

The complaint

This complaint's about a mortgage Mrs C holds with TSB Bank plc trading as Whistletree. The essence of the complaint is that Whistletree rejected a request to extend the mortgage term, which at the time had under three years left, to seventeen years. This would have allowed Mrs C to apply for a five-year fixed interest rate product; instead she could only take a two-year fixed rate, which was higher than the five-year rate and is now about to expire.

What happened

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mrs C being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Our decisions are published, and it's important that I don't include any information that might result in Mrs C being identified. Instead I'll give a brief summary of the main events giving rise to the complaint and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mrs C took the mortgage out in 2005, on the advice and recommendation of a third party intermediary; it was an interest-only mortgage with a 20-year term, and the original lender was a business I'll call N. The mortgage was later transferred to Whistletree following N ceasing to operate.

In 2022, with a little under three years left, Mrs C asked for the mortgage term to be given a new 17-year term, and for a five-year fixed rate of 1.59% to be applied to the mortgage. The proposed term extension would have coincided with her 75th birthday. Whistletree's mortgage advisor put the application forward but after some deliberation, the term extension was rejected. With less than three years left on the mortgage, Mrs C was only eligible for a two-year fixed rate product, which was 1.89%.

This was backdated to run from March 2022 as part of Whistletree's response to the complaint Mrs C made about the decision to reject the term extension. Other than that concession, Whistletree rejected the complaint, albeit it has subsequently told us it is willing to pay Mrs C £150 compensation for her time, trouble and upset.

Our investigator didn't recommend the complaint be upheld. He thought Whistletree had considered the term extension request fairly and in accordance with its lending policy.

Mrs C remains unhappy so the case has come to me for review.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

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

Having done so, I've set out my conclusions and the reasons for them below.

My starting point here is that Mrs C borrowed money under the terms of an agreement that requires her to repay the money in 2025. No one is entitled to borrow money; and even when they've borrowed before, they're not automatically entitled to more time to repay the debt after it's due for repayment. But a lender must treat customers fairly.

In the context of an application for a term extension, that means assessing it in accordance with the bank's lending criteria and being mindful of what mortgage regulation requires of it, which includes considering what is in a customer's best interests. Lenders' criteria are commercially sensitive and not generally made public.

There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

A term extension *is* a material change to the mortgage contract, and particularly so in this case given that Mrs C wanted it to run until her 75th birthday. In the circumstances, Whistletree was, I find, entitled to consider affordability. But it also had to consider whether the change to the mortgage would be in Mrs C's best interests – and if it was, then the affordability assessment could be disregarded.

Considering all of the circumstances, I think Whistletree did assess the term extension request fairly. Firstly, it took account of its policy position that requires requests for extensions of more six months to be treated as exceptional. That being so, it then looked carefully at Mrs C's wider financial situation, which included occasional historic shortfalls in the mortgage payments, inconsistencies in the information provided about her income from the rental properties (and the reasons for that), and the means already available to Mrs C to repay the mortgage when it is due.

If someone *cannot* repay an interest-only mortgage when it's due, then we'd expect the lender to have a conversation with the borrower about their circumstances, and try to work out a plan for repaying the mortgage. If that means providing more time, then fairness requires a lender to consider doing so. But Mrs C isn't someone who won't be able to repay her interest-only mortgage when the term ends. The available evidence indicates that she doesn't *want* to repay the mortgage when it's due, rather than that she won't be able to.

Mrs C is on record as saying she wants to continue living in the mortgaged property until she's 75, and then sell it, repay the mortgage and buy a smaller property with the remaining equity. That's seem reasonable on face value, but the fact is that Mrs C has the means to repay the mortgage when it is due, most likely by selling other properties she owns for letting purposes. This strategy would not deprive Mrs C of her home.

Alternatively, she could bring forward her plan to downsize, but Mrs C has apparently told Whistletree said she's too busy with career at present, and would like to see her children married first. I understand why she'd want to do that but I don't consider either of these a valid reason why Whistletree should have been required to extend the duration of the mortgage by what amounts to around 75% of the original term.

Mrs C has said it's not in her best interests to be facing an imminent substantial increase in her monthly payments when the two-year product expires. Whistletree's view seems to be that it is Mrs C's best interests to repay the mortgage when due rather than have that ongoing liability until she is 75. All things considered, I'm inclined to agree with Whistletree on this point. I say this not least because it limits Mrs C's exposure to the vagaries and uncertainties of what is a borderline volatile financial environment, and the risk that plans which might seem achievable on face value now will become harder to realise as time goes

by. I fully understand why Mrs C found that decision unwelcome, but it wasn't *unfair*, which is the test I have to apply.

It's worth adding, though, that there's nothing to stop Mrs C from asking for another term extension when her current fixed rate product expires, as it's possible Whistletree's lending criteria may have changed by then. To be clear, however, it should not be inferred from my making this observation that any such request, if made, must be agreed to.

As with the request I've dealt with here, Whistletree's obligation would be to assess a subsequent request fairly. Alternatively, Mrs C could speak to an independent financial advisor (something Whistletree has itself suggested) to explore other options, such as equity release, if she wants to remain in her property.

Other matters

Mrs C asked why the monthly instalment she had to pay after the two-year product took effect was slightly higher than initially quoted. I'm satisfied that Whistletree's explanation, that a slight shortfall in a recent monthly payment increased the loan balance slightly, is reasonable.

Having no regulatory power means it's not within my remit to consider why the mortgage was transferred to Whistletree, as opposed to any other lender, when N ceased operating.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from her submissions how important this is to Mrs C. That's a natural reaction, and entirely understandable when you're as close to a situation as she is here.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome. Having done that, and having considered everything that both parties have said and provided, I don't find that Whistletree has treated Mrs C unfairly.

That leaves one last point. While the case has been with us, Whistletree has made an offer to pay Mrs C £150 compensation for her time, trouble and upset. Given that I haven't found that Whistletree has treated her unfairly, if that offer had not been made, I would not have awarded more. Insofar as the offer *has* been made, it seems fair overall that Whistletree pay it, assuming Mrs C accepts my final decision.

My final decision

My final decision is that this complaint should be fairly determined by TSB Bank plc trading as Whistletree paying Mrs C £150. I make no other offer or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 31 January 2024.

Jeff Parrington

Ombudsman