

The complaint

Mr and Mrs F complained about the remortgage of their rented property with TSB Bank plc. They wanted a fixed rate mortgage, but some months later, realised they had a tracker rate. Mr F is adamant he selected a fixed rate online, so he wants TSB to change this.

What happened

Whilst this complaint is brought by both Mr and Mrs F, as the mortgage is in both their names, our dealings have been with Mr F. So I'll mainly refer to him in this decision.

Mr F has told us he has a diagnosis of autism.

Mr F said he applied online, in late September 2022, for a Buy To Let remortgage with TSB. He said he'd always had fixed rate mortgages, and that is what he wanted this time. Mr F said he realised in December 2022 that he hadn't been given a fixed rate mortgage, because the payment taken for that month was significantly higher.

Mr F said TSB told him he'd opted for a tracker mortgage online. He said he did not knowingly do that. And he said TSB told him he'd signed up to the tracker mortgage on the paper copy of the documentation he was then sent by TSB.

Mr F said he wouldn't have read the whole of those documents. He said his diagnosis of autism means this is difficult for him. And he felt the papers he received were ambiguous. He thought he would have turned straight to section 3, headed *"Interest rate and other costs"* and read the following - *"...a current rate payable of 3.34% that will apply from completion until 30/11/24. Followed by a variable rate...."*

Mr F said TSB wasn't trying to sort this out, and had denied making any mistake. And he said the rate change letters TSB issued didn't alert him to the problem, because these both said *"If you've recently asked us to transfer some or all of your mortgage to another product you can ignore this letter. We'll write to you separately about your new product and monthly payment."*

Mr F said when he was discussing the complaint response with TSB, its agent said that there were many people in the same position as Mr F, who applied online and found they didn't get the rate they wanted. So he thought there was a problem with TSB's procedures at the time. Mr F said he wanted TSB to apply the rate and mortgage type that he was confident he'd chosen back in September 2022.

TSB didn't think it had made a mistake. It said its records showed that Mr F applied online for a tracker mortgage, which was then at 3.34%. TSB felt that its online system explained the application to Mr F. And it said it had written to him since, telling him his mortgage payments were going up due to increases in the Bank of England rate. TSB said it wouldn't apply the fixed interest rate that Mr F could have chosen in September 2022, to his mortgage now. But he could choose a new fixed rate if he wanted to.

Mr F said he'd been trying to work out why TSB thought he'd taken out a tracker mortgage, and he thought it must be a problem with the website, perhaps as a result of poor design making the site prone to unintentional changes. He didn't think customers could be held responsible for that.

Our investigator didn't think this complaint should be upheld. He accepted Mr F had intended to choose a fixed rate, but he didn't think TSB had made a mistake. He hadn't seen evidence that the mortgage product could change during an online application, and said that the documents then sent to Mr F did make clear that the rate he applied for was a tracker rate. The "*Interest rate*" section Mr F had referred to said the rate was:

The Bank of England Base Rate, currently 1.75%, with a loading of 1.59%, giving a current rate payable of 3.34% that will apply from completion until 30/11/2024

And our investigator noted that, in section two under the heading "*main features of the mortgage*" it shows the rate to be:

A variable rate which tracks the Bank of England Base Rate until 30/11/2024

So our investigator said, considering the online application Mr F completed, and the information provided in the offer and illustration which Mr F needed to read and agree to, he couldn't say TSB had made an error.

Our investigator said he'd checked with TSB if there were any other customers who experienced this, but TSB said there weren't.

Mr F replied to object. He wanted our service to consider if TSB's fraud guarantee was relevant here. He said he assumed the investigator thought he'd made an error. He asked whether TSB's website had been tested for autism friendliness. He said our investigator's description of the website didn't match with his recollections. He wanted to know how many other people had applied for the tracker mortgage at the same time. And he said TSB had told him other people were affected by the same problem as him, so either TSB had lied to him or it was lying to our service. Mr F was also concerned about the standard of proof we would require to uphold his complaint.

