

The complaint

Mr C has complained about the administration of his seven buy-to-let (BTL) mortgage accounts by Pepper (UK) Limited. All the mortgages were taken out with other lenders but are now owned and administered by Pepper.

Following a jurisdiction decision by another Ombudsman, it has been decided that the complaint covers the following issues:

- credit file reporting for account ending 0544 from October 2016 to July 2020;
- credit file reporting for all accounts from April 2020 onwards;
- whether Pepper acted fairly in relation to requests to change the mortgage payment date in April 2021;
- the fairness of fees, charges and additional interest applied to account 0544 and whether they should have been capitalised from July 2016 onwards;
- the fairness of fees, charges and additional interest applied to all accounts (except for account 0544) – and whether those balances should have been capitalised – from April 2015 onwards;
- the fairness of the interest rate charged on all accounts except for 0544 from April 2015 onwards.

To settle the complaint, Mr C would like Pepper to put things right by removing fees and charges, adjusting his interest rate and by paying more compensation than the £50 it has already offered.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and in two comprehensive letters written by the Investigator, so there is no need for me to repeat the details here.

The evidence in the case is extensive, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and 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.

This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

In addition, our decisions are published, so it's important I don't include any information that might lead to Mr C being identified.

So for these reasons, I will instead concentrate on giving the reasons for my decision.

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.

I will begin by explaining that I am required to consider our jurisdiction at every stage of the process. Having reviewed the time limits in this case, I confirm I agree with the jurisdiction decision issued by the Ombudsman on 13 September 2023 in relation to which parts of the complaint we are able to consider.

Credit file for 0544 from October 2016 to July 2020: A previous complaint made to our service about another business which administered the account until October 2016 was resolved in December 2019. Thereafter arrears remained on the account until August 2020.

I'm satisfied that Pepper has accurately reported this, albeit for one small error where the account was reported as being three, rather than two, months in arrears. This was corrected, and I think the £50 Pepper offered Mr C for this is fair and reasonable and so I don't require Pepper to do anything further.

Reporting of all accounts from April 2020 onwards: I've reviewed the payment histories for the remaining six accounts. I won't set out all the details, as the Investigator did so in his correspondence. I'm satisfied that Pepper has accurately reported the position on the accounts to credit reference agencies, as payments weren't always made in full or on time.

There was one error in relation to account ending 2192 where in April 2020 Pepper incorrectly reported the account as being three months in arrears, rather than two. This has since been corrected and Pepper offered £50 compensation for this. I think this is fair and reasonable in all the circumstances and I don't require Pepper to do anything further.

Fees, charges and interest on 0544 from July 2016 onwards and capitalisation of arrears: Where the account has fallen into arrears, the terms and conditions allow Pepper to charge interest on arrears and to apply fees, which are also interest-bearing.

In his letter dated 23 November 2023 the Investigator provided a comprehensive explanation of why additional interest is charged – and that this is based on the additional fees. I won't therefore repeat all the details here, as the Investigator's explanation is factually correct.

Having reviewed the account from July 2016 onwards, I'm not persuaded there are fees, charges or interest that have been unfairly applied. Pepper has provided evidence in support of legal fees added to the account, which I'm satisfied have been properly incurred.

Pepper has explained that arrears were previously capitalised on the account, and so it wouldn't consider doing this again. Pepper isn't required to capitalise arrears without reference to the borrower. If Mr C wants his arrears capitalised, he can ask Pepper if it will agree to this.

However, given that this will increase the account balance, Pepper will be entitled to consider whether or not this would be affordable. I leave it up to Mr C to decide if he wants to ask Pepper to do this. I'm not going to require Pepper to do anything further.

Fees, charges and interest applied to the other accounts, and whether Pepper should have capitalised these, from April 2015 onwards: Pepper offered to refund some fees as a gesture of goodwill. As those fees were fairly charged, I think this is reasonable.

Initially the Investigator thought Pepper should refund the fees listed on page five of his letter dated 23 November 2023, as these had been applied during the months when a payment had been made. Pepper later clarified that it applies fees in the following months after a payment has been missed, effectively giving the borrower a grace period within which to make the missed payment without incurring a fee.

I've reviewed the fees applied to the accounts. Having done so, I'm satisfied they've been fairly applied, and so I'm satisfied that, other than any fees Pepper has agreed to reimburse as a gesture of goodwill (as detailed in its final response letter dated 1 June 2021), there are no further refunds due.

