

The complaint

Mr and Mrs B complain about the way their mortgage with TSB Bank plc is arranged. They consider that TSB is acting inflexibly to maximise the amount it can charge in fees.

What happened

In 2016, TSB recommended a mortgage to Mr and Mrs B. It had a fixed rate until 28 February 2022 with a £995 product fee. An early repayment charge (ERC) was payable if the mortgage was repaid during the fixed rate period.

In June 2021, TSB recommended that Mr and Mrs B should port their existing mortgage product (sub account 1) and take out additional borrowing (sub account 2) to fund the purchase of a new property. Sub account 2 had a fixed rate until 31 August 2023 with a £995 product fee. An ERC was payable if the mortgage was repaid during the fixed rate period.

In November 2021, Mr and Mrs B arranged a new fixed rate for sub account 1 – TSB did not give them advice. It had a fixed rate until 30 November 2023 with a product fee of £995. An ERC was payable if the mortgage was repaid during the fixed rate period.

In August 2023, Mr and Mrs B arranged a new interest rate for sub account 2 – again, TSB did not give them advice. The interest rate tracked the Bank of England base rate until 31 October 2025 with a £995 product fee. There was no ERC.

Mr and Mrs B complain that TSB is deliberately profiteering from product fees. They consider it has made their product fees inflexible to maximise the fees it charged. They say they are stuck in a position where they are unable to align the sub accounts – and they were unable to remortgage elsewhere because the sub accounts had ERCs with different tie-in periods.

Mr and Mrs B consider it is unfair they have been charged a product fee for each of the sub accounts. They do not consider that TSB is treating them fairly and has not produced a good outcome for them as required under the Consumer Duty.

I issued a provisional decision where I did not propose to uphold the complaint. My provisional findings, which form part of this decision, were:

Porting

TSB gave Mr and Mrs B mortgage advice when they ported their mortgage in 2021. TSB was required to recommend a mortgage that was appropriate for Mr and Mrs B's needs and circumstances. It has provided a copy of the information it gathered from them at the time in question and the reasons why it recommended they should port the mortgage.

The fact find said that Mr and Mrs B's "main priority is to transfer the existing rate on part 01 so that they do not pay the early repayment charges. They want a minimum of 2 years on the new lending and want to review options in 2 years' time. Customers want a maximum of 2 years on the fixed period to allow them to review the rates and finances in 2 years' time."

TSB went on to issue a recommendation letter advising Mr and Mrs B to take an interest rate

that was fixed until August 2023 alongside their existing fixed rate that was due to expire in February 2022. Mr and Mrs B accepted the recommendation. TSB issued a mortgage offer that set out the terms of the mortgage – including that the interest rates for each of the sub-accounts was different and would end on different dates and that an ERC applied if the borrowing was repaid before the end date of each of the respective products.

It was reasonable for TSB to recommend that Mr and Mrs B port their existing interest rate to a new property and that the additional borrowing was on a two-year fixed rate. That was in line with Mr and Mrs B's stated needs. They wanted to avoid an ERC and they wanted the interest rate on the new borrowing to be fixed for two years.

In saying that, neither the fact find or the recommendation letter set out the potential problems that having two sub-accounts could have. For example, Mr and Mrs B would not be able to remortgage to another lender without paying an ERC or switching to the standard variable rate (SVR) or another product that did not have an ERC. I consider that TSB ought to have done more to set out the potential problems of its recommendation. But the illustrations were sufficiently clear that both products had an ERC that ended on different dates.

I also consider it would have been reasonable for TSB to consider and explore whether a variable rate product without any ERC for the additional borrowing so that Mr and Mrs B could switch all of their mortgage to the same rate once the ERC expired on the existing interest rate.

The difficulty I have is that the information available to me shows that at the time in question TSB did not offer any variable rates – it only offered fixed rates with ERCs. I would ask TSB to confirm that is correct in response to this provisional decision. Even if TSB had done more to explore the potential difficulties that Mr and Mrs B might face by having two different tranches of borrowing on different interest rates with different ERCs, the only recommendation it could make was to take another fixed rate.

Bearing in mind that Mr and Mrs B's stated needs were to avoid the ERC and to raise additional funds to move home, I am satisfied that the initial recommendation was suitable for Mr and Mrs B. As TSB did not offer variable rates, the alternatives would have been to not move home at all or repay the TSB loan, incur the ERC and move to a different lender. It was always open to Mr and Mrs B to do either of those things.

