

The complaint

Mr and Mrs S complain that they have been overcharged for their mortgage with Monmouthshire Building Society (MBS) as the standard variable rate (SVR) has increased and it hasn't put them onto a better rate.

What happened

Mr and Mrs S took out an interest-only buy to let mortgage on a variable rate with MBS in December 2001. Additional lending was applied for in June 2003, November 2003 and May 2005 and was provided on each occasion on a variable rate.

Mr and Mrs S applied for a rate switch in March 2019, the rate for which was a discounted variable rate which was applied with effect from 9 May 2019. A further rate switch was applied for in June 2021, again on a discounted variable rate applied with effect from 1 June 2021.

Mr and Mrs S complain that they have been overcharged over the whole term of their mortgage. They say that that MBS has responded to their complaint by saying that they should have asked for a better rate, but they say that they have done so many times and that MBS has a 'standing instruction' from them to charge only the best possible rate it has at all times on their mortgage.

Mr and Mrs S say that MBS has increased its rates by amounts far greater than the Bank of England base rate (BOEBR) has risen. They say that there was an 'unnecessary' interest rate rise in December 2023 as their repayments are linked to the BOEBR, and MBS raised the rate of interest when the BOEBR had not changed.

Mr and Mrs S say that they refuse to pay by direct debit and instead pay by cheque as they prefer to attend the branch and ask about rates each time. They have done this throughout the mortgage term and say that when MBS moved to a new office, they met a clerk from another branch who saved them a lot of money by putting them onto a better rate in 2019. Mr and Mrs S say that MBS is now overcharging them again and is refusing to provide details of what rate it is charging, compared with the rate it should be charging. MBS has contacted them to say that they are in arrears but they disagree with this and believe that they have overpaid the mortgage. They want the overcharges to be refunded with interest, along with compensation for MBS not sorting the matter out years ago.

MBS says that Mr and Mrs S's mortgage was based on its SVR, which would fluctuate throughout the lifetime of the product. MBS sets the rate and decides at what point to increase or decrease this. It says that the SVR does not need to follow movement in the BOEBR and did not agree that MBS had acted incorrectly in relation to the SVR being higher than the BOEBR. It noted that between February 2022 and December 2023, it had only increased its SVR by 3.75%, compared to the 4.75% increase in the BOEBR.

MBS noted that Mr and Mrs S paid their mortgage by cheque or standing order, which had resulted in the account falling behind several times, in the main due to the amount they paid not increasing when the monthly repayment had changed due to increases in the interest rate. It confirmed that it had sent letters advising Mr and Mrs S of all changes to the SVR and their monthly payments.

MBS said that the onus was on Mr and Mrs S to ensure their mortgage rate was reviewed regularly and confirmed that it had sent letters to them leading up to the time that their mortgage products were coming to an end.

Our Investigator looked into Mr and Mrs S's complaint and did not think MBS needed to take any further action. They found that Mr and Mrs S had agreed to the mortgage terms when they switched rates in 2019 and 2021 and that the documentation had made Mr and Mrs S aware that the rate was variable on each occasion and when the rate would revert to the standard variable rate (SVR). MBS was entitled to set its own SVR, which did not directly reflect the BOEBR, and it had written to Mr and Mrs S when there were changes to the variable interest rate. The Investigator set out that they wouldn't expect a mortgage provider to manage the mortgage account and that it would be the responsibility of the customer to ensure their mortgage rate was reviewed regularly. They were also satisfied that MBS had adequately demonstrated why the mortgage account was in arrears, as when the repayments changed in line with the variable interest rate, some of the payments made by Mr and Mrs S weren't enough to cover these. Some payments were also made late.

Mr and Mrs S disagree with this, so the case has come to me to make a decision. They reiterate that MBS had a standing instruction from them from when the mortgage was initially taken out that the rate applied had to be the best available rate. They therefore say that this Service should compare the best rate available with what they were actually charged. Mr and Mrs S say that this also applies to the arrears, which are only present because MBS has incorrectly overcharged them. They say that it is this Service's job to conduct an audit if this is necessary to identify how much they have been overcharged.

I have previously issued a jurisdiction decision setting out that I don't have any power to help with Mr and Mrs S's complaints about overcharging, interest and amounts charged prior to 10 September 2019, as these do not fall within my jurisdiction. I concluded that the Service could consider the complaints relating to overcharging, interest and amounts charged from 10 September 2019 onwards, along with Mr and Mrs S's complaints about the SVR not following the BOEBR and about the unfair relationship between them and MBS.

