

## **The complaint**

Mr F is unhappy with how the interest rate has varied on his buy-to-let (BTL) mortgage with Intrum Mortgages UK Finance Limited. Mr F states the interest rate rises have no relation to Intrum's cost of funds and he feels the interest rate should track the Bank of England base rate but it hasn't.

## **What happened**

Mr F took out a secured loan on a BTL property with a lender called Heritable Bank in 2007. Mr F borrowed £110,240.32 which included fees which were added to the loan, with a term of 20 years. This loan was fixed on a rate of 6.24% until June 2009 after which the interest rate would revert to a variable interest rate, which at the time was 7.24%.

Mr F has complained that he has been charged an unfairly high rate of interest and he feels that they are charging him whatever they want.

In October 2008 Heritable Bank went into administration, and so Mr F's mortgage was serviced by administrators. It was later transferred to Intrum (which was known as Mars Capital at the time but has since changed its name). Following the transfer, Mars Capital became the legal owner of the mortgage and acted as Mr F's mortgage lender. For ease, I will refer to Intrum throughout this decision.

By July 2010, Mr F's interest rate was at 4.99% and in December 2010, this rate had increased to 5.49% where it remained until March 2012. The rate then increased to 5.99% and the interest rate remained the same until December 2016. It then decreased to 5.84% and remained at this level until February 2018 when it increased again to 5.99%. In May 2018, the interest rate increased to 6.19% and increased again in November 2018 to 6.30%.

In February 2019 the interest rate increased again to 6.41% which decreased to 6.27% in August 2019. There was a further decrease in April 2020 to 6.02% and another decrease in May 2020 to 5.77%. The interest rate remained at this level until May 2022 when it then increased to 6.22%. The interest rate increased again in September 2022 to 7.22% and again in December 2022 to 8.47%.

Mr F complained to Intrum on 10 February 2023 about the interest rate he had been charged. They responded to Mr F on 27 March 2023 saying that the interest rate variations were made in line with the original terms and conditions of the mortgage.

Intrum explained that the interest rate didn't solely track the Bank of England base rate and it was based on other factors. Intrum also said they didn't consent to our service looking into things as the complaint had been brought outside of the relevant time limits.

Mr F brought his complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator concluded that the complaint about all of the interest charging events that took place within the six years prior to the complaint being made on 10 February 2023 could be looked into – so from 10 February 2017. The investigator asked Intrum for an explanation surrounding the increase in the interest rates and they said that the interest rate had changed when cost of funding had changed. Costs were linked to LIBOR and then Term SONIA Reference rates, which is not linked to Bank of England base rate. The rate was varied quarterly based on changes in those rates.

The investigator concluded that we could only look at the interest rate from 10 February 2017 but in order to do this, he had to look at what had happened prior to this date. He thought that Intrum charged an unfairly high rate of interest so he asked Intrum to recalculate Mr F's mortgage to track the Bank of England base rate since June 2009 and should refund any overpayments from February 2017 onwards.

Mr F said he wanted our service to go back further than the six years and provided some information as to why he thought his circumstances were exceptional.

Intrum then gave us information surrounding the increases in the interest rates applied to Mr F's mortgage. They said the following:

- They can provide information about the interest rate charged prior to 2013 however, they cannot provide any information on how the previous lender (and then the eventual Administrators of the previous lender) set rates as this was before their ownership of the account.
- Since June 2013 the loans were owned by Intrum and rates previously changed in alignment with cost of funds. But the rates were driven by changes in the cost of funds of the securitisation vehicles that held the beneficial interest in mortgages like Mr F's, not by changes in Intrum's own funds.
- The loan has been inside multiple securitisation vehicles since 2013 and other loans tracking the same managed rate were inside other RMBS deals with different costs of funds and rate setting dates. During these periods a weighted average in rates was passed onto consumers.
- These RMBS transactions tracked 3-month GBP The London Inter-Bank Offered Rate (LIBOR) until it ceased and then migrated to Term SONIA Reference Rate (Sterling Overnight Index Average). These loans have therefore, since 2013, had an inferred link to the standard market rates such as LIBOR and Term SONIA.
- In May 2023 the decision was taken to link the rates to the Bank of England base rate and this decision was taken through a Consumer Duty lens as it made for an easier customer journey than a reference to Term SONIA reference rate.

