

The complaint

Mr H1 and Mr H2's complaint is about their buy-to-let (BTL) mortgage with Nationwide Building Society trading as Dunfermline Building Society.

Mr H1, who has dealt with the complaint throughout, says the interest rate on the mortgage is too high. He is also unhappy that he and Mr H2 have not been offered a new mortgage product.

To settle the complaint, Mr H1 and Mr H2 want Nationwide to switch them to a new interest rate product.

What happened

In 2008 Mr H1 and Mr H2 took out a BTL mortgage with Dunfermline. The mortgage was arranged by Mr H1 in his capacity as a financial adviser. The mortgage was initially on a fixed interest rate of 4.79% until 31 May 2010, following which it would move to the Standard Variable Rate (SVR) applicable at the time.

In March 2009 Dunfermline was taken over by Nationwide. In December 2012 the mortgage term was extended from its original ten-year term and will now end in September 2024. In October 2013 Nationwide aligned Dunfermline's SVR with Nationwide's, and the mortgage has been operating on Nationwide's SVR since then. In January 2014 the account was migrated onto Nationwide's system and became a closed book mortgage. This meant that BTL borrowers could not port the mortgage product onto a mortgage on another property, borrow more money, switch to a new interest rate product, change the type of mortgage (e.g. from BTL to residential) or add or remove borrowers.

On 21 February 2023 Mr H1 and Mr H2 complained to Nationwide about the mortgage. They said that they haven't been able to switch to a new interest rate product with another lender because they are in negative equity. They said that the variable rate they are on is too high and that they are mortgage prisoners.

Nationwide didn't uphold the complaint, so it was brought to our service. An Investigator thought we could only look at the complaint that the interest rate was too high in relation to events after 21 February 2017. Overall, the Investigator didn't think Nationwide had acted unfairly.

On 22 January 2024 I issued a decision explaining that I would only be able to consider the complaint about the interest rate from 21 February 2017 onwards. I could consider the complaint about no further interest rate products being available. In response, Mr H1 has reiterated all the points he's previously made about why he believes Nationwide is treating him and Mr H2 unfairly.

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.

Interest rate: As I said in my jurisdiction decision of 22 January 2024, I can only look at the interest rate that has been charged since 21 February 2017. The mortgage is currently on Nationwide's SVR. Mr H1 says that the SVR on the mortgage is too high, if one takes into account that for much of the period since October 2013 (when the mortgage moved to Nationwide's SVR) the Bank of England Base Rate (BOEBR) has been low in comparison. I note that since 2013 Nationwide's SVR has broadly reduced and increased to reflect movement in the BOEBR.

Nationwide has provided the Financial Ombudsman Service with detailed information about the reasons why it varied its SVR in the way that it did. The information Nationwide has given us is commercially sensitive, so can be treated as confidential. The information has been reviewed in line with the mortgage documentation, relevant law and regulations.

One of the considerations that I am required to take into account is relevant law. I consider that the application of the UTCCRs to the relevant terms in this case falls into that category of relevant law. The way the UTCCRs apply to the relevant terms of Nationwide's mortgage contract is ultimately a matter for the courts. But they are a relevant consideration I must take into account when determining what is fair and reasonable in all of the circumstances of this case.

The crux of this is whether any of the terms, contrary to the requirements of good faith, cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. As part of this, relevant considerations are:

- the extent to which the terms are sufficiently clear and transparent;
- the extent to which there were any barriers to Mr H1 and Mr H2 being unable to exit the contract.

At a general level, interest variation clauses such as those that applied to this mortgage have a legitimate purpose and are common in financial services contracts, particularly those of long or indeterminate duration, such as mortgage agreements. A fair variation term can benefit both borrowers and lenders, by providing flexibility and a wider choice to borrowers 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 also permits lenders to provide for future changes that justify increases in the rate; a lender's own costs of funding are by nature difficult to foresee.

When considering whether there was a significant barrier to exit, it is important to note that there was no early repayment charge applicable to this mortgage at the point it reverted to the SVR after the initial fixed interest rate product expired in 2010. So, Mr H1 and Mr H2 were free under the contract to re-mortgage to another lender.

Overall I am not persuaded there is any basis to say that the variations Nationwide made to its SVR resulted in Mr H1 and Mr H2 being charged an unfairly high rate of interest on the mortgage during the period I can consider. Nor does the evidence lead me to conclude that the interest rate applied during that period was unfair for any other reason. Nationwide's SVR has not been out of line with reversionary rates charged by other similar lenders.

I've considered whether Nationwide acted fairly overall. Having done so, I'm satisfied Nationwide varied the SVR in line with the mortgage terms and conditions and that Nationwide exercised those terms fairly. This means that I'm satisfied Nationwide has not overcharged interest on the mortgage since 21 February 2017.

Furthermore, because Nationwide is a residential lender only, its SVR is lower than that charged by BTL mortgage providers. I'm therefore not persuaded that there has been any detriment or loss caused to Mr H1 and Mr H2 by them being on Nationwide's SVR since 21 February 2017.

