

The complaint

In summary, Miss D complains about the following:

- ITL Mortgages Limited (ITL) changed the interest rate on her mortgage from LIBOR (London Interbank Offered Rate) to another variable rate without her consent or knowledge.
- ITL didn't send the letter in September 2021 about the interest rate changes by recorded delivery or email, so Miss D didn't receive it.
- ITL wouldn't agree to let her select an interest rate product that was available in January 2022 when the interest rate was first changed. She also complains there were delays which meant it took over a year for her rate to be changed.
- ITL won't agree to consolidate her second charge loan on to her mortgage by way of additional borrowing, or give her the same interest rate on the additional borrowing as she now has on her mortgage.

What happened

Miss D took out an interest only mortgage in March 2006 for 25 years. The mortgage was taken out on a variable interest rate which was 1.5% above the base rate for the duration of the loan. The offer stated that 'the base rate' used was three month LIBOR. In 2007 the mortgage was transferred to a lender that later became ITL Mortgages. In 2015, the interest rate margin ITL applied to Miss D's account was reduced to 1.3%, so she was charged three month LIBOR plus 1.3%.

In May 2021 ITL wrote to Miss D to explain that the Financial Conduct Authority (FCA) had recently confirmed that LIBOR would be discontinued at the end of December 2021, and ITL were working to identify an alternative reference rate that was right for their customers. The letter said they would write to Miss D again in the coming months with more detail on what changes they would be making to her mortgage, including information on her new mortgage product. They enclosed a leaflet which contained information about other options that borrowers had available, such as switching to a new interest rate product, switching to another provider, or redeeming the mortgage.

In September 2021 ITL wrote to Miss D again to explain that they were changing the terms of her mortgage agreement to replace LIBOR with the Bank of England base rate (base rate) as the external rate used to set her interest rate. The letter said that to try and ensure as far as possible that Miss D would not pay more than she would have paid if LIBOR was continuing in its current form, they were also reducing the additional interest amount by 0.2%, so her new rate would be base rate plus 1.1%. The letter said that if Miss D didn't want to accept base rate replacing LIBOR in the calculation of interest on her mortgage, she can switch to an alternative product, or redeem the mortgage in full. ITL asked Miss D to contact them if she was considering those options. The letter also said the changes would happen automatically, so Miss D didn't need to do anything. By continuing to hold her mortgage with them after the changes had been reflected in her mortgage payments, they would take this as confirmation she had accepted the terms. The letter also included an appendix setting out the new terms and conditions for Miss D's mortgage. Miss D says she never received this letter.

In November 2021 ITL wrote to Miss D again providing her with an estimate of what her new monthly payment would be following the upcoming change to her interest rate in January. The letter said that if Miss D had any questions or wished to discuss other options available (e.g. changing to a different mortgage rate, or redeeming her mortgage) she should contact them.

In August 2022 Miss D called ITL and complained that her mortgage had been unlawfully switched to a variable rate linked to base rate without her consent, which had increased four times that year so far. She said she would never have agreed to a variable rate had she been given the option and wanted her mortgage to be transferred to a fixed rate product that would have been available to her in October 2021.

Following some conversations with Miss D over the phone, ITL issued their final response letter on 5 October 2022. In summary, they said they had no record of Miss D contacting them earlier than August about changing the interest rate on her mortgage. As a result, they were only willing to offer Miss D an interest rate product that was available when she contacted them in August, not before that. ITL asked Miss D to let them know if she'd like to progress matters based on that outcome, and if so, they would arrange for a mortgage adviser to contact her about switching. The letter said that Miss D could refer her complaint to our service if she remained unhappy, but must do so within six months of the date of the letter.

Further calls took place between Miss D and ITL during October and November 2022 as Miss D remained unhappy that ITL weren't offering her an interest rate that would have been available to her in January 2021 when the rate was changed. ITL explained that was all they could offer, and in November 2022 they sent Miss D information about the rates she could choose from.