### **My first provisional decision**

I issued a provisional decision setting out why I didn't think Intrum had provided enough evidence to show the interest rate increases were justified. And I explained that in the absence of further evidence I was minded to uphold the complaint. In response, Intrum provided further evidence and said the following:

- Mr F was provided with the mortgage conditions from 2006 alongside the mortgage offer. These confirm that rate increases were allowed for movements of interest rates outside of the Bank of England base rate and therefore not limited to linkage with that rate.
- The legal title for Mr F's mortgage was transferred to Intrum in July 2013 after which Intrum assumed rate setting oversight. During their tenure as legal title holder, they relied on multiple conditions with the primary driver being a link to the cost of funds of the beneficial owner. They said that beneficial interest in the assets is held by their clients, who contract with Intrum as the legal title holder and regulated servicer to administer the accounts on their behalf.
- Since 2013, the loans have been within various structured credit portfolios including private and public transactions. The cost of funds within each of these transactions has been the primary driver of rate changes and was linked to market rate including LIBOR and Term SONIA. LIBOR was a forward looking rate until the cessation of its publication when the loans migrated to Term SONIA which is a quarterly compounded rate in arrears.

Intrum explained that the cost of funds wasn't driven by Intrum, but rather by the beneficiaries. Intrum said they are not sighted on the cost of funds on these private transactions, but they are aware these linked to market rates such as Bank of England base rate and LIBOR. They provided information which evidenced that the rates moved in line with those market rates.

Intrum also provided us with evidence that they are permitted under Mr F's contract to adjust interest rates to reflect change to the beneficial title holder's cost of funding. They acknowledged that this has taken a very long time to try and resolve and this would have had an impact on Mr F, so they said if we agreed with their approach, they would be happy to pay Mr F £750 for the inconvenience caused.

### **My second provisional decision**

I considered this information in the second provisional decision, where I explained why in light of the new evidence I now didn't think the complaint should be upheld. I said:

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

I'd firstly like to acknowledge that this has taken some considerable time to reach this point and I thank Mr F for his patience in the matter.

I've thought very carefully about the information that Intrum have now provided and having thought about it all, I've come to a different conclusion to the one I reached in my previous provisional decision.

The crux of this complaint is about whether Intrum charged Mr F an unfairly high rate of interest. In deciding whether the rate was fair, a key consideration is whether the changes they made were changes they could make based on their terms and conditions.

The relevant provisions are as follows:

*"we, us and our Heritable Bank Limited and anyone who may take over our legal rights under the mortgage in the future as described in Section 14".*

This comes in the definitions section, and means that wherever the words "we, us and our" are used in the terms and conditions, they mean either the original lender Heritable, or anyone to whom Heritable's rights have been transferred in accordance with section 14.

Under section 14, "transfer of the mortgage", it states:

*"14.1 You agree that we may transfer, charge, dispose or assign:*

*14.1.1 The mortgage and these conditions;*

*14.1.2 Any other security; and*

*14.1.3 Any guarantee in relation to this advance given to us by a guarantor, (either in law or in equity) in part or in whole (including the benefit of any individual rights) to any person ("transferee") in any way we consider to be appropriate without first seeking your permission".*

The reference to "in law or in equity" and to transfer "in part or in whole" means that either the legal title, beneficial interest or both can be transferred, either together or separately. The holder of legal title means the party which owns the mortgage and acts as lender. The holder of the beneficial interest means the party which is entitled to receive the benefit of any payments Mr F might make. It's not unusual in the mortgage market for the two to be separated. The beneficial interest of a loan might be sold on – securitised – to, for example, allow the legal title holder to raise further funds to lend to new customers. Or, as here, where the original lender withdraws

from the market, the beneficial interest might be acquired by an investor which appoints a third party to act as legal title holder and manage the mortgage.

