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## FINAL NOTICE

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To: TSB Bank plc

Reference  
Number: 191240

Address: Henry Duncan House, 120 George Street, Edinburgh, EH2 4LH

Date: 9 October 2024

### 1. ACTION

- 1.1. For the reasons given in this Final Notice, the Authority hereby imposes on TSB Bank plc ("TSB") a financial penalty of £10,910,500 pursuant to section 206 of the Act.
- 1.2. TSB agreed to resolve this matter and qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £15,586,500 on TSB.

### 2. SUMMARY OF REASONS

- 2.1. Between 25 June 2014 and 1 March 2020 (the "Relevant Period"), TSB breached Principles 3 and 6 of the Authority's Principles for Businesses in relation to its handling of retail customers who were in arrears or suffering from financial difficulties. As a result of these failings, 232,849 customers were identified who

suffered or were at risk of suffering loss. To date, TSB has paid £99.9m in redress to these customers.

- 2.2. TSB offers secured retail mortgages under the TSB and Whistletree brands. TSB also offers unsecured products under the TSB brand, including current account overdrafts, credit cards and loans. During the Relevant Period some customers in each of these product areas had poor experiences and/or outcomes when they fell into arrears or encountered financial difficulties, including customers who were likely to be vulnerable.
- 2.3. The Authority required TSB to appoint a Skilled Person in July 2020 to review the adequacy of TSB's collections and recoveries operations. The Skilled Person looked at a sample of 400 customer files across the TSB and Whistletree portfolios. To ensure that they tested the full customer journey for those customers in financial difficulty, the Skilled Person focused on customers who spent a longer time in collections and who, as a result, may have been more likely to have experienced unfair outcomes. The Skilled Person identified that, in 55% of those cases, customers experienced unfair outcomes, with clear potential or actual detriment over the customer journey. The Skilled Person also assessed the underlying root causes of these unfair outcomes, reviewing the effectiveness of TSB's governance and oversight, policies and procedures, and systems and controls relating to collections and recoveries.
- 2.4. In carrying on its regulated consumer lending and mortgage activities, TSB was subject to the Principles and the detailed rules in MCOB and CONC that support them. Amongst other things (and broadly speaking), TSB was required to deal with customers in financial difficulty/arrears fairly and with appropriate forbearance; to ensure it did so, TSB needed to design and implement appropriate policies and procedures.
- 2.5. The root causes of the unfair outcomes within TSB's collections and recoveries operations were as follows:
  - (1) **Policies and processes:** TSB's collections and recoveries policies contained requirements which increased the risk of unfair customer outcomes such as the requirement for TSB secured customers in certain circumstances to make a payment before a forbearance arrangement was offered. Similarly, where a customer agreed to clear their arrears within a short period, TSB did not necessarily probe the customer's situation and understand whether they were in financial difficulty. Its policies and

processes also did not always provide staff with clear guidance on engaging with customers, which increased the risk of unfair outcomes for customers.

- (2) **Training and incentivisation:** The collections and recoveries policies and processes were also not consistently applied by TSB staff, including when identifying vulnerable customers. In some cases, this was because TSB's training did not fully equip staff to ask the right questions about a customer's financial position and the customer's ability to make repayments, or the range of forbearance options that should be offered to customers. While they also included metrics that promoted the positive treatment of customers, some elements of certain incentivisation programmes had the potential to encourage staff to prioritise the number of payment arrangements made ahead of conducting appropriate discussions to assess the customer's circumstances.
- (3) **Systems:** Some of the automated processes for processing accounts in arrears did not function as intended, and manual workarounds were needed. The Skilled Person identified limited instances of, for example, the charging of two arrears fees within a single period or a failure to move accounts to the next stage in the collections and recoveries process which may have increased the prevalence of errors on customers' accounts. This could impact on the ability of the customer to obtain credit in the future due to a prolonged impact on their credit file, as well producing uncertainty in the short term and the customer incurring further fees and interest (albeit TSB voluntarily suspended the use of secured arrears fees for C&R in May 2018 and Whistletree C&R in January 2020). In some instances, the delay meant TSB did not contact the customer or offer forbearance options.
- (4) **Testing and assurance:** TSB's internal testing failed to adequately identify unfair customer outcomes in collections and recoveries. TSB's approach to testing of customer outcomes focused on single interactions between TSB and customers, rather than the customer's experience across the whole duration of the time they spent in the collections and recoveries process. This limited TSB's ability to identify issues with its overall treatment of customers, particularly those with complex or lengthy arrears history, as the results from single interactions incorrectly suggested that the level of poor outcomes fell within its risk appetite. A lack of comprehensive internal quality assurance also meant that TSB's senior management governance committees did not have an appropriately clear or detailed view of unfair

customer experiences as they did not have the necessary qualitative information. Assurance reviews which took place later in the Relevant Period attributed the root cause of some issues to staff errors rather than recognising wider problems. However, the reviews and subsequent remediation action failed to include a review of policies and processes or training to understand the driver of the staff errors.

