

The complaint

Ms A complains about the service she has received from TSB Bank plc, trading as Whistletree. She says it has failed to make reasonable adjustments for her to enable her to access mortgage documents and manage her mortgage.

What happened

Ms A took out a 'Together' mortgage with Northern Rock in early 2007. This consisted of a secured loan and a smaller, linked, unsecured loan, payable over a 35-year term.

Both the secured and unsecured loans were on an initial fixed interest rate of 5.99% for the first five years. After that, the interest rate was a variable rate below Northern Rock's standard variable rate.

In 2008, Northern Rock collapsed and was later nationalised. Ms A's Together mortgage was transferred to NRAM then, in 2016, to Whistletree.

Ms A is vulnerable and disabled. She has multiple lifelong health conditions and is severely sight impaired and mentally impaired. She relies on limited carer support, for which she has explained that she has to pay. Her communication with Whistletree and the Financial Ombudsman Service has been through carers.

Ms A asked Whistletree to provide audio transcriptions of correspondence on CD, as a reasonable adjustment in light of her disabilities. She says NRAM, Whistletree's predecessor lender, had done so – but Whistletree wouldn't.

In April 2018, Ms A told Whistletree she was in financial difficulty. She asked for support and for a paying-in book, as well as for Whistletree to reply by way of an audio CD. It didn't reply to her request for correspondence in audio format.

In April 2020, Ms A complained that Whistletree had failed to make reasonable adjustments for her. She also asked for copies of mortgage documents with an audio transcription on CD, details of support available to vulnerable borrowers in financial difficulty, and made a subject access request.

Whistletree said it couldn't provide all correspondence and documents in an alternative format, and Ms A should arrange for her carers to read its letters to her. It also said it would try to provide specific letters in an alternative format on Ms A's request. It provided details of free debt advice agencies and said the support it offers borrowers who are in financial difficulty depends on their circumstances.

Ms A got in touch with us. Our Investigator looked into her complaint and concluded that:

- Whistletree should have done more when Ms A told it about her financial difficulty – although it was reasonable to ask for information about Ms A's financial situation, and it had sent her a paying-in book when she asked for one.

- Ms A hadn't asked for a new interest rate product, and Whistletree wasn't required to offer her one proactively. So the mortgage was operating on a variable rate as agreed when Ms A took it out.
- Whistletree had noted on its records that Ms A is vulnerable, but despite knowing about her needs it hadn't provided documents to her in an accessible format and hadn't explained why not. It should arrange for outstanding documents to be sent in audio format.
- Whistletree had caused Ms A trouble and upset, so as well as sending her the mortgage offer and past statements in an accessible format, it should pay her £350 compensation.

Whistletree initially didn't accept the Investigator's recommendation, but later sent Ms A a CD with an audio version of her mortgage offer and past statements, and said it would pay her £350.

Ms A didn't accept the Investigator's recommendation. She said the CD Whistletree had sent her was the first audio transcription she had received from it and she had, since then, received further unadapted correspondence. It had taken more than two years for Whistletree to comply with her subject access request, which it has only provided in paper format. She now has hundreds of documents she can't access. She will have to pay carers in order to access the material, as she has had to do to date in communicating and complaining.

Ms A also said she can't remortgage elsewhere in order to access closer branch services and to get a better interest rate, because she would fail a new lender's affordability checks. She still needs a paying-in book since Whistletree changed her mortgage account number, and it's unfair that Whistletree charges for branch transactions. Ms A can't complete an income and expenditure form over the phone, and would need to receive and return it by post. She also can't apply for a lower interest rate over the phone.

Ms A has received higher awards of compensation in similar complaints in the past, and any award in this complaint should take account of the need for her to pay care costs to access documents from Whistletree since 2016, and to complain after it failed to offer her any support. She said she would be prepared to accept £1,000 compensation in recognition of her care expenses, plus a commitment from Whistletree to make reasonable adjustments in future.

This complaint was therefore passed to me to make a final decision. I asked some further questions of Whistletree, to which Whistletree didn't reply, despite reminders. I went on to say I intended to require Whistletree to send Ms A a fresh-paying-in book for her mortgage, send future correspondence on audio CD, and pay Ms A £1,000 by way of compensation.

Whistletree said it would pay Ms A £1,000, send her a paying-in book, and send historic documents on audio CD. It made no mention of adapting correspondence for Ms A in future.

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.

Reasonable adjustments

At the heart of this complaint is what Ms A says is Whistletree's failure to make reasonable adjustments in order for her to access its services.

Disability (a physical or mental impairment that has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities) is a protected characteristic under the Equality Act 2010. Ms A has such a disability and so, under the Equality Act, Whistletree is required to make reasonable adjustments to enable her to use its services – including in the way it communicates with her.

In making my decision, I must take account of relevant law – and that includes the Equality Act. It's not, however, for the Financial Ombudsman Service to make a decision on whether there has been a breach of the Equality Act. That's a matter for the courts. While I'm required to take into account relevant law, amongst other things, ultimately I must decide what I think is a fair and reasonable outcome in all the circumstances of this complaint.

Whistletree knew in 2016, when it took over Ms A's mortgage, that she is vulnerable and disabled, and requires correspondence to be sent on audio CD. Until recently, and following our involvement, it had failed to correspond in that way – despite saying as standard on its paper correspondence and paper statements to Ms A that it can provide correspondence in audio format. It hasn't explained why it was unable to provide this for Ms A, and suggested instead that Ms A look into software that could read documents aloud, or she could call it and ask staff to read documents to her and it would send her recordings of the calls.