Our investigator contacted TSB, for some more information. Then he wrote to Mr F again. He still didn't think this complaint should be upheld. He said it was possible Mr F had incorrectly selected a rate, rather than the screen changing it. And he didn't have evidence to suggest the website caused the error.

Our investigator noted that TSB said it does work to ensure its websites and apps are accessible to all customers and meet appropriate standards, although it wouldn't be able to confirm if this was user friendly for individual requirements such as autism. Our investigator noted that Mr F hadn't told us he'd informed TSB that he had a diagnosis of autism, so our investigator said he needed to consider how TSB could've done more to help if it wasn't aware that Mr F may have needed additional support. Our investigator asked if Mrs F wasn't able to check the application and offer too.

Our investigator said TSB had confirmed it had a problem at the time of Mr F's application, but this wasn't what had gone wrong for Mr F. It was a problem with one particular product, not the same product Mr F applied for, and it manifested in a different way. And finally, our investigator said he didn't think TSB's fraud guarantee was relevant here.

Mr F wrote again after this, a number of times. He said he felt our service was ignoring what he'd said. He repeated that he didn't recognise the process our investigator described, and said he wanted to see what TSB said he'd have seen when he applied. When our investigator showed him the screenshots TSB had sent us, Mr F said those weren't of his specific application, so he didn't think they would help. Our investigator said that TSB wouldn't have screenshots of the actual application. Mr F asked why TSB hadn't sent our service the data the website captured.

Mr F said if TSB had accepted that other customers had problems, that showed things could go wrong with the web application. He wanted to know how many other people applied for the same sort of mortgage, a tracker, on that day. Our investigator said he didn't think that would help resolve things in this case.

Mr F didn't think our service was assessing things against a standard of fairness. He thought we were favouring TSB. He said if our service's conclusion was either that he made an honest mistake or that he was unhinged in some way, then in either of those circumstances, he thought the fair outcome would be to give him a fixed-rate mortgage deal.

Mr F asked why TSB hadn't emailed him immediately with confirmation of the mortgage product he'd opted to switch to.

Mr F wanted to stress that this mortgage would cost him many thousands more. He wanted to know how much more he would have to pay on his mortgage, before our service ceased to say it was fair.

Because no agreement was reached, this case came to me for a final decision.

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.

I've reached the same overall conclusion on this complaint as our investigator.

Mr F has expressed concerns about the approach our service takes to decision making. Perhaps it will help if I set out briefly here how I will approach this case.

Firstly, it's not unusual for the facts of a case not to be proven entirely beyond doubt. What I need to do is to consider the evidence provided by both sides, and weigh up what is, in my view, most likely to have happened.

I must then determine the “... *complaint by reference to what is, in [my] opinion, fair and reasonable in all the circumstances of the case.*”

Mr F says that if he didn't consciously and intentionally choose a tracker rate (which he's been clear he didn't) then the only fair outcome would be to give him now, the fixed rate he wanted in September 2022.

But I don't think that takes account of all the circumstances of the case. As Mr F is aware, interest rates have unfortunately risen since he applied for his remortgage. So if I require TSB to offer Mr F now, a fixed interest rate mortgage which he could have secured in September 2022, but cannot secure now, then I'm also requiring TSB to bear any losses that arise out of granting Mr F a fixed mortgage rate which is very considerably lower than those TSB is able to offer in the current market.

The evidence I've considered in this case includes Mr F's testimony about what he did online. He recalls applying for a fixed rate mortgage, and says that if a mistake was made, it was likely to be as a result of poor website design, which isn't his fault.

I've also seen the data captured as part of Mr F's application. And this makes clear that, whatever Mr F's intentions, he did apply for a tracker rate.

TSB has shown our service, and Mr F, the process a customer goes through when they apply to remortgage. It has said it works to make this site user friendly, and to make sure it remains easy to read. I think that's a reasonable approach for TSB to take, and I don't think it had to do more to support Mr F's application, particularly as it doesn't appear to have been aware of any reasonable adjustment he might require.