I'm also satisfied that Pepper isn't under any obligation to capitalise arrears, fees or interest on the accounts, for the same reasons I've given above in relation to account 0544. If Mr C wants to ask Pepper to do this, he will need to make a request, which may involve an assessment of affordability.

Did Pepper act fairly when Mr C wanted to change the mortgage payment date in April 2021? Mr C says that when he asked to change the payment date, Pepper wanted to charge him for this.

However, I'm satisfied that Pepper doesn't charge a fee for doing this. Pepper has explained that, where a customer wants to change the mortgage payment date, this impacts on the monthly interest calculation. Pepper therefore requires interest for the month of the change to be paid in advance, so Pepper can then align the monthly payment date with the actual interest due. I'm satisfied this is reasonable, as it reflects the amount of interest that would fall due between the previous repayment date and the new repayment date.

The fairness of the interest rate applied to all accounts except 0544 from April 2015 onwards: In his initial complaint to Pepper, Mr C said he believed his interest rate should be following the SVR of a (named) building society. The original mortgage offers make no mention of this. Mr C has also expressed his dissatisfaction that the SVR hasn't tracked movement in the Bank of England Base Rate (BOEBR).

The mortgage terms and conditions from the original lender set out that when the initial interest rate products expired, the mortgage would revert to SVR and that this could be varied in line with the terms of the mortgage.

I haven't seen any evidence that persuades me either the original lender or any of the other businesses that have held the mortgage since were obliged, contractually or otherwise, to have SVR track BOEBR. There's also nothing in the terms and conditions that entitled Mr C to a new interest rate. To that extent, the mortgage has operated as it should.

The Mortgage Conditions state under the heading '*3. Changes to the standard variable rate*'

"3.1 If the interest rate is the standard variable rate we may vary it for any of the following reasons:

- (a) to reflect a change which has occurred, or which we reasonably expect to occur, in the Bank of England base rate or interest rates generally;*
- (b) to reflect a change which has occurred, or which we reasonably expect to occur, in the cost of the funds we use in our mortgage lending business;*
- (c) to reflect a change which has occurred, or which we reasonably expect to occur, in the interest rates charged by other mortgage lenders;*
- (d) to reflect a change in the law or a decision by a court; or*
- (e) to reflect a decision or recommendation by an ombudsman, regulator or similar body."*

When Pepper took over the mortgage it gained the power to set the SVR, subject to the terms and conditions detailed above.

I don't think the mortgage conditions are unclear here and in determining the fairness of the interest rate charged during the period of time that I can consider, I'm satisfied that there isn't anything that compels Pepper to link SVR to the BOEBR, or anything that says it will. Nor is there anything to suggest SVR would be a particular margin above the BOEBR.

These are not 'tracker' mortgages, so Pepper is not contractually obliged to track BOEBR. Nor is it the case that Mr C's mortgages had a 'cap' preventing SVR from increasing beyond a certain margin above base rate. So there is nothing in the mortgage contracts that expressly prohibit Pepper from setting SVR at a level whereby the margin between SVR and BOEBR would change. But that doesn't mean Pepper can set its SVR at whatever level it chooses. The term enabling Pepper to vary SVR has to be fair, and Pepper has to ensure that, in varying SVR, it only does so for one of the reasons set out in the contract.

I'm satisfied the terms and conditions allow Pepper to vary SVR independently of the BOEBR. In considering whether Pepper did this fairly and reasonably during the time period in this complaint, I've considered the relevant law – specifically the Unfair Terms in Consumer contract Regulations 1999 (UTCCR).

Having reviewed these regulations, some important considerations are whether the terms in Mr C's agreements go further than reasonably necessary to protect Pepper's legitimate interests, whether the SVR variation clauses are sufficiently transparent and whether there have been any significant barriers to Mr C dissolving the contract.

I think the reasons listed in the terms and conditions in relation to interest rate variation may be considered broad and open to interpretation. It follows that it's possible that a court might find some of the terms unfair, in relation to the unilateral discretion to vary the rate and a potential lack of transparency of when a particular term might be engaged.

However, I don't think the concept of a SVR or a variable reversion rate is fundamentally unfair; it's a common feature of the UK mortgage lending market. A reversionary rate allows a lender to attract new customers with a preferential initial rate, whilst building in the flexibility a variable rate allows to manage its longer-term costs. Many borrowers treat the reversion point as an opportunity to shop around for another preferential rate – either with the existing lender or by moving to another lender.