In March 2023 Miss D called ITL and explained she wanted additional borrowing to consolidate her second charge loan. She also said she wanted someone to contact her about switching interest rate. In April Miss D had a conversation with an adviser at ITL who checked how much she could afford to borrow. Unfortunately, they said they couldn't lend her as much as she needed to repay the second charge loan. Miss D complained and ITL issued a final response letter on 5 May 2023 and didn't uphold the complaint.

Following several email exchanges over the following months, ITL said they were still willing to backdate a product switch that would have been available to Miss D in August 2022 and they would also waive any product fees, but that offer would only be available until 30 September 2023. Miss D selected a product and ITL sent her a mortgage illustration on 10 August. She then emailed ITL asking for a term extension and additional borrowing on the same rate she'd selected for her mortgage. ITL explained that their agreement was to backdate the interest rate product on her existing mortgage only.

Miss D requested a conversation with a mortgage adviser, which ITL said they would arrange. They explained that any application for additional borrowing would need to meet their affordability requirements and lending policy. A mortgage adviser tried to call Miss D, but the call was unanswered. ITL wrote to Miss D explaining the times the adviser was available to call the following day. They also said they thought it would be helpful for Miss D if they concluded the product transfer first before discussing the debt consolidation and term extension. Miss D explained she was only available to talk on her lunchbreak at 1.30pm and a call was arranged. Miss D remained unhappy that ITL would not allow her to take additional borrowing on the same interest rate that they were offering on her mortgage (from August 2022). She said had the interest rate switch happened promptly after the final response letter was issued, the rates available for her additional borrowing wouldn't have been an issue as it is now. Miss D then agreed to the rate switch on an execution only basis and the rate switch was backdated. ITL adjusted her mortgage account accordingly.

Miss D brought her complaint to our service in April 2023, but ITL gave our service consent to consider all the concerns she'd raised with the exception of her recent complaint about a term extension – as they were still dealing with that. This is despite some of Miss D's complaint being brought to us outside of the time limits, and some events taking place after the complaint was referred to us.

Our Investigator considered what had happened up until the point the new interest rate was actually in place, but explained that she didn't think ITL needed to do anything more to put things right. Miss D asked for her complaint to be referred to an Ombudsman. I note she asked for some more time to send in additional information. Our service granted extensions, but we're yet to receive a response. As the extended deadline of 23 January has passed, I will now consider this complaint based on the information available.

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 appreciate Miss D has sent us a lot of information to support her reasons for complaint, and I mean no discourtesy by only summarising the events in the section above. I want to assure both parties that I've read and carefully considered all the information provided before reaching my decision on this complaint. Having done so, I've reached the same outcome as the Investigator. I'll explain why.

ITL changing the reference rate on Miss D's mortgage from LIBOR to Bank of England base rate

In 2017 the FCA announced that LIBOR would no longer be published from 31 December 2021 onwards. They advised businesses to take steps to remove reliance on LIBOR from both their new and existing contracts. The FCA set out some alternative rates that they expected mortgage lenders to use as reference rates from that point, and one of those was the Bank of England base rate (base rate). So in changing the reference rate on Miss D's mortgage contract from LIBOR to base rate, I'm satisfied ITL followed the regulator's guidance.

The FCA also said that lenders should ensure that borrowers are not moved to rates that are higher than LIBOR would have been. ITL reduced the margin that applied to Miss D's interest rate from 1.3% above LIBOR to 1.1% above base rate. I'm satisfied they took reasonable steps to ensure Miss D would not be disadvantaged by the change. And once the rate was changed in January 2022, Miss D's monthly payment went down.

I appreciate that following the change, base rate increased several times which resulted in increases to Miss D's mortgage payments. But I'm not persuaded that at the time ITL announced they would be using the base rate in September 2021, that could reasonably have been foreseen. And in any event, the increases to the base rate were a symptom of the wider economic climate at the time – impacting all interest rates. So I'm persuaded it's likely Miss D would have experienced increases to her monthly payments whichever reference rate ITL chose to apply to her mortgage.

