

The complaint

Miss D complains that TSB Bank plc said it would consider her mortgage application if she bought a property from a family member at a reduced price, then it changed its mind. Miss D said this meant she had to pay much more, and had a serious impact on her personally.

What happened

Miss D told us she secured a remortgage of her existing property with TSB, early in 2022. She took out a fixed interest rate mortgage, on a five year deal. That mortgage came with an Early Repayment Charge ("ERC") if it was redeemed before the end of the fixed rate. At this point, Miss D already had plans to move, and she intended to port her new mortgage deal.

Miss D secured a mortgage offer with TSB, to port her existing borrowing and buy a new house. This purchase was partly funded by a large gift of money from a close family member. Miss D then ran into problems with the sale of her existing property, and decided that she would arrange for another family member to purchase the house she wanted, and then she would buy it from the family member at a reduced price.

Miss D said this was all discussed with TSB. But she said she only found out later that TSB cancelled her existing mortgage offer at that time, she said she hadn't agreed to that.

Miss D said she then tried to move forward with buying the house from her family member, and was horrified to be told that the relative she was buying from wasn't a sufficiently close relative for TSB to allow a purchase at undervalue, which it calls a concessionary purchase. TSB said it hadn't known who the relative was, when it said this would be possible. Miss D said she'd been clear throughout who she was buying from.

Miss D's family member was by this time committed to the purchase, so that went ahead. Miss D complained about TSB's decision on the concessionary mortgage, and it agreed to reconsider lending to her. But when it did consider this application, it decided it wouldn't lend. And TSB didn't think it had done anything wrong.

Miss D said all of this flowed from TSB's initial wrong advice, that she would be able to get a TSB mortgage if she was going to buy at a concessionary price from this relative. She set out for us in detail how this had impacted her, both in terms of her physical and mental health, and in terms of her financial situation. Miss D has since been able to sell her previous property, and has redeemed the mortgage, but she says she paid TSB a sizeable ERC to do so, and she lost the advantageous interest rate on her old TSB lending, so she's paying more for her mortgage now.

Our investigator didn't think this complaint should be upheld. She said that we couldn't know for certain whether TSB had understood which relative was buying the property, or what advice it had given around concessionary purchases. But she said that in any case, Miss D's application would always have been subject to a full assessment. She said TSB is entitled to set its lending policies in line with its risk appetite, and we cannot make TSB change those policies. TSB isn't required to share these policies with Miss D. We can only consider if TSB

has given fair and reasonable consideration to Miss D's application. And our investigator thought it had done, so said she wouldn't uphold this complaint.

Miss D wrote in some detail to object. She thought our investigator hadn't understood the issues raised. She said this complaint centres on the fact she was misled by TSB when she first discussed a concessionary purchase. She challenged the conclusion our investigator reached on this. She said it should be clear to anyone who heard what had happened that she had been misled, and that was why TSB later granted an exception to its policy. But she said that didn't change the fact that she was misled, and the detrimental impacts which followed. She wanted our service to listen to the phone calls where this was all discussed.

Miss D repeated that TSB had cancelled her original mortgage offer, without her agreement or knowledge, after these conversations. And Miss D said there was never any suggestion that a concessionary purchase mortgage might not be approved. She thought that at least she should be told the reasons for TSB's ultimate decision, and not leave her speculating about this, although none of the reasons she thought TSB might have latched onto would explain its decision.

Miss D stressed again the impact this had on her, both personally and financially. She thought TSB should, at the very least, be obliged to repay the ERC it had charged on her recently redeemed mortgage. Because no agreement was reached, this case was then passed 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.

I think Miss D's complaint divides into two issues. There is the initial advice she says she was given, that TSB would be prepared to offer a mortgage on a concessionary purchase from a particular family member. And there is the decision TSB eventually made, not to lend to Miss D. I'll look at those issues in turn.

Miss D said that early in 2022 she had recently secured a new mortgage deal with TSB, at an advantageous interest rate. But when she did this, she intended to move almost immediately, and to port this mortgage to what she intended to be her new family home. She wasn't able to sell her existing property right away. TSB's notes say that this was because she needed to extend the lease on this property.

I note that this was a joint mortgage, but it appears that the other person named on the mortgage was living elsewhere, and he and Miss D had separated. Miss D said when she took out this remortgage that they were intending to sell this property, and I understand she then anticipated that any lending for a new property would be in her sole name.

Miss D said she then obtained a mortgage offer from TSB to buy a new house she really wanted, which would provide the extra space she and her family needed. But she said she wasn't able to sell her existing property quickly enough to be able to buy this house. So she decided to secure the purchase of this new home, by gifting money to a relative, and getting that relative to purchase the house for her. She would then, in turn, purchase the house at a concessionary rate, some months in the future.

