

complaint

Mr and Mrs S complain that Teachers' Building Society (TBS) is unfairly refusing to transfer their existing mortgage to a new property they want to buy. They say that this is a combination of discrimination because of their age and a refusal to accept that Mr and Mrs S can manage their financial commitments.

background

Mr and Mrs S took out a mortgage with TBS in 2011. In 2014 they wanted to move house and asked TBS to consider transferring the mortgage – at, possibly, a lower amount – to the new property.

TBS initially said that its lending criteria meant that Mrs S would breach its maximum age for lending, so it wouldn't consider the request. But it later said that it would consider the request and ignore that limit.

TBS then assessed Mr and Mrs S's circumstances but said it wouldn't lend them any money on a new mortgage because of the level of unsecured debt they have. Mr and Mrs S say that this is unfair and TBS are ignoring the transitional arrangements for mortgages, where a lender doesn't have to conduct a full affordability assessment. That's meant to ensure that existing borrowers aren't prevented from moving house simply because lending criteria might have changed.

The adjudicator didn't recommend that this complaint should be upheld. Mr and Mrs S disagreed with that and it's been passed to me for a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

There are two parts to this complaint.

Did TBS discriminate against Mr and Mrs S because of Mrs S's age?

I can see that when Mr and Mrs S originally asked about a new mortgage that TBS said it wouldn't consider this because of Mrs S's age – as she would be over the maximum age stipulated by its lending criteria by the time a new loan was repaid. But TBS later agreed that this wasn't right and offered to consider the request. Whilst I agree that an error was made, I think TBS's response – to apologise and offer to look at the request again was appropriate.

I don't uphold this part of the complaint.

Did TBS apply its lending criteria unfairly or ignore the transitional arrangements available to it?

Mr and Mrs S have talked about porting their mortgage. In looking at this case, I've taken into account that a mortgage loan and a mortgage product are two different things. A loan is the underlying transaction in which money is lent; the product is the initial terms that sit on top. For example, an agreement to borrow £100,000 over 25 years at the lender's interest

rate is a mortgage loan; an agreement that for the first two years a fixed interest rate rather than the standard rate will apply is the product that sits on top of the loan.

So porting a mortgage, in this context, actually means porting the product. In moving properties, a borrower pays off their old mortgage with the proceeds of sale. They also, and separately, apply for a new mortgage to fund buying the new property. A lender will consider the new application on its own merits. If it is prepared to grant a new mortgage, it will then consider whether to port across the old product – if the terms of the old product allow it. These are two separate decisions.

“Porting a mortgage”, when a consumer moves, therefore doesn’t mean moving the mortgage itself from one property to another. It means ending one mortgage and taking another – but moving the product across.

TBS has told us that it would apply transitional arrangements in Mr and Mrs S’s case. That means that it wouldn’t conduct a full affordability assessment on the new mortgage – providing that there were no adverse material changes in Mr and Mrs S’s circumstances. It says that’s not the case for Mr and Mrs S. It says that, when it provided the mortgage in 2011, part of it was to consolidate some unsecured debt Mr and Mrs S had. I understand that was about £23,000 out of the £58,000 borrowed – so a substantial amount. TBS says it believed Mr and Mrs S wouldn’t have any unsecured debt following this. It goes on to say that, as Mr and Mrs S now have about £33,000 of unsecured debt, that it won’t consider an application for a new mortgage until Mr and Mrs S have been free of this additional debt for a certain period of time.

Mr S has given us a set of reasons why he and Mrs S either didn’t clear their original debt as TBS thought they would and/or took out new borrowing. Those were choices Mr and Mrs S made. Mr S has also told us that he and Mrs S have been overpaying on their mortgage – reducing the amount outstanding by more than necessary – and that’s partly why their unsecured debt is so high. I don’t know what the intended capital balance should be on the existing mortgage, but again I think that if Mr and Mrs S have chosen to overpay that was their decision. Mr S says the mortgage outstanding has reduced by about £11,500, so even if this was all overpayment, Mr and Mrs S would still have over £20,000 of unsecured debt – close to the original amount TBS refinanced.

Mr S also says he now has some additional income. But TBS’s decision isn’t based on an assessment of what he and Mrs S can afford – it’s based on its assessment of Mr and Mrs S’s levels of debt outside the mortgage. TSB is entitled to use its commercial judgement in such a decision, and whilst Mr and Mrs S clearly think otherwise, I’m satisfied it has done so fairly.

I think TSB’s actions since making its decision have been reasonable. It’s offered to reconsider the request if Mr and Mrs S clear their unsecured debt and don’t take on any new debt for a while. It’s said it will waive any early repayment charge if Mr and Mrs S want to find a mortgage from another lender. Finally it has said that Mr and Mrs S will be contacted about what new terms it might be able to offer them when their existing product ends.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs S to accept or reject my decision before 9 July 2015.

Susan Peters
ombudsman