

## **The complaint**

Mrs K and her daughters Miss K, Miss K and Miss K have complained about a mortgage they hold with UCB Home Loans Corporation Ltd.

## **What happened**

Mrs K and Misses K took out the mortgage in 2004, and since 2006 their mortgage has been on UCB's Self Certification FlexiPlus Variable Rate ("SCVR").

The account has been in and out of arrears over the years, and since 2018 Mrs K and Misses K have been complaining to UCB about not being able to move to a new preferential interest rate.

In April 2018 UCB said they weren't eligible for a new rate due to the arrears on the mortgage account, and that was still the case in September 2018 when a further complaint was made, albeit the policy had changed slightly by then so that the account only needed to have been out of arrears for two months before a new rate could be taken.

The arrears were cleared in October 2018 but it doesn't seem that Mrs K and Misses K applied for a new rate, and then a few months later the mortgage was back in arrears.

A further complaint was raised in late 2020, which UCB responded to in February 2021. UCB said, as a gesture of goodwill, it would rework the mortgage as if Mrs K and Misses K had, in October 2018, taken a fixed rate of 4.79% for two years (which was the best rate they were eligible for at that time). It said that rate would have ended in September 2020 and at that point they would have been eligible for another two-year fixed rate, this time at 3.29%, from 1 October 2020. It said, if Mrs K and Misses K accepted the offer, then it would get the mortgage reworked. It also offered £500 compensation.

Another complaint was raised, this time about how the SCVR had varied over the years. UCB didn't uphold that complaint.

The complaint was referred to us and UCB didn't agree to us considering everything. It said we couldn't consider a complaint about taking a new preferential rate before October 2018 as Mrs K and Misses K hadn't referred the October 2018 final response letter to us within the six months allowed in our rules. And the complaint about how the SCVR had varied, it said we could only consider that complaint in respect of the six-year period leading up to the complaint, so since March 2015.

One of my Ombudsman colleagues issued a decision about our jurisdiction in July 2022. In that he said we could consider the following complaint points:

- Whether UCB should have offered a new interest rate – but only since 6 October 2018; and
- the level of the SCVR – but only since 30 March 2015.

Our Investigator then looked at those points and didn't uphold the complaint. For the first point he said the offer UCB had already made was more than he would have been able to tell them to do since its offer was a reconstruction from 1 October 2018, five days before we could consider. For the second point he said the SCVR didn't track Bank of England Base rate ("BoEBR"), and he didn't think UCB had acted unreasonably in how it had varied (or not) its SCVR over the years.

Mrs K and Misses K didn't agree and so it has been 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.

### **A new interest rate**

As my Ombudsman colleague confirmed, we can only consider a complaint about this point from 6 October 2018 onwards.

In 2021 UCB offered to rework the account as if a new two-year fixed rate had applied from 1 October 2018, and then offered to put a new two-year fixed rate in place from September 2020. The rates that were available were 4.79% fixed for two years from October 2018, and 3.29% fixed for two years from October 2020.

Having considered everything I'm satisfied those were the best rates that would have been available to Mrs K and Misses K at the relevant times.

Mrs K and Misses K have asked why a five-year fixed rate product hasn't been used. We have to decide cases without the use of hindsight and in 2018 the 4.79% two-year fixed rate was the lowest rate that Mrs K and Misses K were eligible for. Interest rates hadn't varied by any degree for a number of years, and there was no indication that was likely to change in the near future. The contact notes indicate they were struggling with the payments – and there was a long history of arrears - so I think it is likely, on balance, that they would have opted for the lowest payment they could at that point, rather than opting for a higher payment to obtain a longer-term fixed rate (if there was one available to them).

This worked in Mrs K and Misses K's favour as by 2020 a lower rate was available to them, reducing the rate further from 4.79% to 3.29%. Had a longer-term fixed rate been selected for 2018 then they wouldn't be able to benefit from that lower rate, without a substantial early repayment charge being incurred. On the basis of a quick calculation it seems the reduction from 4.79% to 3.29% would reduce their payments by around £200 a month, and if a longer term fixed rate was put in place from 2018 they wouldn't then benefit from that reduction.

