DRN-4564460

The complaint

Mr A has complained about a mortgage he held with TSB Bank plc trading as Whistletree.

What happened

Mr A took out this mortgage in 2006 through an independent mortgage broker. He borrowed £109,245 on a repayment basis over a 35-year term. The interest rate was fixed at 5.89% until 1 October 2011, after which it would move to the lender's standard variable rate which, at the time of the mortgage offer, was 6.84%.

In 2016 the mortgage was transferred to Whistletree.

The mortgage fell into arrears in 2018, and the property was taken into possession in 2020.

A sale was agreed in early 2021, with that completing in April 2021. Unfortunately as the property was sold for less than the outstanding mortgage balance a shortfall debt of around £36,000 remained. However, in mid-2022 Whistletree made the decision to write off the remaining balance, and the account was reported to the credit reference agencies as partially settled.

Whistletree has issued a few final response letters over the years and in my decision about this service's jurisdiction in January 2024 I said:

> *"We can't consider a complaint about the issues that were listed in the final response letters dated 20 February 2019, 7 August 2019 and 30 December 2019 as those complaints weren't referred to us in time. Nor can we consider anything that was responded to after the complaint was referred to our service. That means all I'll be considering here is the November 2022 final response letter."*

The complaint that final response letter dealt with was summarised by Whistletree as:

> *"Having listened to your call from 15 August 2022, and having reviewed your letters dated 15 August 2022 and 18 September 2022, my understanding of your complaint is as follows:*
>
> *You are unhappy your shortfall balance has been written off.*
>
> *You feel we have destroyed your credit file, and you would like us to report your account as fully settled.*
>
> *You feel we have not taken your mental health into account, and that you were offered no support when you were struggling. You are unhappy there is a warning marker on your account which indicates your vulnerability.*
>
> *You are unhappy we did not advise you how much the property was sold for and advise you of the shortfall balance remaining.*

Following receipt of the information we sent in line with your Data Subject Access Request, you are unhappy with the notes that have been left by our agents following your calls.

You are unhappy we continued to threaten you with letters about repossession and Field Agents.

You are unhappy with the length of time it has taken us to investigate your complaint.

You have listened to the calls we have sent to you as part of your Data Subject Access Request. You feel these calls highlight that you have been discriminated against.

You are unhappy with the conduct of the agent you spoke with on 22 January 2019.

You feel you were laughed at during your call on 25 July 2018.

You are unhappy with how your call was handled on 30 July 2019.

You feel there may have been a data protection breach, as you did not receive any information in line with your initial Data Subject Access Request."

Our Investigator said that although there were failings, he thought Whistletree had already done enough to resolve the complaint, and Mr A didn't agree with our Investigator's findings. The case was passed back to me to decide in line with the limitations I set out in my decision about our jurisdiction.

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.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I'm aware of Mr A's circumstances, and I'm sympathetic to the considerable impact they have - and have had - on him. I've not gone into any detail about that in this decision to protect Mr A's privacy once the decision is published. But I'd seek to reassure him that I've read and taken into account everything he's said.

Mr A has said that he didn't receive the information Whistletree sent under his Data Subject Access Request ("DSAR") in August 2019. He said he feels there may have been a data protection breach. Mr A made his DSAR on 30 July 2019 and the response was sent to him on 21 August 2019 at the address Whistletree had registered for Mr A at the time. Mr A said in a letter to Whistletree that he would be reporting the matter to the Information Commissioner's Office and so I make no further comment on this point.

Mr A has also commented on the time it took Whistletree to respond to his complaint as he first submitted it on 15 August 2022 (and raised further complaint points on 18 September and 18 October that he wanted to be added to the complaint). The final response letter wasn't issued until 4 November 2022, around eleven and a half weeks later, whereas the regulator allows up to eight weeks for a complaint to be considered.