I don't consider that Whistletree's suggestions were appropriate or reasonable, given its obligations under the Equality Act and given Ms A's particular circumstances. Whistletree has since sent Ms A her mortgage offer and past statements on audio CD as she requested. Ms A, however, says she has now received further paper correspondence with no accompanying audio CD. I also note that Whistletree hasn't confirmed whether or not it will be sending correspondence in audio format in future.

Whistletree had previously told us that it didn't have the necessary software to record someone reading Ms A's statements aloud. However, I can't see that it would be difficult or particularly costly to obtain such software; indeed, Whistletree now appears to have acquired the necessary software as it has now sent Ms A some information on audio CD.

In the circumstances, I see no obvious reason why Whistletree shouldn't be able to correspond with Ms A by post *and* audio CD on an ongoing basis, as she has requested. It hasn't provided details of any cost analysis it has carried out, for example, which might make corresponding and/or transcribing these documents in this way unreasonable. I therefore find that Whistletree should send Ms A correspondence by post and also on audio CD in future.

Whistletree sent Ms A information following her subject access request in paper format. It has said it can't provide this in audio format because of the volume of documents. I don't think that alone is a reasonable explanation. However, I understand that Ms A has now received her mortgage offer and statements in an accessible format, and Ms A hasn't indicated that there's a particular reason for wanting *all* the information Whistletree holds about her. I can see that transcribing all of this into audio format is likely to present some challenges so, in all the circumstances, I'm not going to make any order or direction in respect of Ms A's subject access request.

In reaching that conclusion, I bear in mind that it's not for me to decide breaches of data protection law – that's for the Information Commissioner's Office. My role is to decide a fair and reasonable outcome in the circumstances of the complaint at hand. If Ms A finds that Whistletree fails to provide her with documents and information in an accessible format in future, she may be able to make a fresh complaint about that at the relevant time.

Financial difficulty

I was sorry to read about the financial difficulty Ms A has found herself in and her experiences of trying to get the carer support she believes she should receive. She told Whistletree she was struggling financially, and I share our Investigator's view that Whistletree could and should have done more to help.

Ms A had overpaid her mortgage and as a result was in a position where she could have underpaid for a time without falling into arrears on the mortgage – as provided for in the mortgage terms. I consider Whistletree should have given Ms A this option.

However, in the longer term, if Ms A continues to experience financial difficulty, I think Whistletree will need to understand her financial situation in order to identify what support it can provide to her with her mortgage. This is because there isn't a fixed solution Whistletree is required to offer in every case: what is appropriate will depend on the borrower's particular circumstances.

I can see that Ms A will need support in order to communicate with Whistletree. Whistletree has, however, offered a range of channels through which the necessary information can be provided to it (online, by post and by phone), and I think this is reasonable. Ms A has some support and at times will need to arrange to communicate with her lender.

Interest rate

There's no duty on mortgage lenders to proactively offer their customers new interest rate products, so I don't consider that Whistletree has done anything wrong in not offering Ms A a new rate.

On its website, Whistletree invites its borrowers to apply by phone if they want a new interest rate product. I would, however, expect it to make the application process available by other means to those borrowers who can't phone. I find nothing to indicate that Ms A has asked Whistletree for a new rate; if she now wishes to do so I would expect Whistletree to make adjustments for her in order that she can make an application.

Branch services

TSB has closed the branch closest to Ms A's home, and I can see that this has inconvenienced Ms A. As the Investigator explained, the decision to close the branch was a commercial one which TSB was entitled to make. It's not for me, as Ombudsman, to interfere with that decision-making process; rather, it's a regulatory matter. The same applies to TSB's and Whistletree's decisions to charge a fee for each branch transaction.

Whistletree gave Ms A details of how to make payments to her mortgage other than at a branch, and its records show that it sent Ms A a paying-in book when she asked for one in 2018. I understand that Ms A's mortgage account number has since changed and as a result she needs a new book. I do understand Ms A's point that ideally Whistletree would have sent her a new book when it changed her account number, but I also recognise that there was no requirement for this to happen automatically and borrowers' needs change over time. However, Whistletree has now agreed to send Ms A a fresh paying-in book, and I will include that in my direction below.

Compensation

Ms A is a vulnerable, disabled customer. She has tried to engage with Whistletree in order that she can receive information about her mortgage in an accessible format, and to ask for

help during a period of financial difficulty. Ms A has explained how she feels substantially disadvantaged as a result of Whistletree's failure to communicate with her in an accessible way, and I agree that she has been caused avoidable and substantial distress, inconvenience and upset. I'm also mindful that this situation has gone on for some time, and that Whistletree clearly is able to provide correspondence in the format Ms A needs but has failed to do so consistently.

I've noted what Ms A has said about having had to pay carers to read and reply to correspondence. She would, however, have been paying for care in any event and, while carers would have been carrying out different duties had they not been assisting Ms A with correspondence, I don't consider I can fairly make an award for costs in the circumstances. I have nevertheless taken into account what Ms A has said about the impact on her care of Whistletree's failings in reaching my conclusion about what represents a fair and reasonable award.

In all the circumstances, I consider that Ms A should fairly receive a substantial award of compensation as set out below.

Putting things right

TSB Bank plc, trading as Whistletree, must:

- send correspondence to Ms A by post together with an audio CD in future, unless Ms A notifies it that her needs have changed;
- send Ms A a fresh paying-in book for her mortgage; and
- pay Ms A (directly, not by way of credit to the mortgage, unless Ms A requests it be paid to the mortgage) £1,000.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 25 May 2023.

Janet Millington
Ombudsman