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.

Having looked at the evidence, I agree with the Investigator's view for broadly the same reasons and I've explained my reasons further below.

Mr and Mrs S have complained that they have been overcharged by MBS and that the interest rates and repayments on their mortgage have increased. They also say that MBS hasn't provided details in relation to what it is charging.

I have looked at the rate switch offer dated 14 March 2019, which set out that Mr and Mrs S wished to transfer to MBS's two-year discount rate, for which the APRC was 3.4% and the interest rate would be the SVR, currently 5.24%, with a discount of 3.25 for the first two years, giving a current rate of 1.99%. The offer set out "*This APRC is calculated using assumptions regarding the interest rate. Because your mortgage has a variable interest rate, the actual APRC could be different from this APRC if the interest rate changes. For example, if the interest rate rose to 11.99%, the APRC could increase to 12.7%.*" The offer also set out the monthly instalments and that the interest rate was variable for the whole term of the loan. It stated "*The interest rate on this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to 11.99%, your payments could increase to £1,357.14.*"

I can see that Mr and Mrs S signed to accept the rate switch on 23 May 2019. The acceptance form included a declaration that they accepted the offer on the terms and conditions stated, that full payments would be collected monthly according to the agreed payment collection date, and that they would be notified of any changes in the amount of the monthly payments

MBS wrote to Mr and Mrs S on 8 April 2021 notifying them that their mortgage was on a discounted interest rate, which was due to end on 8 May 2021. The letter set out that the mortgage would then move to the SVR and what the new monthly payments would be.

Following this, I have seen a rate switch offer dated 1 June 2021, which set out that Mr and Mrs S wished to transfer to MBS's two-year discount BTL rate, for which the APRC was 3.2% and the interest rate would be the SVR, currently 4.74%, with a discount of 2.39% until 31 May 2023, giving a current rate of 2.35%. The offer again set out "*The APRC is calculated using assumptions regarding the interest rate. Because your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for the loan changes. For example, if the interest rate rose to 11.99%, the APRC could increase to 12.7%.*" The offer also set out the monthly instalments and stated "*The interest rate on this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to 11.99%, your payments could increase to £1,358.01.*"

I can see that Mr and Mrs S signed to accept the rate switch on 2 June 2021. The acceptance form included a declaration that they accepted the offer on the terms and conditions stated, that full payments would be collected monthly according to the agreed payment collection date, that they would be notified of any changes in the amount of the monthly payments, and that, once the changes had been made, the new monthly payments would be effective from the following month.

MBS wrote to Mr and Mrs S on 3 May 2023 notifying them that their mortgage was on a discounted interest rate, which was due to end on 31 May 2023. The letter set out that the mortgage would then move to the SVR and what the new monthly payments would be. It indicated that MBS had new mortgage products available if Mr and Mrs S were looking for a new discounted or fixed rate mortgage and provided contact details for them to discuss this with a mortgage adviser.

Having regard to the above, I am satisfied that MBS made it clear that the mortgage was on a variable rate linked to its SVR, and that Mr and Mrs S's rate would be the SVR itself if they didn't move to a new mortgage product once the existing product expired on 31 May 2023. This meant that if the SVR changed, the interest rate for the mortgage would change, along with the monthly repayment due.

I've seen numerous letters sent by MBS to Mr and Mrs S notifying them of changes to the SVR between April 2022 and December 2023. These letters advised Mr and Mrs S of the new monthly repayments and set out that they did not need to do anything if they paid by direct debit, but that if they paid another way they should instruct their bank accordingly. So I'm satisfied that MBS did provide Mr and Mrs S with details of what they would be charged in advance of these changes taking place.

Mr and Mrs S have complained that the interest rates increased by more than the BOEBR, and that the increase to the SVR in December 2023 was unnecessary as the BOEBR had not changed.

I can see that the letter from MBS to Mr and Mrs S dated October 2023 told them that it was increasing its SVR to 8.49% as of 1 December 2023. The letter stated "*As you may be aware, the Bank of England have been increasing interest rates frequently since December 2021. As a Society, we've delayed increases for as long as we can to protect our mortgage members but to balance the needs of our savings and mortgage members we've made the*

decision to increase our SVR." The letter stated that the SVR could go up and down for a variety of reasons at the discretion of the lender and that movements were often linked to changes in the BOEBR. It also explained that if Mr and Mrs S's deal had already ended and they were paying the SVR, they could speak to MBS's mortgage advisers about switching their rate.

