DRN-4572152

The complaint

This complaint's about Miss E's mortgage with Landmark Mortgages Limited (LML). Miss E say LML has:

- increased its standard variable interest rate by more than is justified by changes to the Bank of England Base Rate (BEBR);
- denied her access to a lower interest rate and treated her unfairly as a result; and
- charged a higher variable rate than other lenders.

Miss E is also unhappy that the mortgage was transferred from its predecessor lender to LML, which is a closed lender. She thinks LML has failed to comply with the Mortgage Charter. Lastly, Miss E is dissatisfied with how long LML took to reply to her complaint.

What happened

Miss E's mortgage started in 2002; she borrowed £124,000 on a repayment basis, over 25 years, from a lender I'll call N. In 2003, Miss E took a further advance of £11,000. The mortgage was on a fixed rate deal until 2004, then on Standard Variable Rate (SVR) up to 2011. Since then, the mortgage has been on SVR minus a fixed discount of 0.25%. In 2005, Miss E took out a secured personal loan of £27,000 over ten years. The secured loan was on a lifetime rate of SVR minus a fixed discount of 0.8%. By the time of the 2006 annual statement, the mortgage and secured loan had been changed to an interest-only basis.

In the meantime, N become a closed lender and stopped offering new rate products. In 2016, N changed its name to LML as part of its acquisition by another business. The original term of the secured loan had expired in 2015, but was extended more than once. In 2019, a new ten-year term was agreed for both the mortgage and the secured loan.

Miss E doesn't occupy the mortgaged property; she lives elsewhere and the mortgage property is managed by a trust. In 2018, a court order was issued restricting the terms on which Miss E can sell the mortgaged property. Miss E has raised various complaints with LML before now, some of which have been dealt with by our service. The current complaint started towards the end of 2022, and Miss E referred it to us in the spring of 2023, frustrated at how long LML was taking to address it.

LML eventually provided a final response in April 2023, rejecting all aspects of the complaint. When our investigator looked into it, she wasn't persuaded we had the power to look into all of the complaint. She issued her view giving the reasons for this in July 2023; in the same view, she explained why, on the parts of the complaint we could consider, she didn't think LML had treated Miss E unfairly. Miss E doesn't agree with either element of the investigator's opinion, so the complaint has been referred to me to review.

By way of a jurisdiction decision dated 16 January 2023, I confirmed that my remit to consider the merits of this this complaint was confined to the interest charging events that took place after December 2016.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

We revisit jurisdiction at every stage of our case-handling process. I've read what Miss E said in her email of 16 January 2024 following receipt of my jurisdiction decision. A consumer knowing they have cause for complaint doesn't mean knowledge of everything that has, or may have, gone wrong, or every argument that could be made in support of a complaint. And it certainly doesn't mean thinking there might be the possibility of a complaint succeeding. It simply means awareness that something has, or might have, gone wrong, which gives rise to cause for complaint.

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

Miss E has cited the Mortgage Charter, believing LML to have breached it in its dealing with her. However, the Charter took effect after this complaint was brought to us, and is not retrospective.

Changes to the SVR

The starting point here is the respective agreements Miss E entered into for the mortgage and secured loan. In both cases, the rate LML was permitted to charge in the absence of a separate interest rate product (a point I'll address shortly) was set by reference to its SVR. In the case of the mortgage, that was SVR between 2004 and 2011, and SVR minus 0.25% thereafter; for the secured loan it was SVR minus 0.8%.

Meantime, N (as it was then known) had stopped offering new interest rate deals before the mortgage reverted to an SVR-based rate in 2011. That being the case, I'm satisfied that the interest rates that LML was permitted to charge under the terms of the mortgage and secured loan during the period I can consider were discounted rates using SVR as their reference point.

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 Contracts Regulations (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 Miss E'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 to Miss E being unable to exit the contract.

