

The complaint

Mr S and Ms R complain about the way TSB Bank plc (trading as Whistletree) ("TSB") managed their mortgage.

What happened

In September 2004 Mr S and Ms R were offered a 'Together' mortgage with Northern Rock. After that they took out a mortgage for £95,000 over a 25-year term. They also took out an unsecured loan for £20,600. The initial rate on both the secured and unsecured loan was 7.19% until the 1 September 2006. After that the interest on both loans reverted to the lender's standard variable rate ("SVR").

In 2008, Northern Rock collapsed and was later nationalised. Mr S and Ms R's mortgage and loan were transferred to another lender ("NRAM").

Mr S and Ms R missed occasional monthly payments on their mortgage and unsecured loan after this. Mr S and Ms R said they both lost their jobs in/around 2011.

Mr S and Ms R stopped making payments towards the unsecured loan from 2012, so it has remained in arrears since then. Mr S said he did that because he felt the loan was invalid and unenforceable. However, neither NRAM nor TSB defaulted the loan and interest continued to be charged on their loan account until February 2021. Mr S is very unhappy about that. He has told us about the stress and financial consequences of that and the impact that had on him, Ms R and their family over the years.

Mr S and Ms R's mortgage and loan were transferred to TSB in July 2016. They missed more monthly payments on their mortgage in 2016 and 2017 but it was then broadly kept up to date until they sold the mortgaged property in December 2020.

Mr S and Ms R complained to the Financial Ombudsman Service in 2019. Mr S said he thought their unsecured loan should have been defaulted in 2012. Our investigator looked into what happened.

In February 2020 our investigator said the unsecured loan should have been defaulted in August 2012. He said it was clear by this point the relationship between Mr S and Ms R and the lender had broken down as the unsecured loan was more than six payments in arrears by then. TSB agreed to that. It also said it would amend Mr S and Ms R's credit files to reflect that default. That meant that the default on the unsecured loan would no longer show on Mr S and Ms R's credit files by August 2018 (six years after August 2012). I can see that TSB has done that now.

Mr S said TSB needed to compensate them for what had happened. He said the fact that TSB didn't act to default the unsecured loan until our investigator sent it his view meant that they'd been prevented from getting a better interest rate on their mortgage with other lenders. In other words, he said that by not defaulting the loan he and Ms R were "trapped" on TSB's standard variable rate ("SVR") – a rate they thought was unfairly high.

In June 2022 our investigator said that since 2012, the unsecured loan balance had increased from £18,501.25 to £26,390. He said that the majority of that increase was due to unpaid interest. He said that TSB should have shown forbearance towards Mr S and Ms R, even though they'd stopped paying the unsecured loan for many years and didn't co-operate with it. He said that from the point the loan should have defaulted in August 2012, interest

shouldn't have been applied to the account. So he said that TSB should rework the loan to reflect that. However he went on to say that when doing that TSB should only reduce the outstanding balance on the unsecured loan. That's because he didn't think it would be fair for TSB to be required to refund Mr S and Ms R interest repayments that they hadn't made since 2012.

Our investigator went on to consider Mr S' point that by not agreeing to default the loan until after our investigator sent his 2020 view Mr S and Ms R were "trapped" paying their mortgage on TSB's SVR. Our investigator wasn't persuaded by this.

However, our investigator could see that Mr S and Ms R had asked TSB for a lower interest rate on the mortgage in March 2019. By then it was offering new interest rates to customers with Together mortgages. TSB declined Mr S and Ms R's request at the time because their unsecured loan was in arrears. As TSB has agreed to retrospectively default the unsecured loan in August 2012, and as Mr S and Ms R's mortgage was up to date in March 2019, our investigator thought TSB was wrong to decline Mr S's request for a better interest rate on the mortgage in 2019.

With that in mind, our investigator said that TSB should have given Mr S and Ms R its lowest two-year fixed rate on the mortgage in March 2019. So he said TSB should recalculate the mortgage as if that rate had applied at the time until the mortgage was redeemed in December 2020. However, as Mr S and Ms R had still had the benefit of the unsecured loan, he thought TSB were still entitled to ask for the loan to be repaid.