In this case, when the mortgage was taken out, it was owned in full by Heritable. But after Heritable went into administration, the administrators sold the mortgage to third party investors – they retained the beneficial interest, and Intrum (then Mars Capital) acquired legal title to manage the mortgage, collect the payments, and pass the benefit on to the beneficial owner. As I say, this is not unusual in the mortgage market.

I'm therefore satisfied that Mr F's mortgage was validly transferred from Heritable, and that it was split into the legal and beneficial interests. Intrum became the legal owner. Where, in the rest of the terms and conditions, there is reference to "we", "us" or "our", this could refer to either Intrum, the beneficial owner, or both.

With that in mind, I've then looked at the section about changing the interest rate.

It says:

*"2.4.4 We may increase our standard variable rate because:*

*...*

*(b) the cost to us of borrowing funds has increased or we reasonably believe it is likely to do so;"*

The term "we, us and our" includes anyone who has taken over the mortgage, in this case Intrum as legal owner – or, as I've explained, the beneficial owner. That means that both Intrum's costs and the beneficial owner's costs can be taken into account in setting the interest rate.

Intrum has explained that while its own costs didn't change, those of the beneficial owner did – and those changes were passed on in the form of changes to the interest rate. Having considered this further evidence and argument, I now think these terms and conditions do allow Intrum to vary the interest rate because the beneficial owner's costs have changed. That's something permitted by the contract.

I've then gone on to consider the interest rate charged and whether changes to the rate have varied in such a way that they do reflect changes to the beneficial owner's costs. Intrum said it doesn't have access to detailed information about the costs of the beneficial owner as a third party, but that their costs of raising funds change from time to time and were linked to LIBOR and Term SONIA and not linked to the Bank of England base rate.

A reference rate is generally considered a reliable proxy for market rates – like LIBOR and Term SONIA. These are a representation of the underlying market due to factors such as credit risk and volatility. Intrum chose to track LIBOR and Term SONIA once LIBOR ceased to exist. More recently, and for greater transparency, it has moved to tracking Bank of England base rate instead.

I've looked at the information that Intrum have provided, and I am satisfied that it has shown that the interest rate has varied in line with LIBOR, Term SONIA and then Bank of England base rate. I'm satisfied that Intrum had the right to vary the interest rate to reflect changes in the cost of funds of the beneficial owner. I agree that the LIBOR, Term SONIA and Bank of England base rate reference rates provide a reasonable proxy for the cost of borrowing funds faced by the beneficial owner. For that reason, I'm now persuaded that the interest rate has not varied unfairly.

I'm sorry to disappoint Mr F, but I am no longer of the opinion that Intrum have charged him a higher rate of interest than the terms and conditions allowed. I also note that he has complained about late payment fees and interest added to those fees. This isn't something that I can see he's complained about before, so he would

need to raise this with Intrum first and if he then remains unhappy with their response, he can bring that complaint to our Service.

I'll consider any further comments that Mr F makes in response to this provisional decision before I make a final decision on the matter.

I note that Intrum have offered to pay Mr F £750 in recognition of the time taken to try and resolve this complaint. Bearing in mind all the circumstances, including the time taken to provide a clear explanation justifying the interest rate that was charged and the impact of that on Mr F, I think that's a fair offer.

## Developments

Intrum responded to the provisional decision and were satisfied with the outcome.

However, Mr F responded and didn't agree. He made the following comments:

- He believes the change in outcome places emphasis on Intrum advising that their own rate setting decisions from December 2016 have been made in line with the contract. However, this fails to take into account that they have no answer to the 'offending' rate setting decisions in July 2010, December 2010 and March 2012.
- He considered clause 2.2.4 and he accepts that this doesn't require the lender to track the Bank of England base rate so he is not intending to pursue this part of the complaint. He does however contend that the relationship is 'unfair' for the purposes of s140A of the Consumer Credit Act 1974.
- Mr F then made reference to s140A:
  - (1) the court may make an order under section s140A in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one of the following-
    - (a) any of the terms of the agreement or of any related agreement;
    - (b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
    - (c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).
  - (2) in deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).
- Mr F said there should be proper consideration of whether a debtor-creditor relationship is 'unfair' and this requires a broad assessment of all elements
- Mr F also wanted to draw our attention to the case of Blevin v Datum Finance Limited. And that once a debtor raises a case that the debtor-creditor relationship is 'unfair', the burden of proof rests solely on the lender to prove that the relationship was fair.
- Mr F then commented and outlined what was stated in clause 2.4.4 – changing the interest rate, which is detailed further above. He said he believes this clause is relevant to a consideration pursuant to s140A(1)(a). He said in respect of subclauses (a), (b) and (d), the Ombudsman may consider that:
  - there is no requirement the upward shift in SVR be limited to reflect or track the upward shift that triggered the uplift in SVR;
  - a risk averse lender may perceive market risks and uplift the SVR only for that market shift to never materialise;