As regards clarity and transparency, I accept that its possible a court may find the terms to be unfair under UTCCR but this in itself is not determinative of this complaint. I also need to consider whether the application of these terms has led to Miss E being treated unfairly. And for the reasons set out above, I don't think this is the case.

At a general level, interest variation clauses such as those that applied to Miss E'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 reversion 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.

The time period I'm looking at (December 2016 forwards) followed on from a time of significant change in the wider market as a result of the financial crisis in 2008/09. This had a long-term impact on the funding costs of businesses and was reflected in changes to a number of lenders' interest rates charged across the market at the time and subsequently. It's also what led to N becoming a closed lender in the first place.

I'm also mindful that the FCA has noted the adverse impact the financial crisis had on lenders' costs during that period, and that it hasn't seen that SVR variation terms have generally been relied on unfairly to cause widespread detriment to consumers (see for example the May 2018 Guidance Consultation GC18/2 Fairness of Variation terms in financial services consumer contracts under the Consumer Rights Act 2015 paragraphs 2.8 to 2.10).

LML 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 LML has given us is commercially sensitive, so can be treated as confidential. The information has been reviewed in line with LML's mortgage documentation, relevant law and regulations.
I've considered whether LML acted fairly overall. Having done so, I'm satisfied it varied the SVR in line with the relevant terms and conditions of each contract it had with Miss E and that LML exercised those terms fairly. This means that I'm satisfied LML did not overcharge interest on Miss E's mortgage and loan accounts after December 2016.

Whilst the BEBR had reduced significantly leading up to this period, the costs to lenders of funding their businesses changed, as did their prudential requirements. These are made up of several factors that are not directly linked to BEBR. There was a substantial increase in risk to all lenders before and during that period, and that led to them having to mitigate that risk in different ways. So there are objectively justifiable reasons why LML did not always reduce the applicable rate at the same level as the reduction in BEBR.

Overall I am not persuaded there is any basis to say that the variations LML made to its SVR resulted in Miss E being charged an unfairly high rate of interest on her mortgage and loan 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.

Access to rates

Again, my remit is confined to what happened after December 2016, but I must also consider if events prior to that date impacted on what happened after it.

This element of the complaint is about whether LML either:

- placed obstacles in the way of Miss E getting a new rate; and/or
- failed to take reasonable steps to let her know this was a possibility for her to explore.

On the first point, there was no early repayment charge applicable to Miss E's mortgage account from the point it reverted to SVR in 2004 and then to an SVR-based rate in 2011, or at any point to the secured loan. So, if LML, or N as it was known before 2016, had exercised its rights as set by the variation terms, and Miss E was unhappy with the decisions it made, she was free under the contract with LML to seek a re-mortgage with another lender.

On the second point, as I've already set out, LML had become a closed lender whilst still known as N. However, that in itself wouldn't have prevented Miss E from looking for a better deal by re-mortgaging to another lender, and I don't think it was incumbent on LML to alert her to that possibility unless she specifically asked about it.

Miss E was in regular contact with LML during the period under consideration about other matters; one example being the term extension in 2019. There would have been ample opportunity for her to ask about rates. Had she done so, I've no reason to doubt that LML would have told her about the possibility of another lender being able to offer a better rate, which is what it did as part of its final response to the December 2022 complaint.

In saying all of this, I am aware of the possibility that there may have been external factors that might have impacted on Miss E's ability to re-mortgage to another lender; what is typically referred to as being a "mortgage prisoner". But if there were, they will not have been imposed by LML.

LML's interest rates have been higher than other lenders

I've explained earlier in this decision why I don't believe LML has breached the mortgage terms or otherwise treated Miss E unfairly with regard to the interest rates it has charged her during the period under review. As far as how its rates compare with those offered by other lenders, it's not inherently unfair for one lender to charge more than another. It might well be a reason for borrowers to explore the possibility of moving to another lender. That links back to the findings I've made above that LML has not done anything to obstruct Miss E from seeking such a solution, even if other circumstances make that difficult for her.

My final decision

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 19 February 2024.
Jeff Parrington
Ombudsman