comparison does show that similar pressures were faced across the industry and led – in terms of overall SVR levels – to similar results. And that is a relevant factor for me to consider in thinking about whether NRAM acted fairly.

Mr B says that these are not relevant considerations because condition 7 is based on a lender operating in the commercial market – which after nationalisation was not the case for NRAM. But whatever its ownership structure, NRAM had to fund its business and raise sufficient revenue to cover the costs of that funding – and that's what the terms and conditions allow it to do.

Taking all that into account, I am not persuaded that Northern Rock and then NRAM operated the SVR variation clause in an unfair way when setting and varying the interest rate applied to Mr B's mortgage in a way that resulted in an unfair SVR payable (subject to the discount) by Mr B from November 2013.

After November 2016, the only changes to the SVR were at the same time, and to the same extent, as changes in the Bank of England base rate. Although the SVR does not track Bank of England base rate, changes in base rate have an impact on its overall funding costs and as such are a matter NRAM can take into account in setting the SVR. I've not seen anything that would lead me to think that NRAM varied the SVR in a way that was not fair and reasonable in this period – and indeed Mr B accepted in correspondence with our investigator that these changes were legitimate; the focus of his concern is on what he sees as the "obscenity" of his mortgage rate increasing in March 2009 and not falling thereafter.

Conclusion

For all the reasons I've set out above, I don't think Mr B's mortgage was linked to base rate (either through an implied term in the offer, or through the 2001 General Conditions). The reason his interest rate increased in March 2009 was that he moved from a rate that tracked the Bank of England base rate to the SVR, which did not track Bank of England base rate. This was in line with his mortgage offer and the terms and conditions.

I've also considered how NRAM and Northern Rock varied the SVR over time, to see whether – looking at the terms and conditions which did apply – there was good reason why the SVR was set at the level it was from time to time. If there was not, that might mean that

the rate applied to Mr B's mortgage after November 2013 was unfair as a result. But having taken everything into account, I've seen nothing to suggest that, during the period I can consider, Mr B was charged an unfair interest rate or one that was charged in breach of the applicable terms and conditions.

My final decision

For the reasons I've given, 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 B to accept or reject my decision before 4 August 2023.

Simon Pugh
Ombudsman