

The complaint

This complaint is about a mortgage Mr B and Mrs R hold with Clydesdale Bank Plc trading as Virgin Money (VM).

The essence of the complaint is that Mr B and Mrs R believe that VM mis-sold new interest rate products to them by falsely presenting them as variable rates, failing to explain the products to them more fully, and not keeping them informed on how the application was progressing. They're also unhappy that the interest rates they're paying on the new products have gone up.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat all the details here. Instead I'll provide a brief summary of the events leading to the complaint, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

The new product application was initiated over the telephone, in two calls that took place on 5 December 2022 and 13 January 2023 respectively. The first call was mainly to book the appointment time for the fuller discussion that took place in the second call. At the conclusion of the 13 January 2023 call, VM sent out paperwork for the new mortgage product that Mr B and Mrs R had chosen.

There are two parts to the mortgage. For part one, the selected product provided a discount of 2.91% off VM's offset variable rate (OVR) running for 27 months. For part two, the selected product provided a discount of 3.01% off VM's OVR, again running for 27 months. Based on that, the initial documentation anticipated the products running until 30 April 2025. When the products expired, both parts of the mortgage would revert to OVR. At the time of the illustration, the OVR was 7.45%, but has risen more than once since January 2023.

The intended start date for the new products was to be 1 July 2023, when the original interest rate product arranged at the start of the mortgage expired. Mr B and Mrs R had the option to withdraw in the meantime. They didn't, and the product switch went ahead on 1 July 2023. This means the 27-month discount period would run until 31 October 2025.

Mr B and Mrs R complained about the sale of the new products after VM sent them letters informing them their interest rates (and the monthly payment as a result) had increased. VM rejected the complaint and it was referred to us. Whilst the case was with us, Mr B and Mrs R broadened the scope of the complaint to include the rate increases since they agreed to go onto the new products. They believe these increases are contrary to what is happening in the wider mortgage market.

Our investigator didn't think VM had done anything wrong. Mr B and Mrs R have asked for the complaint to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The first point to make is that this was not an advised sale where VM was recommending the new products to Mr B and Mrs R. It was non-advised sale where VM provided information about the products and it was then incumbent on Mr B and Mrs R to satisfy themselves that they understood what they were buying and that the products were suitable for their circumstances and needs.

I don't believe there should have been any ambiguity on Mr B and Mrs R's part about the non-advised nature of the sale; it was explained in the 13 January 2023 call, and in the written documentation that followed. Also, the cover letter of 13 January 2023 recommended Mr B and Mrs R take independent advice before accepting the offer. I don't know if they did that or not; if they chose not to, that's not a matter for VM.

Still on the nature of the sale, I'm aware that in its final response to the complaint, VM mistakenly said the sale had taken place online. Whilst this muddled the waters slightly, as I'll explain in due course, nothing turns on it.

I move to how the new products were described, and the information about them presented, in order that Mr B and Mrs R could make a decision on the products' suitability for their circumstances and needs. The starting point here is the documentation issued on 13 January 2023. It follows a standard format, prescribed by the FCA, and contains all the information I'd expect to see about the products.

I don't agree with Mr B and Mrs R that describing the products as variable is false or misleading. The products may offer a fixed discount, but the foundation of the products is the OVR, and the discount is then applied to that. That is exactly how I'd expect such a product to be described.

Mr B and Mrs R says they never received the mortgage terms and conditions which combine with the product offer to form the new contract. VM will have issued the mortgage terms and conditions to Mr B and Mrs R's solicitors when the mortgage started, which was in 2018. If Mrs B and Mrs R weren't shown them at the time, then that would be matter for them to take up with the solicitors. Meanwhile, if Mr B and Mrs R were expecting to be provided with a further copy alongside the point of sale documents in January 2023, they had until July 2023 to query the point and ask VM to send a further copy.

Overall, I don't find anything amiss with the way in which the new interest rate products were arranged for Mr B and Mrs R. There was some minor confusion when VM incorrectly referred to the sale has having taken place online, but that was well after the event, and was corrected without any detriment to Mr B and Mrs R.

That brings me to the movements in the interest rate Mr B and Mrs R have been charged on the products since they were applied to the mortgage. The starting point here is the agreement Mr B and Mrs R entered into in order for the mortgage to go onto the new products on 1 July 2023. As I have already found, VM is permitted under that agreement to charge rates that have OVR as their reference point, specifically OVR minus 2.91% and 3.01% respectively. When the discount period ends, the mortgage reverts to OVR, unless of course Mr B and Mrs R agree a new deal at that time.

Next, I consider the variations in OVR that Mr B and Mrs R have objected to as part of this complaint.

At a general level, interest variation clauses such as those that applied to Mr B and Mrs R's mortgage have a legitimate purpose and are common in financial services consumer contracts, particularly those of long or indeterminate duration, such as mortgage agreements.

A fair variation term can benefit both consumers and lenders, by providing flexibility and a wider choice to consumers and enabling firms to provide competitively priced products, knowing they can vary the interest rates they charge to reflect changes in circumstances, particularly in their own cost of funding. A reversionary rate, which is what OVR is, also permits lenders to provide for future changes that justify increases in the rate, and a lender's own costs of funds are by nature difficult to foresee.

The main (but not the sole) driver of lenders' standard and/or reversionary variable rates is the Bank of England Base Rate (BoEBR). On 23 March 2023 – so after Mr B and Mrs R had agreed the new deal but before it took effect – BoEBR increased from 4.00% to 4.25%. It went up again on 11 May 2023 to 4.50%, on 22 June 2023 to 5.00%, and then again on 3 August 2023 to 5.25%. In an economic climate where the trend in BoEBR was relentlessly upwards, I don't consider the movements in VM's OVR, the variable rate that underpins the new products Mr B and Mrs R took in 2023, are unreasonable or unfair.

To summarise, it was Mr B and Mrs R's choice to take new products on a non-advised basis, and therefore their responsibility to make sure the new products they were contemplating were suitable for them. If they were unhappy with, or unclear about, any of the mortgage documentation, they had more than five months to raise any concerns with VM. Similarly, if they had any concerns that they might have chosen the wrong products and wanted to consider changing their selection, they had the same period of time in which to do so.

VM has implemented the choice they made, and since doing so, has operated the mortgage in accordance with the product terms. I'm sorry to learn of the difficulties Mr B and Mrs R have found themselves in as a result of the increases in their monthly mortgage payment. For the reasons I've set out, those aren't the result of any act or omission on VM's part.

Nonetheless, if Mr B and Mrs R are likely to experience ongoing hardship that might impact on their ability to meet their mortgage payments, a sensible step would be to alert VM, so that it is pre-warned of any potential difficulties. Mr B and Mrs R might benefit from speaking to an independent financial advisor about their options.

My final decision

My final decision is that I don't uphold this complaint, or make any order or award against Clydesdale Bank Plc trading as Virgin Money.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs R to accept or reject my decision before 2 July 2024.

Jeff Parrington

Ombudsman