Mr S broadly accepted what our investigator said. But he was unhappy with the redress recommended. He asked for this complaint to be reviewed by an ombudsman so it has been passed to me to decide. He raised a number of points that I've considered below.

TSB said it didn't agree with all our investigator's conclusions. But it acknowledged that it could have handled matters better. So it agreed to the redress our investigator recommended as a gesture of goodwill.

For completeness I'll say here that Mr S complained to TSB about the unsecured loan (saying it was invalid and unenforceable) a number of times after he stopped making payments towards it in 2012. He remained unhappy about TSB's responses and was directed towards the Financial Ombudsman Service. But he didn't complain to us about the issue in the time limits set out in our rules. Mr S and Ms R accepted that. So I won't consider that issue in this complaint.

I can also see that when Mr S and Ms R first brought this complaint to the Financial Ombudsman Service in 2019 they also complained that the unsecured loan was mis-sold, about its terms and conditions and issues about the documentation they were initially sent. Mr S accepted that they were out of time to complain about those issues too. Mr S and Ms R also said that they felt the unsecured loan was statute-barred so they didn't think they should be required to pay it anymore. Our investigator said he wouldn't consider that issue as they'd already complained to the Financial Ombudsman Service about it. Mr S and Ms R accepted that we couldn't consider those issues again.

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 done so, I've reached broadly the same conclusion as our investigator. I'll explain why.

In broad terms both parties have accepted our investigator's view of the case. However, Mr S said he didn't think the redress he recommended is enough. So I will take the redress recommended by our investigator as my starting point.

Our investigator said that TSB should resolve this complaint by reworking the unsecured loan to ensure that interest is not applied from August 2012. There's no dispute about this issue so I also think TSB should do that. I can see that TSB has accepted that the unsecured loan should have been defaulted in August 2012 and has already amended Mr S and Ms R's credit files to reflect that. I think the interest that was applied to the unsecured loan account after August 2012 should be taken off the balance of that account. It's clear that Mr S wants that money to be given to him directly as a form of compensation. He has said he would be better off if he and Ms R had declared themselves bankrupt, as that would have meant that their debts would have been written off at that point. But they didn't do that and I don't think it would be fair and reasonable for them to be paid compensation directly when they owe TSB a significant balance in relation to the unsecured loan they didn't repay from August 2012.

When should Mr S and Ms R have been given a better interest rate on their mortgage?

Mr S said he asked for a new interest rate on his mortgage in 2017, not 2019 but he hasn't been clear about when that was. However, I've considered TSB's notes of its contact with Mr S and Ms R, and haven't seen anything to support that.

I'm also aware that even if the unsecured loan had been defaulted in August 2012 there would still have been a default on Mr S and Ms R's credit files until August 2018.

So I don't think it would be fair and reasonable for me to say that TSB should have given Mr S and Ms R a better interest rate on their mortgage in 2017. I think it was only after Mr S and Ms R asked for a new interest rate on their mortgage in 2019 (by which time there were no arrears on the mortgage) that TSB should have given them one. TSB wasn't obliged to consider offering Mr S and Ms R a new interest rate on their mortgage until they'd asked for one.

I appreciate that Mr S thinks the guidance issued by the Financial Conduct Authority ("FCA") regarding 'mortgage prisoners' supports his belief that he should have been offered a better rate sooner. But I disagree. The relevant guidance is clear that the decision to lend, and the interest rate charged, is a commercial decision for lenders. TSB says it took the commercial decision that it would only offer new interest rates to customers in Mr S and Ms R's position who were not in arrears. I can understand why TSB might have taken that decision. Usually lenders would want to see a history of mortgage payments being met before agreeing a new fixed rate. That's because fixed rates products usually have significant early repayment charges in place to cover a lender's costs if the borrower ends the fixed rate product early. So TSB would have needed to consider whether such a product was appropriate for borrowers that didn't have a history of mortgage payments being met.