I am satisfied that both of the rate switch offers made it clear that the interest rate applicable to Mr and Mrs S's mortgage would be MBS's SVR, and not the BOEBR. I also note that the mortgage offers stated that MBS's SVR at the time of the 2019 rate switch was 5.24% and at the time of the 2021 rate switch was 4.74%. The BOEBR at those times was 0.75% and 0.1% respectively, so I think it should also have been clear that MBS's SVR was different to the BOEBR.

So, whilst I appreciate that MBS's SVR may not have reduced by either the same amount or at the same time as the BOEBR, there is nothing in the terms of Mr and Mrs S's mortgage to suggest that MBS's SVR would be linked to the BOEBR. So I can't say that the interest rate applied to Mr and Mrs S's mortgage was incorrect or that MBS has done anything wrong in this respect.

Variable rates are not uncommon in mortgages. As set out above, I am satisfied that the applicable rate was made clear in the terms of Mr and Mrs S's mortgage offers, which made no reference to being linked with BOEBR. Likewise, for the reasons set out above, I am also satisfied that MBS applied the rate in line with the applicable terms.

Mr and Mrs S have also complained that MBS has not changed the mortgage rate they are on despite the fact that they gave it a 'standing instruction' that their mortgage should be on the best interest rate possible at the outset. But this is not how their mortgage worked and it wouldn't be the role of a lender to proactively change a customer's mortgage to a different product unless they asked for it. As set out above, Mr and Mrs S agreed to the terms of the mortgage in 2019 and 2021, which meant that they were to receive a discounted variable rate for the relevant term of each agreement. MBS notified Mr and Mrs S when the respective terms were coming to an end in 2021 and 2023. And the onus would have been on Mr and Mrs S to switch to a different product if they weren't happy with the rate they were on.

Mr and Mrs S disagree that they are in arrears and maintain that – because MBS has overcharged them for a number of years – they have been making overpayments and are owed money by MBS.

I have looked at the annual statements sent to Mr and Mrs S, which show that payments due were made late and sometimes not in the correct amount. For example, I can see that MBS wrote to Mr and Mrs S on 1 February 2023 informing them that it was increasing its SVR and that the monthly repayment would increase from 1 March 2023 to a total of £518.61. The mortgage statement for the year 2022/23 issued to Mr and Mrs S in May 2023 shows that a payment of £518.61 was due on 14 March 2023. However, a payment of only £462.33 (the previous repayment amount) had been made on 15 March 2023. A payment of £518.61 was then due on 14 April 2023, but a payment of only £462.33 was made on 17 April 2023.

I am aware that Mr and Mrs S have decided that they don't want to pay their mortgage repayments by direct debit. I can see that MBS wrote to them on 17 February 2022 advising that the terms and conditions of the mortgage set out that monthly payments were to be made by direct debit and enclosing a direct debit mandate. However, Mr and Mrs S refused to complete this and continued to pay the mortgage by cheque or standing order. Whilst I understand that Mr and Mrs S have their own reasons for this, it appears that this is what has resulted in the incorrect payments being made (as the payment would be made in time and the amounts would be updated automatically if there was a direct debit in place).

Whilst it is not the role of this Service to audit the mortgage account, I'm satisfied that MBS has demonstrated why the account is in arrears and that it has explained this to Mr and Mrs S. It has also written to Mr and Mrs S to notify them of the arrears on a number of occasions. For the reasons set out above, I am also satisfied that MBS has not been overcharging Mr and Mrs S in respect of the interest rate applied. There I can't conclude that MBS has acted unreasonably in asking for the arrears on the account to be cleared.

I have also thought about whether MBS's actions have made the relationship between it and Mr and Mrs S unfair on an ongoing basis. Given that I have not found that MBS has acted unfairly, I haven't found there to be an unfair relationship.

I know my decision will come as a disappointment to Mr and Mrs S, but I can't say that MBS has acted unreasonably in the circumstances of this case and I don't uphold this complaint.

My final decision

For the reasons I've explained above, I don't uphold this complaint and don't require Monmouthshire Building Society to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 23 October 2024.

Rachel Ellis
Ombudsman