I have also considered whether there were any significant barriers to Mr C exiting the mortgage. There were no early repayment charges (ERCs) applicable to Mr C's mortgages after the initial fixed rate periods expired. Therefore Mr C was free to re-mortgage elsewhere without having to pay any ERCs to end the existing contract.

Had Mr C re-mortgaged elsewhere, he would most likely have incurred some general fees and possible legal costs, but I'm not persuaded this would be considered a significant barrier to exit, as any borrower would incur those costs if they decided to re-mortgage to a new lender.

But even if the terms were considered unfair by a court, that wouldn't necessarily mean that Mr C had been treated unfairly. We are not a court, and so what I am required to consider is what is fair and reasonable in all the circumstances. That includes – but isn't limited to – the relevant law.

So I've thought more broadly about whether, and the extent to which, the way in which the terms have been used might have resulted in unfair treatment for Mr C in the interest charged to him from April 2015 onwards. In doing so, I've considered the historic context which may have contributed to interest rate changes from April 2015 onwards and whether Pepper had legitimate reasons for varying the rate in the way that it did.

Between 2007 and 2009 the mortgage market was going through a period of significant change, as a result of the global financial crisis. This impacted the funding costs of businesses, including the original lender, and was reflected in changes to a number of lenders' interest rates charged across the market at the time. This was clear at the time and has been the subject of analysis by both the Bank of England and the Financial Conduct Authority. Whilst BOEBR did reduce significantly during this period, the cost to lenders of funding their businesses changed, as did their prudential obligations. These were made up of several factors that are not directly linked to BOEBR. There was a substantial risk to all lenders during this period and they all had to find ways to mitigate that risk, while balancing the need to treat customers fairly.

The changes that impacted mortgage funding predominantly took place in the lenders' wholesale funding markets, the cost of which was, for the most part, contractually defined by reference to the London Interbank Offered Rate (LIBOR). Prior to the financial crisis, LIBOR generally followed BOEBR. However, during and after the financial crisis there was a significant dislocation between LIBOR and base rate, such that reductions in base rate were not matched by commensurate reductions to LIBOR or to the cost of the original lender's wholesale funding. So whilst Mr C's mortgage was not LIBOR-linked, the underlying business model of the lender was, and so this was a factor taken into account when SVR was set by the lender.

Given this, taking into account the historical context of the mortgages taken out by Mr C with reference to SVR, I'm not persuaded that Pepper has acted unfairly in setting its SVR since it took over Mr C's mortgages.

The information Pepper has provided about how it sets its SVR has been reviewed. This information is commercially sensitive, and so we are entitled to treat it as confidential. The evidence does not suggest that the changes Pepper has made to SVR since the mortgages were transferred to it are unfairly, arbitrarily or excessive. Overall, I'm satisfied that Pepper has shown that it was entitled to rely on the terms and conditions to make the changes to SVR it did make, and that there was no obligation on it to make changes to SVR at any other times. Taking that into account, I don't think there's evidence either that Pepper relied on changes it wasn't entitled to make in setting SVR charged at the start of the period I am able to consider, or that it has acted unfairly in making further changes to SVR during that period.

Conclusion

I'm satisfied that the fees Pepper offered to refund as a gesture of goodwill and the £50 it offered for an error in reporting the wrong number of months of arrears are fair, reasonable,

proportionate and appropriate compensation. As I've found no other errors made by Pepper, I'm not upholding the complaint or ordering Pepper to do anything further.

I note Mr C believes the mortgages were mis-sold. However, Pepper did not sell the mortgages or give Mr C any advice when he took them out. If Mr C believes the mortgages were mis-sold, he will need to refer this to the party which sold the mortgage.

As the original lender did not offer mortgages direct to the market but only through mortgage intermediaries, this means Mr C will need to refer his concerns about mis-sale to the intermediary or mortgage broker which arranged the mortgages for him. However, I will explain here that the sale of BTL mortgages by a broker is not an activity that is covered by our rules. Therefore, if Mr C was to complain to the broker that the mortgages were mis-sold and was unhappy with the outcome of his complaint, we would not be able to consider a complaint about this.

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 C to accept or reject my decision before 1 April 2024.

Jan O'Leary
Ombudsman