We're not the regulator and it's not our role to fine or punish businesses for breaching the complaint time limit rules. Whistletree apologised for exceeding the eight weeks and gave

Mr A referral rights to our service if he didn't want to wait any longer. Mr A wasn't financially disadvantaged by the delay in the final response letter being issued, and he was free to refer the matter to us at the eight week point if he didn't want to wait any longer.

As our Investigator explained, it's not our role to say whether a business has acted unlawfully or not – that is a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances of a case. In order to decide that, we need to take a number of things into account, including the relevant laws and what we consider to be good industry practice at the time. So although it would be for the Courts to say whether or not Whistletree breached the Equality Act 2010, I'm required to take the Act into account, if it's relevant, amongst other things when deciding what's fair and reasonable in the circumstances of the complaint.

Mr A is concerned that there is a warning marker on his mortgage account about his mental health issues. He says he understood that to mean that Whistletree staff could think he posed a physical risk to their personal safety. He says the wording is disgraceful and misconceptions could easily be construed by members of staff dealing with the account, or outside agencies reading the notes.

From the information provided it seems that Mr A notified Whistletree of his mental health issues in January 2019 and due to that Whistletree placed a marker on Mr A's account to indicate he was a vulnerable customer.

I can reassure Mr A that a marker like this isn't to warn staff that he may be a risk to them, but instead as a way to highlight to staff quickly and easily that Mr A is a vulnerable customer.

A warning marker is commonly used in the industry, including by Whistletree, to highlight accounts where a customer may need a different approach due to their particular vulnerability. For example, a marker may be used to indicate a customer has difficulty hearing, another may be used to highlight that a customer has some sort of vulnerability that means they need things explained in a certain way. It is just a way to highlight an account so whenever it is accessed the staff member immediately knows that there is something extra they need to think about or take into account when dealing with that customer. As I've said, it is entirely normal in the industry, and isn't intended in a negative way, instead the markers are used to try to identify those customers that may need additional, or different, help.

I acknowledge that the situation Mr A found himself in will have had a profound impact on him, but I don't think that means Whistletree is solely responsible for that. Ultimately, Mr A was in arrears for some time and Whistletree needed to manage that as best as it could. Whilst originally granted as a residential mortgage, this wasn't a property Mr A was now living in, and so it wouldn't be making him homeless if the property was taken into possession and sold.

Where the mortgage isn't being repaid, the lender is entitled to take action to enforce payment, and ultimately to repossess the property to recover its money. However, this is a drastic step to take, and so the rules of mortgage regulation – and the requirements of good practice and fairness – say that this should be a last resort.

A lender should try to work with the borrower to try and get things back on track – including offering help and support. There are various options open to a lender, including temporary reduced payment arrangements, extending the term of the mortgage, or changing its type. But in every case the ultimate aim is for the borrower to bring the mortgage back up to date and avoid the need for the lender to take repossession.

As I explained in my decision about our jurisdiction, I can't consider a complaint about the options that were considered for Mr A's mortgage as that complaint wasn't referred to us in time.

Mr A has said Whistletree continued to threaten him with repossession and sending Field Agents to visit him. Whistletree has certain regulatory requirements it needs to meet when a mortgage is in arrears and there is a risk of legal action potentially leading to possession. One of those is that letters have to be sent to the borrower with clear warnings about the risk of repossession action, and another is that the lender needs to try to engage with the borrower and a field agent visit is often a valid and valuable tool a lender can use for that.

Ultimately a court decided in February 2019 to grant a suspended possession order, and then, in October 2019, Mr A asked Whistletree to take the property into its possession.

When selling a property in possession, Whistletree is required to get independent valuations and use them as a guide when marketing the property. That's what it did. It relied on the opinions of three professionals who gave valuations of £72,500, £80,000, and £80,000.

A lender in possession should get the best price it can. But it shouldn't hold out too long for an unrealistically high price while interest on the debt continues to accrue and will ultimately have to be paid by the borrower. That isn't always an easy balance to strike, but I don't think Whistletree got it wrong in this case. Having considered everything, I don't agree that Whistletree sold the property for less than it was worth, nor do I think it held onto it for longer than it should to try to achieve that price.

