

complaint

Mr and Mrs B complain about their mortgage with Clydesdale Bank Plc trading as Virgin Money. They're unhappy it hasn't offered them new interest rates.

background

Mr and Mrs B took their mortgage with Northern Rock around fifteen years ago. In 2008 and 2010, Mr and Mrs B took further borrowing. When Northern Rock collapsed the mortgage moved to Virgin Money, which has since merged with Clydesdale – the merged entity still uses the Virgin Money trading style. Virgin Money is now responsible for their mortgage and for this complaint.

They borrowed £98,000 in 2006, on a ten-year fixed rate of 5.39%. In 2008, they borrowed a further £10,000 at a lifetime rate of 2% above the standard variable rate (SVR). And in 2010 they borrowed £6,000 at 5% above the SVR. The three tranches are all on separate terms, but all three were due to expire around 2026.

In 2012, Mr and Mrs B began to experience some financial difficulty and fell into arrears. Virgin Money extended the term of their borrowing by a further four years to reduce their monthly payments, but Mr and Mrs B continued to face difficulty.

In 2016, their main mortgage fixed rate expired, and that part of their borrowing then reverted to a discount rate 0.25% below the SVR. The further borrowing elements remained on their lifetime rates 2% and 5% above the SVR.

In 2017, Mr and Mrs B asked about a new interest rate. Virgin Money told them they were not eligible for a rate while the mortgage remained in arrears.

Mr and Mrs B's financial position began to recover, and while they remained in arrears they were by and large able to maintain their monthly payments and make small contributions to reducing the arrears.

By early 2020, the arrears were down to less than £4,000. But then the coronavirus pandemic hit, and Mr B's income was affected. Mr and Mrs B took six months' payment deferral. But, other than missing one payment in January 2021 by agreement, they've maintained the monthly payment, plus a small contribution to the arrears, since then.

Mr and Mrs B complain they have been charged excessive rates of interest across their borrowing, and if the rates were lower they would have been able to reduce the arrears more quickly. They believe that as a result the further borrowing was mis-sold and that the interest rate should be reduced. They say Virgin Money won't consider new interest rates until the arrears are cleared completely.

Virgin Money said that it was policy not to offer new interest rates to customers in arrears. To be considered, Mr and Mrs B would first have to clear the arrears. It could consider capitalisation, but only if Mr and Mrs B would be able to show six months' payments at the higher level that would follow capitalisation first. Mr and Mrs B hadn't been able to do that, most recently because of the payment deferral.

And it considered capitalisation separately to, and before, a rate switch. Therefore the six months would have to be at the current rates applicable, not the rates Mr and Mrs B might

be able to take after a switch. But it said that once Mr and Mrs B became eligible for a rate switch, they would be able to take a new rate across all three parts of their loan, folding them into a single account.

Our investigator recommended upholding the complaint. He said that it would have been fair for Virgin Money to have capitalised the arrears once it was satisfied that Mr and Mrs B could afford monthly payments at a new interest rate – it could then have offered them a new rate at the same time as capitalisation. Whereas requiring them to prove they could pay the capitalised monthly payment on SVR put a higher barrier in place than they'd ever actually have to clear.

He said that Mr and Mrs B had been maintaining their monthly payments and reducing the arrears for over a year when they asked for a new rate. It would have been fair if Virgin Money had agreed to capitalise and grant a new rate from early 2017, and had it actually done so six months later if Mr and Mrs B had kept to their payments in the meantime.

Mr and Mrs B accepted that. But Virgin Money didn't. It said it didn't offer capitalisation in 2017 – it only started to offer that as a forbearance option in 2019. It didn't think it should be required to offer something when it was not its policy to do so at the time. It also said that Mr and Mrs B were not currently making any payments to the mortgage. So it wouldn't be appropriate to put them on a fixed rate now. But, in future, if Mr and Mrs B were able to demonstrate that they could make their payments for six months in a row based on what the payments would be on a new interest rate, it would agree to capitalise and offer a new rate.

my findings

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

Mr and Mrs B had some financial difficulties, which led their mortgage to fall into arrears. But while they've never been able to clear the arrears, they've been able to maintain the monthly payments, plus pay a small amount to the arrears, for several years now.