As I said, we can't use hindsight when deciding a complaint, so the fact interest rates have now risen substantially can't be taken into account when thinking about what we think Mrs K and Misses K would likely have done in 2018 and 2020. Both rates UCB have selected were the lowest rates Mrs K and Misses K were eligible for at the times in question and, having considered everything, on balance I think that is most likely what they would have opted for.

For that reason I consider UCB's offer to reconstruct the mortgage account as if it was on a two-year fixed rate of 4.79% from 1 October 2018 and then a two-year fixed rate of 3.29% from 1 October 2020 to be fair and reasonable. In addition I consider the offer of £500 compensation for any distress and inconvenience caused to also be fair.

It is unfortunate that Mrs K and Misses K seem to have chosen to withhold their mortgage payments for a number of years, with the transaction history indicating in the period from January 2021 until June 2023 they only made the following payments:

January 2021	£482
February 2021	£200
July 2022	£250

Because of that I don't think UCB is treating them unfairly by being unwilling to put another preferential rate in place for when the October 2020 rate ended in 2022. Whilst Mrs K and Misses K said it isn't that they couldn't pay their mortgage, it was that they were choosing not to, that doesn't matter. The fact is their mortgage is in arrears and so they wouldn't be eligible for a new rate until after those arrears are cleared.

Since February 2021 it has been open to Mrs K and Misses K to accept UCB's offer to rework their mortgage onto the 4.79% for two years from October 2018, and then for it to have been moved onto the 3.29% rate from October 2020. Both UCB and the Financial Ombudsman Service have made it clear that offer could be accepted without any impact on our investigation, but Mrs K and Misses K chose to keep their mortgage on the SCVR and withhold payment instead.

I understand Mrs K and Misses K withheld their mortgage payments as they were unhappy with how UCB was dealing with matters. But Mrs K and Misses K were required to make the payment due each month as they'd agreed to do when they signed up for the account. I've seen nothing to show that it was reasonable for Mrs K and Misses K to withhold payments. Even if a new rate had been put in place, payments would still have been due, albeit they would have been lower, so it wasn't proportionate for Mrs K and Misses K to withhold payment altogether.

### **How the SCVR has varied**

I must consider whether from 30 March 2015 onwards, Mrs K and Misses K paid an unfairly high rate of interest. As my Ombudsman colleague explained, in considering the fairness of the interest charged since 30 March 2015, it will be necessary for me to consider what is fair and reasonable in all the circumstances of the case. This means that I will need to consider all the matters that contribute to and make up the interest charge added to the loan each month. And in turn that means considering the fairness of the interest rate used as the basis of the calculation.

In order to consider what is fair and reasonable I need to consider all the circumstances. I need to look at the impact of what may or may not have contributed to those charges – including things that happened before 30 March 2015 which influenced the rate charged at that time.

I'm satisfied that this is an essential part of determining whether or not the rate charged from 30 March 2015 onwards was fair and reasonable in all the circumstances. But in the event that I find something unfair about what happened before that date, I can only consider its impact on the interest charged since then – and therefore any redress I would award would only cover interest charged since 30 March 2015. That's because the complaint I'm considering is that interest was unfairly charged from 30 March 2015 onwards.

To assess the fairness of the interest rate terms, it is helpful to first set out the relevant terms themselves.

Mrs K and Misses K's mortgage agreement was that from 2006 the interest rate would be the SCVR. The terms and conditions document says:

*"10. CHANGES IN INTEREST RATES*

*10.1 Unless your Loan Proposal specifies a Fixed Rate Period, we may vary the interest rate applicable to the loan at any time upon giving you three days written notice of our intention to do so. We will only vary the interest rate for one or more of the following reasons:*

- (i) to reflect a change, or a change we expect to occur, in the cost of funds we use for our Mortgage lending;*
- (ii) to reflect any change in the law or decision by a court;*
- (iii) to reflect a change in regulatory requirements;*
- (iv) to reflect a change in the way the Property is used or occupied;*
- (v) to reflect a change in the credit risk relating to the loan."*

There's no general obligation on mortgage lenders for their SCVRs to track the BoEBR, and I'm satisfied that this isn't the way UCB's SCVR operated.