Mr A said that Whistletree should have requested another estate agent market the property after the original one was clearly not doing an acceptable job, but there's nothing to indicate that the estate agent wasn't doing an acceptable job. The property was being marketed, viewings were taking place and offers were being made.

There was a fair amount of interest, but most offers weren't of a high enough value or were withdrawn. A property is only worth what a person is willing to pay for it, and the best offer Whistletree received that it was able to proceed with was for £73,500 which completed. Whilst Mr A may feel that was less than it was worth, the potential buyers didn't agree, otherwise there would have been higher offers.

There's nothing to indicate that if another estate agent had been instructed a higher price would have been achieved.

Whistletree has said that it wouldn't send updates to a borrower on the progress of a sale in possession, and I wouldn't expect it to. The property had been taken into Whistletree's possession and I would only expect it to get in contact with a borrower once a sale had completed, to either let them know there was a shortfall or to arrange to pay the surplus proceeds to the borrower. That is entirely normal in the industry. If Mr A wanted any updates he could have contacted Whistletree for them at any time. That said, Whistletree has said it could have sent a letter to Mr A when the property was sold in April 2021, and I agree.

I understand Mr A is unhappy about the fact Whistletree has written off his shortfall balance, but that is a decision the lender was entitled to make; it didn't need his agreement to do so. Had that shortfall balance not been written off then Mr A would owe around £36,000 that Whistletree is now not pursuing him for, and so I can't see that he has been financially disadvantaged by Whistletree's decision.

Mr A has said he would like to be put back in the position he would have been in had he not taken out the mortgage, with all adverse information removed from his credit file and the

debt marked as satisfied. But that isn't something I would order Whistletree to do here as he did take out the mortgage and he was in arrears on it, with the property then being taken into possession.

Whistletree has a responsibility to report accurate information to the credit reference agencies about its customers. Here that would mean Whistletree reporting the account as in arrears for the relevant time periods that was the case, and then as defaulted at the point the property was taken into possession and as partially satisfied when the property was sold with a shortfall. The account will only be marked as fully satisfied if Mr A repays the shortfall debt himself (rather than Whistletree writing it off). The account will remain visible on his credit file for six years from the date it was marked as partially satisfied.

Having reviewed everything that has been said and provided on this I can't see that Whistletree has misreported any information to Mr A's credit file.

Mr A has said he wanted to be financially compensated for injury to feelings, including causing upset, hurt, distress and severe depression due to being discriminated against due to his mental health issues. He's identified some calls and notes on his account that he feels are inappropriate and discriminatory.

I've listened to the recordings of calls between Mr A and Whistletree and I find that staff handled things poorly at times – as Whistletree accepted in its final response letter.

Whistletree has apologised for the contents of some of the notes its staff made on Mr A's account, as well as how some of the calls were handled with Mr A, and conversations between staff discussing Mr A and his account. Whistletree has also said that it had provided feedback to the managers of any agents that were still employed within the business so appropriate action and training could be provided.

I have a great deal of sympathy for Mr A's position here. He already struggles with his mental health, and to then see and hear things like that would have been very difficult for him; he's referred to it as being extremely insulting and upsetting for him and I can understand that. It is clear the language used wasn't appropriate and Whistletree has acknowledged that in its response to the complaint and the actions it said it was going to take.

Mr A has said that the offer from Whistletree is offensive, but any award we make isn't punitive. It isn't designed to fine or punish a business. Clearly no amount of money can change what Mr A saw and heard and I have to have regard for awards we've made in other similar cases. Having done so I'm satisfied the offer of £250 that Whistletree made in its response to the complaint is fair and reasonable and I don't think it needs to do – or pay - anything more.

My final decision

TSB Bank plc trading as Whistletree has already made an offer to pay £250 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that TSB Bank plc trading as Whistletree should pay £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 April 2024.

Julia Meadows

Ombudsman