2.6. As a result of the failings referred to above, some of TSB's customers who were placed into its collections and recoveries processes during the Relevant Period were at risk of being treated unfairly. Examples of unfair treatment that occurred include:

- (1) **Assessment of customer circumstances:** In some cases, TSB did not fully assess a customer's financial position and failed to conduct appropriate affordability assessments. This meant that there was a risk that TSB took payments that some customers could not afford, as it could not reliably assess their ability to repay their arrears. This led, in some cases, to TSB setting repayment plans that were unaffordable or unsustainable, and in other cases to TSB failing to identify vulnerable customers and treat them accordingly. In addition, in some cases TSB failed to respond appropriately to customers who were indicating financial difficulty.
- (2) **Forbearance:** TSB's use of forbearance was not always in a customer's best interests. Forbearance options were not always fully explored with customers and in a few cases, were not offered at all. In several secured cases, customers were pressured to make an arrears repayment immediately to access forbearance options, which may not have been affordable. Others received assistance which lasted longer than necessary, leading to an unnecessarily long time to pay off their debt and higher overall charges. Where arrangements were unsustainable there was a higher risk that they would fail. This meant that further repayment plans were needed. In some cases, forbearance arrangements were not regularly reviewed to ensure they remained affordable and appropriate for the customer.
- (3) **Interest, fees and charges:** There were instances in which TSB applied interest and arrears charges and fees to customers in arrears when this was not appropriate according both to TSB's own policies and the customer's circumstances. In other cases, TSB also continued to charge customers when charges should have been suppressed under TSB policies. For example, these failings led, in a few cases to:

- (a) accounts remaining in collections and recoveries longer than necessary;
  - (b) customers exceeding their credit limits due to charges being applied and then accruing additional charges increasing their debt position further; and
  - (c) vulnerable customers or those suffering financial difficulty receiving inappropriate charges where a hold on arrears fees should have been applied.
- (4) **Bank errors and poor communication:** Several customers received poor and inappropriate communication from TSB or otherwise experienced a wide range of errors relating to the treatment of arrears on their accounts. Some customers did not receive letters because TSB held old addresses or lacked full address details for its customers. Communication delays extended the time that some customers waited to have a repayment arrangement agreed. TSB also contacted customers during hold periods, when the customer should not have received calls chasing the arrears. In some cases, customers were disadvantaged when their payments were incorrectly applied to their account. As a result, in a small number of cases TSB's errors in crediting customer payments led to customer repayment arrangements breaking.

2.7. The Authority's rules require that firms engage effectively with customers in financial difficulty and understand their personal circumstances, including whether an individual is likely to be vulnerable. This means obtaining sufficient information to agree an appropriate course of action, given the customer's personal circumstances. Doing this effectively is the basis for providing fair outcomes. Failing to understand and consider customer circumstances can lead to unsustainable repayment arrangements, which in turn may break and worsen the customer's financial position. Ultimately, this could, in the most severe cases, result in litigation against the customer or repossession of their home.

2.8. Firms should appropriately apply fees, charges and interest, and customers should not be unduly pressured to make an arrears payment when they are not able to do so, or as a condition of accessing forbearance treatments. Systems relating to customer communication and review and management of customer accounts in arrears should be robust and well-designed, and staff should be properly trained in

their use. These systems should be subject to regular review and effective quality control measures.

- 2.9. The Authority considers that TSB's failings are serious for the following reasons:
- (1) The failings were caused by systemic weaknesses in TSB's collections and recoveries systems and controls and its lack of adequate oversight of those systems and controls;
  - (2) Some TSB customers, including those who were vulnerable, suffered a loss, which may have been significant in relation to their circumstances; and
  - (3) TSB could have acted sooner to rectify many of these failings. For example, in December 2016, TSB's former parent bank notified TSB that it had identified a risk to TSB customers of poor customer treatment arising from processes and policies relating to unsecured lending. From 2017, TSB sought to further understand and explore this notification from its former parent and undertook various reviews and work in relation to its C&R function more broadly. However, TSB did not take effective action to fully address this issue until 2020.
- 2.10. The former parent bank separately completed its own remediation process in relation to the issues raised in its notification to TSB.
- 2.11. TSB undertook a comprehensive remediation and redress programme, ensuring fair and appropriate treatment of customers which extended beyond the Relevant Period and which addressed the issues identified above. This has resulted in financial remediation across a population in excess of 270,000 customer accounts, with TSB making redress payments totalling £99.9m. The total cost to TSB in conducting this remediation and redress programme was £105m. As a result of the programme, which includes comprehensive end-to-end testing, customer outcomes have improved considerably. The failings referred to in this notice are therefore historic, having now been remediated and redressed.
- 2.12. The Authority has also taken into account that the breaches were committed inadvertently as well as TSB's full cooperation with the Authority's investigation into the matters that are the subject of this notice. In addition, TSB co-operated fully with the Skilled Person, promptly and comprehensively actioned their recommendations/findings and agreed that the Authority could rely upon the findings in order to assist with and expedite its investigation.