I do think the online application process includes a number of chances to check and confirm the product selected. I think it's unlikely that Mr F's initial choice of a fixed rate was accidentally changed to a tracker during this process, as a result of poor website design, and Mr F didn't notice this.

And I also think this isn't the only point when things went wrong. TSB posted Mr F an offer letter, confirming the details of the mortgage he'd applied for. Mr F has been quite clear that he did not read this offer letter which was posted to him. Mr F says that his autism makes this more difficult for him. But he hasn't suggested TSB ought to have been aware of this, so I can't say TSB made a mistake in sending him documents by post.

I know that Mr F would also have liked an email confirming his choices, but I think any email, if sent, was likely to be in the same format as the letter he received. This provides a standardised approach to setting out the details of mortgages. So I can't say TSB made a mistake in using that format. And I think the outcome in this case would be likely to be the same, if Mr F had received these documents by email rather than by post.

Mr F did say he thought he would have read the section on interest rates, and he quoted from that section in his initial complaint to us. The sentence Mr F quoted part of was then set out in full by our investigator. It says his interest rate is:

The Bank of England Base Rate, currently 1.75%, with a loading of 1.59%, giving a current rate payable of 3.34% that will apply from completion until 30/11/2024

I think that makes clear that Mr F is on a variable interest rate. The rate is set by taking the Bank of England base rate, then adding a percentage on top. Mr F told us he thought he would have read this. But what it says isn't at all consistent with the sort of mortgage Mr F has told us he wanted.

Considering all the evidence in this case, I think what is most likely to have happened, is that Mr F made a mistake when he selected his mortgage online. And he then did not notice this mistake when he received the confirmation documentation, even though he thinks he did read the above section.

We know that Mr F didn't notice that he didn't have the mortgage type he wanted until December 2022. In the intervening period, interest rates had risen. So I have to assess whether it's fair in this case, to ask TSB to carry this burden, rather than Mr F.

Mr F also wanted me to consider this complaint in the light of TSB's fraud guarantee. I've considered this guarantee, but, like our investigator, I don't think it's relevant here. That's

because I don't think it's reasonable to characterise what has happened in this case as falling within the terms of the guarantee.

Mr F wanted our service to find out how many other TSB customers had applied for a tracker mortgage at the same time. He said that if he was the only customer to do so, then that might show something was wrong with his application. Like our investigator, I don't think that would assist in resolving this case. I don't think an overview of how many other people had applied for the same mortgage type would help me decide whether Mr F had made a mistake in his application. And I don't think it would have meant TSB should not have acted on Mr F's application either.

Mr F said TSB had accepted that other customers had problems at the same time. And he said that showed things could go wrong with the web application. I haven't started from the assumption that web applications are infallible. But I do have to decide what's most likely to have happened here. We know TSB has recognised a problem, which it says was confined to a different mortgage product, and affected a number of customers so their offer document didn't match the product they were given. But I don't think TSB having experienced this specific problem with mortgage applications for one product, means it's most likely something also went wrong with Mr F's application, which wasn't for the same product, and where the offer document and product applied to his mortgage account did match.

Mr F wanted to stress that this mortgage would cost him many thousands more. He wanted to know how much more he would have to pay on his mortgage, before our service ceased to say it was fair. But I've explained that I need to consider what's fair and reasonable in all the circumstances of the case. And I don't think that increasing costs for Mr F in future would mean that it becomes fair to ask TSB to carry the burden of these costs, if it wasn't fair to ask it to do so before.

I've considered the evidence and arguments of both sides carefully in this case. But I haven't been able to agree with Mr F, that it would be fair and reasonable in the circumstances, to require TSB to give him now the rate which he could have secured on 22 September, when he made his application.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 8 September 2023.

Esther Absalom-Gough

Ombudsman