I think this was always a somewhat risky decision to take. TSB wasn't obliged to port a mortgage to any new property, or to increase Miss D's lending. Her personal situation and TSB's lending policies could well change. So if TSB later decided that it wouldn't lend either the extra funds Miss D wanted or wasn't happy with the property she was offering as security, then Miss D had already committed to a five year term mortgage product, and would need to pay a sizeable ERC to move to the home she wanted. And, of course, Miss D's plan also relied on being able to sell her existing home quickly, which I understand, for a number of reasons, she has struggled to do.

Although I understand that Miss D did initially obtain a mortgage offer for this property, she wasn't able to go ahead with that purchase in her own name, as her existing property wasn't able to be sold at this time. She told us she'd discussed a concessionary purchase with TSB, and it knew who would be buying this property with a view to selling it on to her, but failed to warn her that this fell outside of its policy on concessionary purchases.

I've seen TSB's policy on concessionary purchases, and I'm satisfied that it doesn't offer mortgages for such purchases when they are not made from immediate family members. I'm also satisfied that this policy defines immediate family to exclude the family member Miss D hoped to purchase from.

I understand Miss D says this completely upturned her plans, as she only found out about this, after this relative was committed to the purchase of the property that Miss D intended to purchase later. Miss D would like our service to obtain, and consider a number of phone calls with TSB, so that we can see she was initially advised this would be possible.

I haven't requested these calls from TSB. That's because I don't think the content of these calls is likely to make a difference to the outcome of this complaint. If I were to listen to these calls, and they showed what Miss D has said, that she could apply for a mortgage for a concessionary purchase from this relative, then I would ask TSB to give consideration to Miss D's mortgage application. But I can see that TSB already agreed it would do this, as part of its initial response to her complaint. And it backdated the rate to when Miss D could have made her application, so that she wasn't affected by the time TSB took to consider its response to her complaint.

TSB then refused to lend to Miss D for the purchase of the property from her relative. Miss D includes this as part of her complaint. She said she has now sold her original property, and had not only lost the previous advantageous interest rate, but had to pay an ERC to redeem her TSB mortgage because she couldn't port that mortgage to the new home she wanted to buy.

I understand that Miss D sees what she says was TSB's wrong advice about whether its policy allows it to grant a mortgage for a concessionary purchase from this relative, as the root of all the problems she has since experienced, and the significant impact she says this had on her personally. But I haven't been able to see that these are linked in the way Miss D suggests.

I think that, even if we accept what Miss D says about the advice she was given, she knew from the outset that any relative would have to own the new house for six months before she could buy it at a concessionary rate. So she could not purchase this new property until six months after the purchase, which the Land Registry shows happened in late April 2022.

Miss D's original mortgage offer expired on 4 September 2022. She also complained that this was cancelled without her agreement or knowledge. But, even if that offer hadn't been

cancelled by TSB, it would have expired before Miss D could purchase the new property at a concessionary rate.

In short, Miss D would always have needed to submit a new mortgage application before purchasing the house she wanted, from her family member.

When Miss D did submit a new application, the lending request wasn't approved. I haven't been able to see that this decision was made on the basis of the closeness or otherwise of the family relationship that Miss D has with the owner of this property. I think this remains a separate issue. So I have to see if TSB acted fairly and reasonably when it reached this decision.

Miss D said that no explanation was given for TSB's refusal to lend, although she said she was informally told that there were "*too many moving parts*". But I think it's important to stress that TSB was making a fresh lending decision at this stage, for reasons I've explained above. And TSB said that when it reconsidered, it didn't think this lending fell within its policy.

Miss D says the decision couldn't have been based on affordability, because she had previously been approved by TSB for the same amount. But I've explained why TSB needed to make a fresh decision, and that this would always have been the case. So TSB having approved lending previously, doesn't mean it's then bound to reach the same decision in future.

I think there were a number of factors for TSB to consider at the point when it made its lending decision. I note that at the time TSB reached its lending decision, Miss D wasn't able to say what her share of equity from the sale of the existing, mortgaged property, might be. The nature and sources of all the funding involved in this purchase do not appear to have been clear at that time. And TSB also didn't appear to be clear whether her new partner, who had gifted some of the money for the purchase, would then be living in with her in this property or not.

I think it was reasonable for TSB, in the light of all of the above information, and the apparent fluidity of this situation, to decide that it would not wish to make a mortgage offer to Miss D at that time. And because I think that was a fair and reasonable decision for TSB to reach at the time, I'm not able to say that TSB is then responsible for the consequences that Miss D says flow from this.

I know that Miss D will be very disappointed by my decision, but I don't think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 18 September 2023.

Esther Absalom-Gough
Ombudsman