-there is no requirement for a downward shift in SVR if a perceived market shift did not materialise

-a risk-adverse lender may over react to actual market shifts and uplift the SVR on the basis of that exaggerated reaction to actual market shifts had resulted in an uplifted SVR

- subclause (c) the Ombudsman may consider that there is friction in charging yesterday's debtors more in order to compete better for tomorrow's new business

- clauses that permit the SVR to be uplifted on the basis of a mere unilateral supposition is a typical example of what might be determined as 'unfair' for the purposes of s140A(1)(a).

- The mortgage offer was made on 25 April 2007 and the Bank of England base rate was 5.25%. The interest rate offered at that time was 6.24% for two years which then reverted to the SVR of 7.24% – so the SVR was 2% above the Bank of England base rate. The interest rate was varied in July 2010, December 2010 and March 2012. Mr F says Intrum doesn't know what clause was relied on when these interest rates were varied.
- Mr F then gave a number of considerations regarding the SVR and why it may or may not have increased against the reasons outlined within the terms and conditions, section 2.4.
- Mr F said in the absence of any details from Intrum as to the rate setting decisions carried out in July and December 2010 and March 2012, that we should consider that a court would make a finding that the relationship is 'unfair'.

### **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'd firstly like to thank Mr F for the time he has taken in providing his response to my provisional decision. I understand and accept that he is disappointed that my outcome has changed.

I'd like to reassure him that I have taken into consideration everything he has said and thought carefully about the arguments he has made. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

Mr F's main focus is the interest rate increases in July and December 2010, and March 2012. He has said that these changes didn't track the Bank of England base rate (which was permitted by the contract) and that Intrum cannot explain why these increases happened. This is what I originally upheld Mr F's complaint on.

But Intrum have now explained why the increases happened and those increases were not because of the Bank of England base rate but instead because the cost to them of borrowing funds had increased.

This change in interest rate is allowed as it's one of the clauses in the terms and conditions which says:

*"2.4.4 We may increase our standard variable rate because:*

*...*

*(b) the cost to us of borrowing funds has increased or we reasonably believe it is likely to do so;”.*

As I have already explained, Intrum explained that their own costs didn't change but those of the beneficial owners did. And those changes were passed on to Mr F's mortgage in the form of changes to the interest rate. I'm satisfied this is permitted by the contract.

Mr F has made several arguments as to why he believes the relationship between him and Intrum is unfair and that a court would deem this to be the case. But I don't agree with this.

While it's for a court to decide matters of law, I must take account of relevant law in determining a fair and reasonable outcome to complaints. In the particular circumstances of Mr F's complaint, I don't think the way the interest rates varied on his mortgage resulted in a credit relationship that was unfair to Mr F.

In all the circumstances, I don't think it can be reasonably argued that an imbalance arose in the debtor-creditor relationship as a result of those interest rate changes. I'm satisfied that there were good reasons which were permitted by the contract which allowed the changes to the interest rate.

For these reasons, as well as those set out in more detail in my provisional decision, I don't consider that Intrum acted unreasonably in the way they varied the interest rates on Mr F's mortgage, or that a court would be likely to consider that an unfair relationship existed under the relevant parts of the Consumer Credit Act.

### **My final decision**

For the reasons given above, I find that Intrum Mortgages UK Finance Limited has made a fair and reasonable offer to settle this complaint and direct them to pay Mr F £750 for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 July 2025.

Maria Drury  
**Ombudsman**