Miss D has raised specific concerns about ITL changing the terms and conditions of her mortgage contract without her consent. And I can appreciate her concerns, as she agreed to take this mortgage out on the basis the interest rate would be linked to LIBOR for the duration of the mortgage. However, as I've explained, ITL were no longer able to use LIBOR to calculate Miss D's interest rate, so a change had to be made.

ITL notified Miss D of the changes to the terms and conditions of her mortgage in the letter they sent in September 2021. That letter said that they would assume acceptance of the new terms and conditions if Miss D continued to make her payments after the change, and hadn't contacted them about switching to a new interest rate. That letter made it clear to Miss D

what her options were if she didn't want the interest rate on her mortgage to be moved to a rate linked to base rate.

I accept Miss D's point that she ought to have been given the option to accept the new terms, but I'm satisfied she was given the option. I appreciate she says she didn't receive this letter, but ITL also sent her letters in November and December about the changes and what she could do if she wanted a different interest rate. Miss D has said that ITL should have sent the September 2021 letter by recorded delivery or by email, but I'm not persuaded they've acted unreasonably by not doing so. ITL sent the letter to Miss D's correspondence address, where she has said she has received other letters from them. They had no reason to suspect Miss D might not receive the letter if it was sent the usual way. This letter was sent to all of their mortgage customers whose mortgages were linked to LIBOR, and I'm satisfied for that level of mass communication, the method they chose was reasonable.

Miss D has also complained that ITL didn't carry out any affordability checks or advice before the rate was changed. But they didn't have to. The change was an unavoidable replacement of the rate Miss D was already paying, and it was intended to result in the same, or less, interest being charged on her mortgage. So I'm satisfied it was reasonable for ITL to make the change without carrying out any affordability checks.

Miss D has made several references to the law, and what she considers to be the illegal contract changes ITL have made to her mortgage. I've considered what she's said, but I remind her that this service is an alternative to the courts. Whilst we take account of relevant law when reaching our decisions, we are an informal service and decide our outcomes based on what we think is fair and reasonable in all the circumstances. I've already explained why I'm satisfied it was reasonable for ITL to make the change to Miss D's contract. Considering the industry wide scale of what was happening, I'm not persuaded it was unreasonable of ITL to inform Miss D of the changes to her mortgage's terms and conditions by letter. In any event, I'm satisfied Miss D did not suffer a financial loss as a result of the contract change ITL made.

Miss D says because she did not receive the letter in September 2021, she lost out on the opportunity to switch to another rate with ITL. But Miss D was told about the options available to her in both the letters ITL sent in March and November 2021. As Miss D didn't contact ITL, her mortgage moved over to the new interest rate linked to base rate in January 2022. For the reasons I've explained, I'm not satisfied that was a result of anything ITL did wrong. Miss D knew her interest rate and monthly payments were changing in January, and she didn't contact ITL to discuss her options.

Miss D made her complaint in August 2022. ITL offered for Miss D to switch to an interest rate product if she didn't want her mortgage to be on the existing rate. Miss D wanted ITL to give her a rate that would have been available to her earlier, either before the rate changed or at the time of the change. Rates had increased considerably between the time Miss D's mortgage began tracking the base rate and when she made her complaint in August, so I can appreciate why Miss D wanted access to older products with lower rates. But Miss D didn't apply for a rate before August. I'm satisfied ITL had made it clear Miss D could contact them about her interest rate, and she didn't do so until August 2022. As a result, I don't think it would be fair or reasonable to expect ITL to offer a rate that would have been available before she made contact with them.

Overall I'm satisfied that ITL were acting reasonably when changing the terms of Miss D's mortgage, and in the offer they made to Miss D for her to switch to an interest rate product that was available in August 2022.

Delays in backdating the rate

ITL told Miss D she could switch to a rate that was available in August 2022 in their final response letter sent in October 2022. They had also discussed this on the phone with her

during the complaints process. In the letter they said Miss D should let them know if she'd like to accept their offer, and they would arrange for a mortgage adviser to contact her.

Miss D did contact ITL but as she disagreed with the outcome, and wanted a lower rate that was available earlier (before the rate rises), so the rate change didn't proceed. Miss D says that ITL should have followed up with her about the rate change to ensure it happened promptly. But I've reviewed the contact history for this account, and I can see that each time ITL tried to discuss this with Miss D, she didn't want to accept ITL's position about the interest rate.