I've reviewed the documentation available, and having done so, I haven't seen anything that says UCB would link the SCVR to the BoEBR or that compels it to. Nor is there anything that suggests that the SCVR would be a particular margin above or below the BoEBR.

It follows that I'm not persuaded that there was any requirement for the SCVR to track the BoEBR or for UCB to maintain any margin between them.

I've also thought more broadly about whether, and the extent to which, the way in which the terms have been used has resulted in unfair treatment for Mrs K and Misses K in the interest charged to them from 30 March 2015 onwards. In doing so, I've considered the historic context which may have contributed to the interest rate charged from 30 March 2015 onwards and whether UCB had legitimate reasons for varying the rate in the way it did.

I can see that between 2008 and 2009, the difference (or margin) between the BoEBR and UCB's SCVR increased from 2.29% to 4.49%. Whilst UCB's SCVR did reduce during this period, it didn't fall by the same proportion as the reduction in the base rate.

UCB has told our service that, despite a reduction in the BoEBR, its funding costs did not reduce to the same extent between 2008 and 2009.

During this time, 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.

UCB has provided relevant explanations and reasoning behind the decisions made to vary the interest rate during this period. This is supported by evidence that shows the direct impact of its cost of funding and how this correlated with its decision to vary the SCVR.

Considering this, I don't think UCB has acted unreasonably by not passing on all of the reductions in the BoEBR to its SCVR.

I can also see that, in February 2010, UCB increased the SCVR from 4.99% to 5.49% when there hadn't been any changes to the BoEBR. UCB has provided evidence to show that its

cost of funds had increased and it increased the SCVR by 0.50% in order to account for those increased costs. The terms and conditions of the mortgage allowed it to increase the SCVR for this reason. Considering this, I don't think UCB acted unreasonably by doing this.

In August 2016 the BoEBR fell by 0.25%, and then it increased back up by that same differential in November 2017. UCB didn't reflect either of those BoEBR changes with a change in its SCVR, keeping it at 5.49% throughout that period. UCB has told us that its cost of funding was impacted in 2016 due to the uncertainties around Brexit, which is why it didn't lower the SCVR at that time. By late 2017, when BoEBR increased back to its pre-August 2016 level UCB said the market had settled enough that it was able to leave the SCVR untouched.

From November 2017 until March 2021 (which is the latest date I can consider as part of this complaint), UCB's SCVR remained at 4.99% above the BoEBR.

Having considered all the information and evidence available to me, I have not seen any evidence to suggest the changes UCB made (or didn't make) were unfair. Rather, the evidence I've seen satisfies me that UCB acted in line with its terms and conditions to protect its legitimate interests while balancing its obligation to treat Mrs K and Misses K fairly. And I'm further satisfied that the evidence UCB has been able to provide for this period is corroborated by evidence of wider market conditions at the time.

Taking everything into account, I'm not satisfied that UCB has acted unfairly or unreasonably in the circumstances.

### **My final decision**

UCB Home Loans Corporation Ltd has already made an offer to settle the complaint and I think this offer is fair in all the circumstances. That offer is to rework the mortgage account as if it was on a 4.79% fixed rate from 1 October 2018 to 30 September 2020, and a 3.29% fixed rate from 1 October 2020 to 30 September 2022. In addition, it offered to pay £500 compensation for the distress and inconvenience caused.

So my decision is that UCB Home Loans Corporation Ltd should undertake the above in full and final settlement of this complaint (less any actions or payments already made).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K, Miss K, Miss K and Mrs K to accept or reject my decision before 20 October 2023.

Julia Meadows

**Ombudsman**