DRN-3740811

Financial Ombudsman Service

The complaint

Mr J says TSB Bank plc applied the wrong 10-year product to his mortgage. He'd like to be able to change products without paying an early repayment charge (ERC).

What happened

Mr J took out a mortgage with TSB in early 2017 with a 10-year fixed rate product. He says he thought this was a "fix and flex" product that would allow him to change products after five years. He says this product was recommended to him by TSB in late 2015, as it fitted with his retirement in 2025 and pension entitlements, and this was the product he thought he was taking out in early 2017.

I sent a provisional decision to the parties. In summary, I said:

- There was no mention in the mortgage offer, recommendation or illustration of a "fix and flex" option, or that Mr J could switch products after five years without paying an ERC.

- TSB recommended a 10-year product with an ERC that expired after Mr J said he intended to retire and repay the mortgage. This didn't look like good advice, and TSB couldn't give an explanation for its recommendation.

- TSB should waive the ERC if Mr J repays the mortgage after April 2025, when he intends to retire.

TSB agreed. Mr J said he was still concerned he'd missed out on being able to switch products in early 2022, when interest rates were lower than his current fixed rate.

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.

Mr J took out a 10-year fixed rate product in 2017. An ERC is payable if he repays the mortgage or changes product during the product term (before February 2027). This is clearly set out in the mortgage offer in a table. There's a section underneath headed "flexible features". This says the product is portable, and gives options for underpayments, overpayments and payment holidays. There's no mention of being able to repay the loan or switch products after five years without paying an ERC.

Mr J says TSB should agree to waive the ERC if he changes product. Essentially, he says it would be unfair to apply the ERC because the product isn't the one he thought he was taking out.

The mortgage offers says the product is for 10 years. It says the ERC is payable throughout this period. There's no suggestion there's an option to change products without paying an ERC at any point.

Interest rates were falling in late 2016, and TSB made new recommendations when a product with a lower rate became available. The mortgage recommendations and mortgage illustrations sent to Mr J in late 2016 all refer to 10-year fixed rate products. There's no mention of them being fix and flex products, or there being an option to switch products after five years without paying the ERC.

However, that's not the end of the matter. The mortgage was recommended by TSB, and so it had to recommend a product that was suitable for Mr J. TSB sent a recommendation which says Mr J wanted stability in his payments for 10 years and a loan term that ends before his retirement.

TSB can't provide a copy of the fact find and the mortgage adviser can't recall the discussions. The adviser said if a mortgage term expires after a customer's preferred retirement age, they have to provide proof they can afford payments into retirement. It seems likely the adviser would have needed to ask Mr J for a pension statement.

Mr J says he expects to retire in 2025. He sent a pension statement dated September 2014, which he says would have been the statement he provided when taking advice in 2015. Mr J doesn't recall providing a statement to TSB in late 2016 – he says the advice was just carried over from the previous year.

The pension statement sets out the benefits payable if Mr J retires in 2025. He can take a yearly pension, or he can take out a lump sum of up to about £90,000 with a lower yearly pension. Mr J will be at normal retirement age for his role in 2025, although his employment terms allow him to continue working if physically able.

The mortgage Mr J took out was about £85,000, and this will have reduced by 2025. So Mr J would be able to use his lump sum to repay the mortgage balance, as he says he always intended to do. Mr J says he wanted the security of a fixed rate product, with the ability to use his pension lump sum to repay the mortgage. He says the "fix and flex" product was ideal as it would allow him to review matters after five years with an updated pension forecast, to decide whether to go onto a new product.

Mr J says he wouldn't have signed up for a 10-year product which means an early repayment charge (ERC) of about £3,000 if he switches products in 2022 or repays the mortgage in 2025. He thought he had the option to switch product after five years. Mr J has been consistent throughout about this.

TSB recommended a 20-year mortgage, which expires 12 years after Mr J says he expects to retire. This isn't necessarily unsuitable assuming he can afford monthly repayments from his pension – and of course Mr J intends to repay the balance with his pension lump sum.

But I don't think a fixed rate product which expires nearly two years after Mr J says he expects to retire and repay the mortgage appears suitable. While there could be a reason why this was suitable, TSB can't provide an explanation or evidence of this.

Based on the available evidence, I don't think TSB should have recommended a 10-year product with an early repayment charge. So I need to consider what it should do to put matters right.

Mr J wants the option of retrospectively switching products in early 2022 without paying an ERC, as he says he thought he'd be able to do. Having this option would have given Mr J the benefit of a fixed rate if rates go up, with the ability to switch products if rates fall.

But, as I've said, the mortgage offer, recommendations and illustrations sent to Mr J in late

2016 all refer to 10-year fixed rate products. There's no mention of a fix and flex option, or there being an option to switch products after five years without paying the ERC. I don't think I can fairly require TSB to retrospectively offer this option.

The error made by TSB was to recommend a product with an ERC that extends past the date Mr J says he intends to repay the mortgage, without being able to explain why this was suitable. I've re-considered the evidence and the comments of both parties since my provisional decision. Having done so, I still think the fairest outcome is for TSB to waive the ERC on Mr J's current product if he repays the mortgage after April 2025.

My final decision

My decision is that I uphold this complaint. I order TSB Bank plc to waive the ERC on Mr J's current product if he repays the mortgage after April 2025.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 4 November 2022.

Ruth Stevenson
Ombudsman