

The complaint

Mr and Mrs O complain that TSB Bank plc has miscalculated their mortgage balance and, as a result, the mortgage won't be repaid by the end of the agreed term.

What happened

Mr and Mrs O took out this mortgage in 1994 with Cheltenham & Gloucester Building Society, now TSB. They originally borrowed £53,000 on an interest-only basis, over a term of 19 years. This is sub-account one.

Mr and Mrs O took further advances in 2004, 2012 and 2017, all on a capital and interest repayment basis and with terms ending in 2024. These are sub-accounts two, three and four respectively.

In July 2013, TSB received a payment of just under £9,000 from the proceeds of Mr and Mrs O's endowment policy. It applied the payment to sub-account one. Soon afterwards, sub-account one was changed so it was paid on a capital and interest repayment basis, and its term appears also to have been extended.

In October 2020, TSB reviewed Mr and Mrs O's mortgage account. It found that sub-accounts two, three and four had all been in and out of arrears over the years, but sub-account one had been overpaid. It made various transfers between sub-accounts to try to sort things out. But, as a result, it said Mr and Mrs O's monthly payments would need to increase by £200 in order for the mortgage to be repaid by term end.

TSB said it hadn't told Mr and Mrs O about the arrears because of the overpayment on sub-account one and because the arrears had never amounted to more than one month's payment. It also said it had calculated their monthly payments wrongly since 2016. It went on to say that it recognised these underpayments weren't Mr and Mrs O's fault – but their monthly payments would nevertheless have to increase in future. It apologised and offered Mr and Mrs O £500 by way of compensation.

Mr and Mrs O referred the matter to the Financial Ombudsman Service. They didn't think they had ever been in arrears on their mortgage, and said they had understood that any occasional shortfall in payments was taken from overpayments they had made.

Our Investigator thought TSB had made a fair offer to put things right. Mr and Mrs O didn't accept that and asked for a review. They said TSB was at fault for what had happened and it had credited payments to the wrong sub-accounts.

My provisional decision

I issued a provisional decision on this complaint. I said:

"This is essentially a case of 'underfunding': Mr and Mrs O haven't been paying enough over the years for their mortgage balance to be repaid by the end of the term. TSB has accepted

that this is because it calculated their monthly mortgage payments wrongly between 2016 and October 2020, when it spotted the problem and ‘tidied up’ the mortgage.

TSB has explained that its mistake arose following a change which the regulator made in 2016 to the way in which lenders must treat mortgage arrears. It has said receipt of Mr and Mrs O’s endowment policy proceeds left an overpayment on sub-account one, and that overpayment exceeded the value of arrears which accrued in subsequent years – and so the mortgage as a whole didn’t appear to be in arrears, even though Mr and Mrs O weren’t paying enough.

So, there’s no dispute that TSB made a mistake in the administration of Mr and Mrs O’s mortgage, and as a result the mortgage has been underfunded – resulting in Mr and Mrs O being asked to pay more now to get their mortgage back on track.

The Financial Ombudsman Service has a long-established approach to cases of mortgage underfunding, and there’s guidance about this on our website¹. Our usual approach where mortgage payments are arranged on the wrong basis and this results in a shortfall (which is what has happened here) is to put the borrower in the position they would have been in had the mortgage been arranged correctly.

We generally disregard any past savings the borrower has made because they’ve made lower monthly payments. We adjust that approach if we consider that the borrower knew – or should reasonably have known – about the problem.

TSB didn’t tell Mr and Mrs O that their payments were wrong and they needed to pay more, didn’t tell them when arrears arose on some of their sub-accounts, and didn’t tell them that there was a problem with the way they were paying their mortgage. As a result, Mr and Mrs O have been paying less than they should have been since 2016, and the mortgage isn’t on track to be repaid in 2024 as they had intended.

I can see that there were arrears on the mortgage from time to time. Mr and Mrs O say that whenever there were arrears, they were cleared through overpayments they had made previously. They say they always made the monthly payment TSB asked them for within the calendar month in which the payment was due – although not necessarily consistently on the exact due date.

