

The complaint

Mr R's complaint arises out of a mortgage account with Leeds Building Society (LBS). Mr R says that, after his property was taken into possession by LBS, the surveyor LBS appointed undervalued the property.

Mr R also says that he was charged an excessive rate of interest on his mortgage.

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 our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr R being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr R's shared ownership property, mortgaged to LBS, was rented out to a tenant. The tenant stopped paying rent, as a result of which the mortgage fell into arrears. Mr R started legal action to evict the tenant, but this was superseded by LBS taking possession proceedings due to arrears on the mortgage. LBS took the property into possession and in May 2023 its asset managers put the property on the market for sale.

Mr R is unhappy that the property was valued at less than he believes it is worth. Mr R also says that he was charged too much interest on his mortgage.

Mr R had raised other complaint issues but our Investigators have explained that we can only look at the interest rate applied to the mortgage for the six years before the complaint was first raised – so only from May 2017 onwards.

Mr R had also complained about the property having been repossessed by LBS, and about LBS not allowing him to continue with his own legal action against his tenant. The Investigators were satisfied that these were issues that had been the subject of court proceedings where there had been a decision on the merits, and so it wasn't appropriate for us to consider those matters.

In relation to the issues we could consider, the Investigators were satisfied that LBS had appointed a suitably-qualified surveyor to value the property. As far as the interest rate was concerned, this had been applied in line with the mortgage terms and conditions.

Mr R didn't agree and asked for an Ombudsman to review the complaint.

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 agree with the Investigators about those parts of the complaint that we cannot or should not consider. The investigators have set out the details of the relevant part of our rules in correspondence with Mr R, so I won't repeat them here. But I'm satisfied that I can only consider the complaint about the interest rate from May 2017 onwards. I

it's also not appropriate for us to consider Mr R's complaints about the repossession of the property by LBS as these matters have already been decided by a court.

Interest rate:

Mr R's mortgage has been on Standard Variable Rate (SVR) during the period in question, from May 2017. LBS has previously provided the Financial Ombudsman Service with detailed information about the reasons why it varied its SVR in the way that it did. The information LBS has given us is commercially sensitive, so can be treated as confidential. The information has been reviewed in line with LBS's mortgage documentation, relevant law and regulations.

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

One of the considerations that I am required to take into account is relevant law. I consider that the application of the Unfair Terms in Consumer Contract Regulations (UTCCR) to the relevant terms in this case falls into that category of relevant law. The way the UTCCR apply to the relevant terms of Mr R'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 significant barriers preventing Mr R from exiting the contract.

At a general level, interest variation clauses such as those that applied to Mr 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 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.

When considering whether there was a significant barrier to exit, it is important to note that there was no early repayment charge applicable to Mr R's mortgage at the point it reverted to the SVR. So, if LBS had exercised its rights as set by the variation terms, and Mr R was

unhappy with that decision, Mr R was free under the contract to re-mortgage to another lender.

Overall I am not persuaded there is any basis to say that the variations LBS made to its SVR resulted in Mr R 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.

I don't uphold this part of the complaint.

Valuation:

When Mr R purchased the property in 2018 it was valued at £100,000. The surveyor appointed by LBS's asset managers in May 2023 valued the property at £110,000, and used two other properties in the same development and one similar nearby property as comparables. The valuation reflected the condition the tenant had left the property in, including an abandoned car in the parking space, and general cleaning and minor repairs.

The surveyor who carried out the valuation is a member of the Royal Institution of Chartered Surveyors. I'm satisfied, therefore, that LBS was entitled to rely on his professional opinion about the potential re-sale value of the property.

I don't uphold this part of the complaint.

Conclusion

I have no doubt this has been a very upsetting time for Mr R. He, unfortunately, had a "nightmare" tenant, who stopped paying rent and refused to vacate the property. The situation was made worse by the pandemic, which meant Mr R had to postpone taking action to remove the tenant.

Ultimately LBS was granted possession by the court, due to the mortgage arrears. I can see from what Mr R has told us that the situation he found himself in was largely outside of his control, and I have considerable sympathy for him.

However, in relation to the issues I have been able to consider in this complaint – the interest rate charged since May 2017 and the valuation after the property was taken into possession – I'm unable to find LBS 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 R to accept or reject my decision before 1 May 2024.

Jan O'Leary
Ombudsman