What mortgage product should Mr S and Ms R have been given in 2019?

Our investigator recommended that TSB should rework the mortgage as if the best two-year fixed rate that was available to Mr S and Ms R had applied from March 2019 (when Mr S asked a new interest rate). He said that when it does that it should take into account any fees they would have incurred, such as product fees. If they benefit from the rework, TSB should apply 8% simple interest to any overpayment Mr S and Ms R have made as a result of the rework. He also said that if it turns out that the product fee costs outweigh the benefit of the lower rate, TSB should not carry out the rework and act as if Mr S and Ms R's mortgage remained on the SVR.

Mr S broadly agreed to this. However, he said that he and Ms R sold the mortgaged property in December 2020 because of a number of factors at that time including paying what he thought was an inflated mortgage, the covid-19 pandemic and the unpredictable environment surrounding work conditions. Mr S has told us that he and Ms R lost 40% of their income during the pandemic. They hadn't found TSB to be sympathetic or understanding in the past, so they didn't think it would be in 2020 if they were to miss payments. He said that if they had had the opportunity to pay a lower interest rate on the

mortgage (meaning their payments were £250 each month as opposed to the £675 a month they were paying) they wouldn't have needed to sell the mortgaged property.

There's no doubt from what Mr S has told us that he and Ms R took the decision to sell (at the agreed price) after weighing up a several factors – a number of which (the covid-19 pandemic and the consequences of that including the reduction to their incomes) were outside TSB's control. I'm conscious that their mortgage still had a nine-year term around that time. So I don't think it's likely that Mr S and Ms R would have been able to reduce their monthly payments to £250 a month at that time without extending the term of their mortgage – something they didn't ask TSB to do. I'm also conscious that the average interest rate on a two-year fixed rate mortgage at that time was 2.49%. I can see that from April 2020 the interest rate on their mortgage reduced to 4.38% meaning that their monthly repayments were £609.27. I think that by fixing their interest rate at around 2.49% they would have been able to reduce their mortgage repayments, but as I said above, I'm not persuaded that it's likely that they would've been able to reduce their monthly payments to £250 a month.

So I don't think it would be fair and reasonable for me to say that TSB was responsible for Mr S and Ms R having to sell the mortgaged property in December 2020 as Mr S has suggested.

There are two further points I'd like to make here.

The mortgage was redeemed in December 2020. That is likely to have been within a two-year fixed rate period beginning in March 2019. I'm conscious that a two-year fixed rate product was likely to have included an ERC that would've been payable if the mortgage was redeemed within the two-year period. However, I think it's likely that if Mr S and Ms R had been given such a product in March 2019, they would have delayed redeeming their mortgage by a few months to avoid paying the ERC. So when TSB reworks the mortgage, I don't think it would be fair and reasonable for it to deduct any ERC that would've been payable when they redeemed the mortgage from any refund.

I've shared my thinking on this point with Mr S and Ms R and they've said they agree with me. TSB is also willing to ensure that no ERC is charged when it reworks the mortgage.

Secondly, I can see that our investigator said that the unsecured loan (even though it has been defaulted now) will continue to be a debt Mr S and Ms R are required to pay. So he thought that TSB was entitled to continue to ask for the debt to be repaid. I agree with that as there's no dispute that Mr S and Ms R had the benefit of the loan. However, I don't think it follows that any refund that may be due in relation to the mortgage should be paid towards the unsecured loan debt. I say that because the mortgage and unsecured loan were always separate debts, so I think it's fair and reasonable for them to be continued to be treated separately.

The parties appear to be content with this point too.

I will now go on to cover the other points Mr S has made.

Should Mr S and Ms R be awarded more compensation for what happened?

Mr S has said that if the default had been recorded in 2012, it would have stopped being recorded on his and Ms R's credit files by August 2018. So they would've been able to take advantage of the historically low interest rates at the time to get another mortgage. He has told us that he and Ms R tried to do this but were declined, but he hasn't provided us with evidence to demonstrate that. So Mr S thinks he should get more compensation to reflect that. He also thinks he and Ms R should be given compensation for the distress and inconvenience he says they suffered over the years.