2.13. The Authority hereby imposes on TSB a financial penalty of £10,910,500 pursuant to section 206 of the Act.

### **3. DEFINITIONS**

3.1. The definitions below are used in this Notice:

"1LOD" means first line of defence;

"2LOD" means second line of defence;

"3LOD" means third line of defence;

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the body corporate known as the Financial Conduct Authority;

"BUCF" means Business Unit Control Function;

"C&R" means the collections and recoveries function (excluding Whistletree C&R) which managed the process for TSB customers who were in either pre-arrears or arrears in respect of a secured or unsecured lending product;

"C&R Platform" means the software platform used by TSB to record details of customers within C&R;

"Call model" means a process flow map to guide call handlers' discussions with customers;

"Charge-off" means when a bank writes off a customer debt as no longer collectable through its collections process;

"CMP" means contractual monthly payment;

"CONC" means Consumer Credit Sourcebook, part of the Handbook;

"Handbook" means the Authority's Handbook of rules and guidance;

"I&E" means Income and Expenditure;

"LBG" means Lloyds Banking Group plc, including subsidiaries within its group;

“MCOB” means the Mortgages and Home Finance: Conduct of Business Sourcebook;

“MI” means Management Information;

“MME” means the Main Migration Event which took place over the weekend of 20 to 22 April 2018 when TSB migrated the majority of the operations of its corporate systems, customer services and customer data to a new IT platform;

“PIT” means point in time;

“the PRA” means the Prudential Regulation Authority;

“the Relevant Period” means 25 June 2014 to 1 March 2020;

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber);

“Whistletree” means the trading name of TSB through which it manages a portfolio of mortgage loans it acquired on 18 July 2016; and

“Whistletree C&R” means the collections and recoveries function which managed the process for Whistletree customers who were in either pre-arrears or arrears in respect of a secured lending product.

## **4. FACTS AND MATTERS**

### **Background**

4.1. TSB is a retail bank which traded as a separate business within LBG from September 2013 and was divested from LBG in June 2014. It has over 5 million retail banking customers and offers the following secured and unsecured lending products:

- (1) TSB offers loans under the TSB and Whistletree brands to retail customers that are secured by a mortgage on residential property. In June 2019, the value of TSB’s mortgage portfolio was £26.9bn, with a further £1.5bn of secured loans in the Whistletree secured portfolio, comprising 1.99% of total mortgage lending in the UK.
- (2) TSB’s unsecured lending portfolio totalled £12.16bn as of June 2019. This included the following:



- (a) personal current accounts which included access to overdraft facilities (short-term unsecured lending);
    - (b) unsecured personal loans (TSB's UK market share for these products was 0.72% as of June 2019); and
    - (c) credit cards (TSB's market share was 0.78% of UK credit card debt as of June 2019).
  - (3) The Whistletree portfolio included products which comprised both a mortgage and an unsecured loan.
- 4.2. The Authority's rules imposing requirements on authorised firms in relation to regulated mortgages and consumer credit are set out in the parts of its Handbook known as MCOB and CONC respectively. All of TSB's consumer secured and unsecured lending was regulated by the Authority throughout the Relevant Period (mortgages from 31 October 2004 and consumer credit from 1 April 2014) and was subject to the requirements in MCOB or CONC.
- 4.3. The Authority published the following thematic reviews and an occasional paper prior to and during the Relevant Period relating to arrears, forbearance and customer vulnerability, which included examples of good practice to assist firms with developing more effective policies, and highlighted areas in which firms were at risk of providing unfair customer outcomes:
- (1) Thematic Review TR14/3: Mortgage lenders' arrears management and forbearance dated February 2014;
  - (2) Occasional Paper No.8: Consumer Vulnerability dated February 2015; and
  - (3) Thematic Review 16/10: Early arrears management in unsecured lending dated December 2016.
- 4.4. The remainder of this section addresses the following:
- (1) an overview of TSB's collections and recoveries processes during the Relevant Period (paragraphs 4.6 to 4.23);
  - (2) how between 2014 and 2020 TSB failed to fully identify and, notwithstanding taking some action, failed to resolve issues later identified by the Skilled Person (paragraphs 4.24 to 4.37);

