

## **complaint**

Mr S complains about the sale of his Bradford & Bingley Plc (B&B) mortgage.

## **background**

Mr S worked for B&B. In 2007 he applied for a mortgage with B&B. It was an advised sale. The advice he received was that he should take a 100% mortgage on a 10 year fixed rate at 6.19%. He says that at the time he was told that after 5 years he could switch to a different product.

In 2012 Mr S wanted to switch to a different product. B&B told him he couldn't. Mr S complained to B&B. He said the mortgage was mis-sold. He said at that point he was unfairly locked in. This is because he couldn't move to another lender due to the high loan to value on his property and because he couldn't move to the B&B's standard variable rate. In mid-2014 Mr S sold his property and repaid his mortgage.

B&B didn't uphold his complaint. In its response it said that it stopped offering new rates after it was nationalised. It pointed out that Mr S agreed in April 2014 that he was aware that his mortgage was fixed for 10 years. There was an ERC until April 2012. It said that the mortgage offer does not say that Mr S could exit the fixed rate after 5 years and take a new product. Even if this option had theoretically been available, it was not able to offer new mortgage deals. Mr S complained to us.

The adjudicator did not recommend upholding Mr S's complaint. He said that Mr S accepted a mortgage deal that suited his needs at that time. He accepted that due to a shift in the market, mortgages with high loan to values are hard to come by. His view was that the mortgage advisor couldn't reasonably have foreseen the changes in the mortgage market, nor B&B's particular position. He found no evidence to support what Mr S said about B&B giving him an assurance that after 5 years he could apply for a new rate without incurring an ERC.

Mr S did not accept the adjudicator's recommendation. He says that having spoken to other former staff members they confirmed before and after nationalisation B&B did allow borrowers to come off their fixed rates onto its variable rate. He says this was policy. He says B&B's decision had a serious impact on him.

Mr S would like an apology from B&B. He would also like the difference between the interest he paid and the product variable rate from the end of the ERC until he redeemed his mortgage.

My provisional view was that knowing Mr S was trapped in the mortgage with B&B and on his fixed rate product through no fault of his own, it would have been fair and reasonable for B&B to find a way to move him on to a default rate. Because of that I thought B&B should compensate Mr S.

In response, Mr S accepted my provisional decision. B&B didn't.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. This includes the responses to my

provisional decision from both Mr S and from B&B, which I have addressed below. However, I haven't received any new information that has caused me to come to a different view.

Mr S says he was within his rights to cancel the 10 year fix after 5 years. B&B says there was nothing in its terms and conditions that obliged it to offer Mr S a new preferential interest rate "deal" when his ERC expired. It says that it was no longer able to offer new products. In its response to our adjudicator, B&B said it knew that Mr S was trapped at B&B.

Mr S says he was told that after the end of the ERC period he could switch to another product. I am satisfied that he was and that it was reasonable for Mr S to have relied on this. Mr S says that he wanted flexibility after the five years ERC period was up and stressed this to the advisor at the time. B&B can't find the notes from the initial interview so is unable to contradict Mr S's version of events. Even if Mr S hadn't been told he could switch products, it would have been reasonable for him to conclude he could. This is because otherwise the ERC period wouldn't have ended after five years. It has also been commonplace in recent years for borrowers to move from one product to another throughout the term of their loan.

In a discussion with the adjudicator B&B accepted that it did not have any evidence that the lending was affordable or that the advice was suitable at the time. I am satisfied that it was. The reason for this is that Mr S paid his mortgage for many years without any missed payments. It also appears from what he has said, it allowed him to do what he wanted and he fully understood the arrangements.

However, given B&B knew that Mr S was trapped in the mortgage through no fault of his own, it would have been fair and reasonable for B&B to find a way to help him. I consider that this would have been to move him on to a default rate. B&B say that it was never envisaged that Mr S could do this before the expiry of the fixed rate period. But as discussed above but for the changes at B&B, it was envisaged he could move onto some other product. It is not Mr S' fault that B&B is no longer able to offer any.

B&B say that if Mr S had moved to a different product, the interest rate on this would have been higher than the variable rate. This may have been the case in 2012. However, just because he might not have been able to have a fixed rate as low as the default rate, that doesn't mean that it was fair to leave him in the position he was. It also says that if interest rates had increased instead of decreasing then Mr S would have been keen to keep his fixed rate. It says it is unfair for B&B to bear the cost of this benefit. However, if B&B didn't want this to be the case, then it wouldn't have set the ERC to expire after five years.

For these reasons I find that Mr S has been financially disadvantaged. The disadvantage is that he has been paying a higher interest rate than if B&B had taken his circumstances into account, acted fairly and allowed him to move to a default rate. He has also been put to the inconvenience of having to bring his complaint to us.

### **my final decision**

For the reasons given above my final decision is that Bradford & Bingley Plc should compensate Mr S as follows:

- It should calculate the difference between the interest that Mr S paid from the point he asked to break the fixed rate product and B&B's PVR until the mortgage was redeemed. It should pay this sum to Mr S.

- It should pay Mr S £250 for the trouble and upset it has have caused him.

It should also apologise to Mr S for the way it dealt with his request and complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 November 2015.

Robin Somerville  
**ombudsman**