complaint

Mr and Mrs B complain that TSB Bank plc refused their application to port their mortgage product.

background

Mr and Mrs B took out a mortgage with TSB in 2016 for £87,200 on a capital repayment basis with a term of 11 years. They also took out a fixed rate mortgage product for five years with an early repayment charge ("ERC") if the mortgage was redeemed in that time. This could be avoided if they ported the mortgage product.

In 2018, Mr and Mrs B wanted to downsize and applied to TSB to port their mortgage product to the new property. Although Mr and Mrs B were downsizing, they asked to port the mortgage at the same amount. They planned to take some equity out of their property when they moved. If the existing loan was transferred in full it would have a higher loan to value ratio ("LTV") than previously at 50.71% rather than 42%. On 10 July, TSB said that it wouldn't lend more than £63,000 and Mr and Mrs B agreed to that. But because of a low credit score the application was referred for a credit risk review. On 10 August TSB agreed that it would lend £63,000 if additionally Mr and Mrs B paid off two credit card debts of about £2,500.

After the referral to credit risk, Mr and Mrs B looked to get an alternative mortgage and accepted a mortgage offer for the balance they originally wanted from another lender and paid the ERC. Our investigator's view was that this complaint should be upheld as Mr and Mrs B weren't looking to borrow any more money but were looking for a like for like mortgage with the one they already had. Although there was a change in the LTV our investigator felt that TSB should have ported the mortgage without requiring them to pay off the unsecured debt.

So, our investigator recommended that this complaint should be upheld and that TSB refund the ERC of £2,912.06 and pay Mr and Mrs B the difference between what they would pay in interest to the new lender and the interest they would have paid to TSB until 31 December 2021. TSB previously paid Mr and Mrs B £150 for the delay in processing their application.

my findings

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

Mr and Mrs B were downsizing and wanted to port their mortgage product and avoid the ERC. They wanted to move their existing mortgage of around £76,000 to a new property. This mortgage product ended on 31 December 2021. So, they were required to make an application for a new mortgage on the new property. This would be subject to the lender's conditions at the time of application. But also subject to any applicable MCOB regulations and TSB's overriding duty to treat Mr and Mrs B fairly.

TSB was concerned about a couple of things although at the start, at least, it would seem that affordability wasn't a major issue as there was no change to Mr and Mrs B's incomes and a small change to the contractual monthly payment (CMP). Firstly there was a concern about the LTV on the new purchase. If Mr and Mrs B ported the same mortgage balance over, this would have meant that instead of the existing level of 42% it would rise to 50.71%. So, TSB wanted them to reduce the mortgage balance and Mr and Mrs B said they would accept a lower mortgage of £63,000.

But Mr and Mrs B also failed TSB's credit score. This seems to be related to some old trading debts from over ten years previously which meant that Mr and Mrs B were still making small payments towards what had been quite large debts. On 17 July the application was passed by the underwriter to credit risk. There was no response for a time until Mr and Mrs B made a complaint when on 13 August TSB said that it would make the loan if Mr and Mrs B paid off their existing credit card balances. I understand that these at the time were about £2,500. This would have reduced the benefit to Mr and Mrs B of the loan further. Mr and Mrs B were buying a new build and presumably under pressure from their builder and went to another lender who offered them a mortgage in the region of what they originally wanted.

I will look at the LTV issue first. The notes record that as the LTV was increasing from 42% to 50.71% the underwriter "*would be unlikely to agree any proposal for existing TSB customers where TSB's risk is increasing*". The underwriter then asked the mortgage adviser to confirm the sale price, what the amount of equity was and what was going to happen to that money. The underwriter expected Mr and Mrs B to be putting most of the equity to their purchase. But the mortgage adviser said that Mr and Mrs B were looking to complete home improvements, including new windows, and a small extension with the disposable equity. The underwriter replied "*That is not a scenario I am comfortable with* "and that he wasn't willing to proceed above the current 42% LTV. So the underwriter was only willing to sanction a loan of £63,000 which Mr and Mrs B at that time would have accepted.

But the mortgage doesn't go ahead after the underwriter refers the case to credit risk because of two old debts that Mr and Mrs B had been paying for some years. These debts existed before the original mortgage was taken out with TSB. There is a reference to the debts not being disclosed in 2016 but I've received no supporting evidence for that. As I understand it, all Mr and Mrs B's payments to creditors flow through TSB accounts so I believe that TSB should have been aware of them. TSB's response was to require Mr and Mrs B to pay off, not these debts, but two other credit card debts of about £2,500. This would in effect have meant that the benefit to Mr and Mrs B in the mortgage was no longer £63,000 but closer to £60,000. Mr and Mrs B didn't consider this acceptable and so accepted a mortgage offer from another lender.