I think it’s clear that Mr and Mrs O understood – based on the information TSB gave them and the absence of any communication from TSB about any arrears – that everything was in order with their mortgage and it was on track to be repaid by the end of the term.

So I accept that Mr and Mrs O didn’t know anything was wrong with the way their mortgage was operating. And, in the circumstances, I don’t consider that they should reasonably have known there was a problem either. TSB didn’t alert them to an issue, it has said the arrears never amounted to more than a month’s payment, the statements I’ve seen don’t show arrears and do show that the mortgage balance was reducing each year. Mr and Mrs O had no reason to question things.

Had Mr and Mrs O realised there was a problem with their payments, I think it most likely that they would have altered those payments as necessary. While Mr and Mrs O haven’t paid enough in some months, they have overpaid in others. I find nothing to indicate that they were struggling financially such that they wouldn’t have been in a position to make up small amounts of arrears over the years.

¹ For businesses [here](#), and for consumers [here](#).

In all the circumstances, I consider that the fair outcome is for TSB to take responsibility for the capital shortfall arising on Mr and Mrs O's mortgage because they weren't paying enough.

This means TSB should re-work the mortgage as though Mr and Mrs O had made the right payments each month. The mortgage should be re-worked on that basis from 2016, when the mistake first happened, until 2021, when TSB let Mr and Mrs O know about the problem and explained why they would need to increase their payments.

TSB says it has already re-worked Mr and Mrs O's mortgage. But that seems to be on the basis that Mr and Mrs O *didn't* make the right monthly payments and they now need to make up the shortfall. That's not the approach I find TSB should fairly be taking, and it's not in line with the Financial Ombudsman Service's approach. TSB should re-work the mortgage on the basis that any capital shortfall arising from Mr and Mrs O having paid less than they should have done is written off.

I note that TSB has offered to pay Mr and Mrs O £500 by way of compensation. However, I don't propose to require it to make that payment on top of refunding the capital shortfall, since I would expect the capital refund or write-off to exceed £500."

For these reasons, I went on to say that I provisionally concluded that TSB should put things right by meeting the full underfunding on Mr and Mrs O's mortgage from the date the underfunding began in 2016 to the date it explained to Mr and Mrs O what had happened in January 2021.

I explained that this would mean TSB re-works Mr and Mrs O's mortgage on the basis that the correct monthly payments were made to each sub-account between the relevant dates in 2016 and 2021 as set out above, and on the basis that any arrears were repaid the month after they arose, and write off any resulting capital shortfall. TSB should then tell Mr and Mrs O what their new monthly mortgage payment is, in order for them to repay the mortgage by the end of the term.

Responses to my provisional decision

TSB asked me to reconsider. It said Mr and Mrs O had "underpaid on a lower amount more than they have overpaid", paying less than was due in some years but more in others, and it was their underpayments which had resulted in a shortfall. It attached a spreadsheet with Mr and Mrs O's payments on.

Mr and Mrs O didn't reply to my provisional decision.

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've carefully considered TSB's further submissions. Having done so, I've come to the same conclusion I reached in my provisional decision, for the same reasons.

As I explained in my provisional decision, the point here is that TSB didn't tell Mr and Mrs O when they weren't paying enough. The statements I've seen don't show arrears and do show that the mortgage balance was reducing each year. Mr and Mrs O had no reason to question things, and the available evidence doesn't indicate that they were in financial difficulty such that they wouldn't have been in a position to make the right monthly payments had TSB told them what those payments were.

Putting things right

TSB Bank plc should meet the full underfunding on Mr and Mrs O's mortgage from the date the underfunding began in 2016 to the date it explained to Mr and Mrs O what had happened in January 2021.

This means it should re-work Mr and Mrs O's mortgage on the basis that the correct monthly payments were made to each sub-account between the relevant dates in 2016 and 2021 as set out above, and on the basis that any arrears were repaid the month after they arose, and write off any resulting capital shortfall.

TSB should then tell Mr and Mrs O what their new monthly mortgage payment is, in order for them to repay the mortgage by the end of the term.

My final decision

My final decision is that I uphold this complaint and I require TSB Bank plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr O to accept or reject my decision before 23 December 2022.

Janet Millington
Ombudsman