I appreciate the points Mr S has made, but Mr S and Ms R's mortgage statements show that the mortgage was in and out of arrears until September 2018. So their ability to get credit would have been affected by that as well as the default that would have been on their credit

files in relation to their unsecured loan. I'm also conscious that Mr S and Ms R had experienced a protracted period of financial difficulty in the six years before September 2018 so I think it's likely that there were other accounts on their credit files around that time that are likely to have had an impact on their ability to get credit.

It follows that I don't think it would be fair and reasonable for TSB to compensate Mr S and Ms R for any difficulties they might have had taking advantage of interest rates that were available around 2018.

Mr S has told us that he thinks he and Ms R should be compensated for the stress and mental impact this matter has caused them. I'm very sorry to hear about that. However, I think it's worth me making the point again here that Mr S and Ms R have had to deal with a long period of financial difficulties over the years that have clearly had a profound impact on them and have affected their ability to pay the Together loan and mortgage. I think it's likely that those difficulties meant that Mr S and Ms R struggled to pay the unsecured loan and then to question its validity. Mr S and Ms R's credit files were affected by their decision not to repay the unsecured loan from 2012/ their decision not to co-operate with TSB in relation to the unsecured loan. So I think it's fair to say that Mr S and Ms R's actions were also a big factor in the way the unsecured loan was managed over the years and the impact it had on their lives.

For completeness I'll say here that I'm conscious that Mr S has made it clear that he doesn't think it's fair to say that they chose not to repay the unsecured loan. He has said they stopped paying the loan because they disputed its validity. I understand Mr S' position on that but can see that they made use of the money lent to them under the loan. So I think TSB is entitled to ask them to repay it.

Mr S has complained that the Financial Ombudsman Service hasn't done enough to consider the fact that before 2016 the lender started court proceedings to repossess the mortgaged property. He says that's evidence of the lender bullying and intimidating him and Ms R. I've been provided with limited information about this period of time and I'm conscious that this hasn't been the focus of Mr S and Ms R's complaint with the Financial Ombudsman Service. So I think that if Mr S wants to complain about this issue he should raise the matter with TSB in a separate complaint, so that it has the chance to consider the matter in full.

conclusion

Bearing in mind everything that's been said and provided on this case, I don't think it would be fair and reasonable for me to award Mr S and Ms R more compensation for what happened.

Finally, and for completeness, I think it's worth me saying here that I can see that Mr S has raised a number of questions about TSB's actions that he wants specific answers to. I understand that he's keen to understand every detail about the way it handled the matters raised in this complaint. But it isn't for us, an informal dispute resolution service, to provide a detailed explanation of why the lender acted as it did or to require TSB to answer every question that Mr S and Ms R put to it.

Putting things right

I think that TSB should put things right by reworking Mr S and Ms R's unsecured loan and mortgage as set out below.

My final decision

For the reasons set out above, my final decision is that TSB Bank plc (trading as Whistletree) should:

- rework Mr S and Ms R's unsecured loan to ensure that interest is not applied from

August 2012.

- rework Mr S and Ms R's mortgage as if a two-year fixed rate (the lowest interest rate available in relation to the relevant loan to value) had applied in March 2019, taking into account any fees they would've incurred getting that product. If Mr S and Ms R would benefit from the rework, TSB should apply 8% simple interest to any overpayment they have made towards their mortgage between March 2019 and December 2020 as a result of the rework from the date of each overpayment to the date of settlement. If the rework would worsen Mr S and Ms R's position – due to fees – then TSB should not carry out the rework.
- If TSB deducts tax from any money it pays to Mr S and Ms R in relation to reworking the mortgage, it should provide them with a tax deduction certificate, so they can reclaim the tax from the tax authorities if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R and Mr S to accept or reject my decision before 6 March 2023.

Laura Forster
Ombudsman