In view of Mr and Mrs B's stated needs – and the subsequent action they have taken to avoid the ERC – I am not persuaded they would have accepted advice that required them to pay an ERC. I consider it more likely that they would have accepted TSB's explanation even if it had given a clear, fair and not misleading warning about the potential difficulties of having two interest rates with different tie-in periods.

I would add that if Mr and Mrs B had paid the ERC, then not only would they have paid the ERC, but their full mortgage balance would have been on a higher interest rate than they paid on sub account 1. It is not clear they are worse off by arranging their mortgage in the way they did.

Rate switches

TSB did not give Mr and Mrs B advice about either of the rate switches. It was Mr and Mrs B's decision about which rate to choose. TSB was not responsible for those decisions. And on the face of it, I don't consider that TSB had any reason to consider that the switches were not in their best interests.

Mr and Mrs B's point is that TSB is taking advantage of them to generate excessive fees and that it is not a good outcome for them as required under the Consumer Duty. The Consumer Duty only came into place on 31 July 2023. So it only applies to the rate switch that Mr and Mrs B did in August 2023.

TSB's position is that Mr and Mrs B have two products that do not align because they chose to move home and borrow more money. It was always open to them to pay an ERC if they wished to move lenders or to have only one product for the whole mortgage. TSB said it offered interest rates that did not have product fees – it was Mr and Mrs B's decision to choose rates that had fees. Mr and Mrs B are being treated the same as every other customer in their situation and with those products.

I've thought carefully about what both Mr and Mrs B and TSB have said. I've already found that the initial advice TSB gave Mr and Mrs B to arrange their mortgage in this way was fair and reasonable. That has played a large part of the position Mr and Mrs B have found themselves in. But it reflected the reality of their position, what they wanted to do and what they wanted to avoid. And as I said, this was the only option available to them that allowed them to achieve their objectives to move home and to avoid the ERC.

TSB has provided a range of different products and options once the respective rates came to an end that allowed Mr and Mrs B to take out new interest rate products. None of the products were priced outside what was available on the market elsewhere – including the interest rates and product fees. And it was Mr and Mrs B's decision to enter into a new fixed rate in November 2023. TSB did not recommend they should do that or had any reason to consider that was not in their best interests. My understanding is that variable rate products were available at that time.

Mr and Mrs B completed the product switch in August 2023 and chose a variable rate product. Again that was their decision. Consumer Duty applied for this transaction. But the switch enabled Mr and Mrs B to meet their financial objectives to align the two sub-accounts and take a new concessionary interest rate product. It was also priced in line with similar products on the market – there is nothing to suggest that the product did not offer fair value.

Of course, Mr and Mrs B's point is that the way things were set up means they have to pay more fees and are stuck with TSB. But as I've already found, that was because of the way the mortgage was set up to accommodate Mr and Mrs B's needs. It does not follow that the lender should waive ERCs or product fees because Mr and Mrs B later want to arrange things differently. And I note under Consumer Duty firms are not required to waive pre-existing contractual rights, such as ERCs.

Overall, I don't consider that TSB has treated Mr and Mrs B unfairly. They had a mortgage with TSB that had an ERC. They wanted to move home and needed more money to do that – but they also wanted to avoid paying the ERC. So setting up the mortgage in the way they did was the only option available to them. The downside of that was they had two sub-accounts with different tie-in periods. But I see no reason why that would mean that TSB should waive ERCs or set up products specifically to deal with customers in that situation.

TSB has offered Mr and Mrs B a range of interest rate products and the features and costs of those products were not out of line with the market. While it now has a duty to avoid foreseeable harm, that does not mean it should prevent all harm. The different tie-in periods were set out clearly and prominently in the paperwork. TSB had no reason to believe that Mr and Mrs B did not accept and understand the risks of setting the mortgage up in the way they did – albeit it could have done more to highlight that when it gave originally them advice. But for the reasons I have already given, I don't consider Mr and Mrs B would have done anything differently had they been given a clearer explanation at the outset.

TSB accepted my provisional findings. It confirmed that when it gave Mr and Mrs B mortgage advice in 2021 it did not offer any variable rates. Mr and Mrs B did not respond.

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.

As there were no substantive responses to my provisional decision, I see no reason to reach a different decision than I did in my provisional decision.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 7 January 2025.

Ken Rose
Ombudsman