Delays were then caused by the fact Miss D wanted to borrow additional funds to repay her second charge loan with another lender, and another complaint was made. I've set out the order of events in the 'what happened' section above so I won't repeat that again here, but having carefully reviewed the contact history for Miss D's account, I'm not persuaded ITL were responsible for the delay in the rate being applied and backdated. Unfortunately, it seems the relationship between ITL and Miss D broke down on several occasions when Miss D didn't agree with the offer ITL had made, and the fact they wouldn't lend her additional funds on the rate she wanted.

Despite the length of time that passed between the offer being made by ITL, and Miss D accepting it (over one year later), ITL still agreed to backdate the rate change and adjust Miss D's account accordingly. I'm satisfied that was reasonable.

In July 2023, the FCA introduced new standards for lenders under the 'Consumer Duty'. This sets higher and clearer standards of consumer protection across financial services and requires businesses to put their customers' needs first. As the communication between Miss D and ITL continued past the date these standards were introduced, I've thought about whether ITL adhered to the new standards when communicating with Miss D from 31 July onwards about the interest rate being applied to her mortgage.

Having listened to the relevant call recordings, I'm satisfied ITL communicated with Miss D in a way that she was able to understand, and they tried to support her achieve her objective of applying the interest rate product to her mortgage. It was clear in those conversations that Miss D was not happy with what ITL were offering, and that is the reason the matter took so long to progress. But I'm not persuaded that was a result of how ITL were handling things. I'm satisfied from reviewing all the communication that took place from that period, that ITL did what they could to meet Miss D's needs and acted in line with the expectations outlined in the Consumer Duty.

Application for further borrowing

Miss D wanted to borrow more money from ITL in order to consolidate her second charge loan she had with another lender. ITL arranged for a mortgage adviser to discuss this with Miss D in April 2023, but after talking through the options available to her, they found they wouldn't be able to lend her as much as she needed to repay her secured loan, based on the outcome of an affordability assessment.

Before agreeing to lend more funds to a borrower, a lender must check that the additional borrowing would be affordable for the borrower based on their circumstances at the time, to ensure they're lending responsibly. I'm not persuaded it would have been fair or reasonable for ITL to agree to lend Miss D more money if they didn't think she'd be able to afford it.

Miss D is unhappy that ITL wouldn't let her apply for further borrowing on the interest rates that were available in August 2022. She says that when ITL offered to backdate a rate from August on her existing mortgage, they didn't include any conditions with that offer which stated she couldn't also take additional borrowing on that rate. ITL said that any application would need to be based on current rates available at the time of the application, and the offer to backdate earlier rates was only for her existing mortgage as it was at the time.

I'm satisfied ITL did only offer to backdate a rate they had available in August 2022 on Miss D's existing mortgage as it was at the time. Whilst the offer didn't explicitly say that the rate would not be applicable to any further borrowing Miss D might apply for in the future, I'm not persuaded that means ITL should have allowed Miss D to apply for an old rate that was no longer available during the application she made in April 2023.

Miss D says that had ITL sorted out the new rate earlier, her mortgage repayments would have been lower, and she would have been able to afford to consolidate her loan onto her mortgage. She also says that would have meant the rates available to her for the additional borrowing would have been lower than too. I've already explained why I'm satisfied ITL were not responsible for the delays in applying the backdated rate to Miss D's mortgage, and so for those reasons, I'm not persuaded ITL are responsible for the fact that rates may have been higher by the time Miss D applied for the additional borrowing. In any event, ITL weren't prepared to offer Miss D the additional borrowing she wanted, and so the lending didn't go ahead.

Overall, whilst I appreciate Miss D feels very strongly about the way ITL have treated her throughout the events I've considered in this complaint, I'm not persuaded ITL have treated her unfairly, and so I won't be asking them to do anything further to put things right.

My final decision

Considering everything, for the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 7 March 2024.

Kathryn Billings
Ombudsman