Mortgage prisoners: Mr H1 says that when the mortgage was migrated to Nationwide's systems in January 2014, he was told that he and Mr H2 would have access to Nationwide's full range of mortgage products, but that's not happened. Because of this, Mr H1 says that he and Mr H2 are "mortgage prisoners".

I note the letter sent on 9 January 2014 says "*you **could** have access to our full range of mortgage products ...*" (my emphasis) I'm satisfied that Nationwide has never provided any guarantee that it would offer Mr H1 and Mr H2 any new products.

Nationwide is a residential mortgage lender only, and doesn't offer BTL mortgages. It has a related business, The Mortgage Works, offering commercial lending (including BTL mortgages). However, Nationwide itself doesn't offer BTL lending. I'm satisfied, therefore, that Nationwide isn't under any obligation to offer Mr H1 and Mr H2 a new mortgage interest rate product, as BTL mortgages aren't part of its product range.

Nationwide's records show when Mr H1 spoke to Nationwide in December 2015, he was told there were no new interest rate products available for the mortgage. Nationwide also repeated this in a final response letter of 22 March 2021 sent to Mr H1 following a different complaint. I'm therefore not persuaded that it was only in 2023 that Mr H1 and Mr H2 were first told this.

In addition, I've reviewed the annual mortgage statements sent since Nationwide took over the account. For residential mortgage borrowers not in a closed book and where the mortgage has reverted to SVR, the annual statements will often invite the borrowers to review their interest rate and provide details of the lender's interest rate section of its website so the borrowers can see if a better one is available.

There is no such wording on any of Nationwide's statements sent to Mr H1 and Mr H2. There are reminders about making sure they have the correct insurance, and about ensuring there is a repayment vehicle for the interest-only mortgage, but no suggestion anywhere that a new interest rate product might be available.

This is a closed book mortgage, which means that there are no further interest rate products available on it. The Financial Conduct Authority (FCA) put rules in place to help residential mortgage borrowers, but as this is a BTL mortgage and so is unregulated. Therefore, the rules that apply to residential mortgage borrowers don't apply to Mr H1 and Mr H2.

Nationwide is, however, required to treat them fairly, but that doesn't extend to an obligation to offer a new interest rate product on a BTL mortgage when that type of mortgage is not part of Nationwide's lending portfolio. I'm mindful that if Nationwide were to offer new lower rates to some ex-Dunfermline BTL customers but not others, that could mean some customers were being treated less favourably than others with similar characteristics. That isn't the case here, because Nationwide doesn't offer BTL mortgages to *any* customers.

I'm therefore not persuaded that Nationwide has acted unfairly in not offering a new interest rate product to Mr H1 and Mr H2, as it is not part of its business model to offer this type of product. I'm also satisfied that Mr H1 and Mr H2 aren't being treated differently from any

other customer in the same situation – because Nationwide wouldn't be able to offer them a new interest rate product either.

I appreciate that, due to the fall in value of the property, Mr H1 and Mr H2 would find it difficult now to re-finance their borrowing to a new lender. They also have only a few months left on this mortgage before the capital balance is due to be repaid in September 2024. I can understand that this is a worry for them. They took out this mortgage in 2008 before the financial crash. I am sure the intention was that it would be a sound investment, with the mortgage being self-financing through rental income, and the property increasing in value to give Mr H1 and Mr H2 a capital return on their investment by the time the mortgage came to an end. Due to circumstances beyond Mr H1 and Mr H2's control, that's not what has happened. Unfortunately, it is always a risk when going into a commercial venture that it might not prove to be a success.

I know it's not the fault of Mr H1 and Mr H2 that the value of their property fell – but it's not Nationwide's either. I understand Mr H1 and Mr H2 acknowledge this; in an email to Nationwide dated 10 February 2022 Mr H1 and Mr H2 say: *"... We are in this truly horrendous predicament, through no fault of ours, markets have simply conspired against us and who would have imagined a property costing £299k would be only worth 60% of its original value 16 years later..."*

Because this mortgage is unregulated the forbearance options offered to residential mortgage customers under mortgage regulations don't apply to this BTL mortgage. Nationwide is still under an obligation to treat Mr H1 and Mr H2 fairly and reasonably, and to give fair consideration to any payment proposals.

Given that the mortgage term is due to come to an end in September 2024, I think it might be helpful for Mr H1 and Mr H2 to take some advice on their options from a specialist BTL mortgage adviser. They will need to have a repayment strategy in place for the mortgage by September 2024 and so should be thinking about this sooner rather than later.

I know this isn't the outcome Mr H1 and Mr H2 were hoping for; I know from what he's told us that Mr H1 has some health concerns, and I am truly sorry if my decision adds to his distress. But in all the circumstances, I'm unable to find Nationwide has done anything wrong.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H1 and Mr H2 to accept or reject my decision before 22 February 2024.

Jan O'Leary
Ombudsman