Virgin Money says that it's policy not to offer rates to customers in arrears. And – as a general rule – I can understand that. A customer struggling with their mortgage is more likely to need to sell the property, or even face repossession. If they're in a fixed rate at that time, there would be a significant early repayment charge (ERC) if that were to happen.

But I also need to think about what's fair in the particular circumstances of this case. I accept that Virgin Money followed its policy. But did that produce a fair result for Mr and Mrs B?

By 2017, Mr and Mrs B were maintaining their monthly payments again – but only just, and weren't able to make significant contributions to the arrears. But it was nevertheless clear that they were now able to maintain the mortgage. So while they remained in arrears, they were no longer in financial difficulty, and the extra risk of an ERC had fallen away.

At the same time, remaining on SVR – and, in the case of the further borrowing – 2% and 5% above the SVR – meant that they were paying significant interest each month. And so more of what they could afford was going towards interest, and less towards clearing the arrears, than if Virgin Money had offered them a new interest rate. I think that would have been the fair thing to do.

Our investigator said that Virgin Money should also have capitalised the arrears at that time but Virgin Money said it didn't offer that as an option at the time. Again, I need to think not just about whether Virgin Money followed its policy, but whether that resulted in fair treatment for Mr and Mrs B in their specific circumstances.

The regulator says that capitalisation is one of the options a lender should consider to assist a borrower in arrears. Virgin Money does consider that now, and it's not clear to me why it didn't do so in 2017. In this particular case, I think it would have benefitted Mr and Mrs B for the same reasons a new interest rate would have done. Their financial difficulties were behind them, but they were still in significant arrears and only able to reduce the arrears a bit at a time. Capitalisation would have cleared the arrears – making it easier for Mr and Mrs B to move on from their past financial difficulty, and removing the objection to giving them a new rate on the grounds of arrears.

I think in all the circumstances that it would have been fair for Virgin Money to have capitalised Mr and Mrs B's arrears, and offered them a new interest rate, from July 2017, and that's the position I think Virgin Money should put them back in.

As part of the resolution of this complaint, Virgin Money will need to discuss with Mr and Mrs B what rates it had available at that time and allow them to select a rate appropriate to their loan to value and any other eligibility criteria – and, depending on the length of the rate they choose, another rate to follow on from that one up to now. The interest rate should cover all three parts of their borrowing.

That will involve re-working Mr and Mrs B's mortgage, and following the re-work they will have made overpayments. Those overpayments should be used firstly to clear the payment missed in January 2021 (the 2020 payment deferrals having already been capitalised), and then Mr and Mrs B should be given the choice of having the remainder refunded to them, adding simple annual interest of 8% on each month's overpayment, or having the overpayments used to reduce the mortgage balance, reducing the mortgage interest month by month.

my final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Clydesdale Bank plc trading as Virgin Money to:

- Re-work Mr and Mrs B's mortgage so that it as if:
 - The arrears were capitalised from 1 July 2017;
 - Mr and Mrs B were offered new interest rates for the whole of the mortgage, from 1 July 2017 and on the expiry of the rate they select from that date.

This will result in overpayments having been made to the mortgage since 1 July 2017. The overpayments should be used in this order:

- To pay any product fee, if Mr and Mrs B select rates with product fees; then
- To pay the missed payment in January 2021; and then
- As Mr and Mrs B choose, either:
 - Refunded to them, adding simple annual interest of 8%* running from date of payment to date of refund; or
 - Used to reduce the mortgage balance, and thus the interest charged, month by month.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 2 July 2021.

Simon Pugh
ombudsman

** Clydesdale Bank plc trading as Virgin Money may deduct income tax from the 8% interest element of my award, if applicable, but should give Mr and Mrs B the necessary paperwork, if they ask for it, so they can reclaim the tax from HMRC if they're entitled to do so.*