TSB wrote to us on 3 February to explain its position. It said that it refused Mr and Mrs B's original application because there was going to be a higher risk to the bank and with their unsecured debts and they thought that the loan was unaffordable. The unsecured debts I understand to be two credit card debts referred to above. It also said that Mr and Mrs B's low credit score was a factor and that the reduced LTV was a change to the mortgage contract likely to be material to affordability. The bank goes on to say that Mr and Mrs B *"were proposing to be a higher risk to the bank with the change in the loan to value and with their unsecured debt as a company we did not deem it affordable."*

TSB has framed its response to us in terms of affordability. As lenders tightened up on their affordability requirements in recent years, it's recognised that this can lead to unfairness and this is in part relieved by Regulations including MCOB 11.6.3 and the general duty on the lender to act fairly to customers.

MCOB 11.6.3 says that a lender can forego an affordability assessment if the borrower's application doesn't require additional borrowing as was the situation here and there isn't a change to the terms of the mortgage contract likely to be material to affordability. Examples of changes to the mortgage contract material to affordability are given in MCOB 11.6.4. such as change in the type of mortgage from interest only to capital repayment that would have a direct effect on the affordability of the mortgage.

This was a "*like for like*" application where Mr and Mrs B wanted to borrow the same amount, on the same interest rate product, repayable over a similar term to their existing mortgage. I don't believe that a change in the LTV was material to affordability. It's not mentioned in 11.6.4 and doesn't appear to be similar to what is contained in that section. It's certainly relevant to the lender's risk. The lender wanted to maintain the existing LTV by insuring that the equity from the house sale was used to reduce the borrowing on the property so reducing the LTV. But Mr and Mrs B were proposing to use some of the money from the sale for improvements on the new property which would increase the value of the property realising what the underwriter wanted to achieve but by other means. But it doesn't appear that TSB considered that possibility which could have equally achieved TSB's aim of not increasing its risk exposure.

In regard to the two other older debts, as I understand it from TSB's email to us of 2 March 2020 the two other debts would have increased the level of Mr and Mrs B's commitments and made the mortgage unaffordable. These were debts being paid in respect of payment plans stretching back I believe over ten years and appear to be related to the debts of a company that stopped trading possibly in 2005. The payments are described by TSB as minimal in comparison to the debt. It seems that TSB's processes in 2019 picked up these debts but didn't when the original loan was sanctioned in 2016. As I say above I've no evidence that Mr and Mrs B were asked about these debts previously and failed to disclose them. Mr and Mrs B had been paying these debts before and after 2016 and I do not consider them to be changes in the mortgage contract material to affordability under MCOB 11.6.4 so that TSB could deem their mortgage payments unaffordable in 2019.

This was a porting application which was on a like for like basis and so under MCOB 11.6 .3. unless there was a material change to the mortgage contract TSB didn't have to apply the strict affordability criteria expected of it. TSB looked at its level of risk and because of the increased level of risk (although only to 50%) it wouldn't lend to the level that Mr and Mrs B had expected. I can see that this would have interfered with Mr and Mrs B's plans for home improvements. Mr and Mrs B's plans would seem to me to have had the effect of reducing TSB's level of risk and TSB failed to consider that which I believe to be unfair.

TSB's processes in 2018 also revealed two other older debts which Mr and Mrs B had been paying off for years and were paying when they took out the mortgage originally. As I say above I don't consider that these fall into the category of changes to the mortgage contract material to affordability. It also seems unfair that Mr and Mrs B should be penalised by TSB on affordability grounds for payments they had been making that pre-existed the original mortgage contract, which they had been making during the currency of the contract and where they had shown that they could comfortably afford those payments.

So, my view is that TSB should have agreed to port Mr and Mrs B's mortgage product for the balance remaining on the mortgage at that time. I understand from the redemption statement that the balance was £72,801.57. TSB refused them that opportunity and Mr and Mrs B should be put in the position they would have been in had their application been approved.

In order to compensate them TSB should refund the ERC of £2,912.06. Mr and Mrs B also had to pay a higher interest rate to the new lender than to TSB and I believe that it's reasonable that TSB pays for the additional cost of that interest. So, TSB should pay Mr and Mrs B the difference between what they would pay in interest to the new lender on the balance of £72,801.57 and the interest they would have paid to TSB until 31 December 2021. From the figures on the new lender's mortgage offer for a loan of £73,970, Mr and Mrs B would have been paying a slightly increased interest rate of 2.29% pa during this period rather than the existing rate of 2.24%.

my final decision

My decision is that I uphold this complaint and I require TSB Bank plc to:

- Refund the ERC of £2,912.06 together with interest at 8% pa from the date the mortgage was redeemed to date of payment and

- Pay Mr and Mrs B the difference between what they would pay in interest to the new lender and the interest they would have paid to TSB on their mortgage payments until 31 December 2021 on the mortgage balance of £72,801.57.

Under the rules of the Financial Om Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 11 July 2020.

Gerard McManus
ombudsman