- (3) the appointment of the Skilled Person on 28 July 2020 at the Authority's request (paragraphs 4.38 to 4.39);
  - (4) the Skilled Person's findings relating to customer unfair outcomes, which the Authority has grouped into four key areas: assessment of customer circumstances, forbearance, interest and fees, and communication and errors (paragraphs 4.40 to 4.64);
  - (5) the Skilled Person's findings relating to the following root causes of customer unfair outcomes: policies and processes, training and incentivisation, systems, and testing (paragraphs 4.65 to 4.100); and
  - (6) the steps that TSB took to remediate the issues identified by the Skilled Person (paragraphs 4.101 to 4.105).
- 4.5. TSB accepted the findings and recommendations of the Skilled Person and took immediate action to incorporate the recommendations into its ongoing rectification work. The Skilled Person's findings, as described at paragraphs 4.40 to 4.100 below, form the basis of this Notice and the breaches of Principles 3 and 6 of the Authority's Principles for Businesses as described in Section 5 below. TSB has agreed to the Authority's reliance on these findings for the purposes of this Notice.

#### **Overview of Collections and Recoveries processes**

- 4.6. During the Relevant Period, C&R managed the process for TSB customers who were in either pre-arrears or arrears in respect of a secured or unsecured lending product. Customers in pre-arrears are those who anticipate difficulty with meeting required payments due to any situation contributing to short-term financial difficulty, including job loss or loss of access to key payments. Customers in arrears are those who have missed a payment or multiple payments or have otherwise breached agreed lending limits.
- 4.7. C&R consisted of two functions, Collections and Recoveries:
- (1) The role of Collections was to contact the customer, assess their circumstances and then identify and arrange appropriate forbearance to assist the customer manage their arrears position, with the aim of helping customers who were entering, or who were in, financial difficulty, to return to a position of financial stability where possible. Customers could exit Collections in two ways: by paying off their arrears (known as "cure") or by their case being registered as a default and moved to Recoveries (known as

“charge-off”). Alternatively, they could remain in Collections for further forbearance treatment.

- (2) Recoveries managed the process of collecting outstanding sums from customers following the decision to charge-off the account and the issuing of a formal Notice of Default. Recovery of the arrears was managed by the instruction of lawyers and the use of debt collection agencies.

4.8. The following aspects of the collections and recoveries processes created a risk of customer harm:

- (1) **Assessment of customer circumstances** by collections and recovery staff. There was a risk that deficiencies in policy, process, systems, and staff performance could lead to failures in establishing contact with customers to conduct a timely assessment or a lack of detail or accuracy in doing so.
- (2) **Forbearance** to assist customers in managing their arrears position. While the Skilled Person recognised the need to exercise judgment in finding a balance between under and over forbearance, failures in policy, process, systems and staff performance could lead to the risk that forbearance was not offered when it should have been, or that the forbearance provided was not in the customer’s interests. This could include a forbearance arrangement that was unaffordable and unsustainable or, alternatively, was excessive and prolonged the time a customer would spend in arrears.
- (3) **Fees charges and interest** inappropriately applied to accounts of customers in financial difficulty can create a risk of unfair treatment by compounding a customer’s arrears position. Fees and charges could be excessive or applied erroneously.
- (4) **Bank errors and poor and inappropriate communication** increased the risk of unfair treatment, particularly in complex cases.
- (5) **Vulnerable customers:** a heightened risk of unfair outcomes when dealing with customer vulnerabilities meant that robust processes were needed relating to the identification and treatment of vulnerable customers.

4.9. The policies and processes relevant to these risks are described below.

***Assessment of customer circumstances***

- 4.10. When customer accounts went into arrears above the relevant threshold (which varied according to product type), there was an automated process to transfer the account into Collections and load the account details onto the C&R Platform. Alternatively, staff could manually transfer accounts into Collections, for example when a customer advised TSB that they were anticipating financial difficulties and may miss a contractual payment.
- 4.11. As soon as an account entered Collections, Collections staff allocated a risk band to the customer's account, based on the account details and the likelihood of repayment. Collections staff then attempted to contact the customer in the order required by its Collections Contact Strategy, using SMS messages, letters and an automated telephone dialler.
- 4.12. TSB's calls to customers followed Collections call models and call scripts which gave staff guidance and a set process to follow. This included an overview call model comprising a general process flow for C&R calls, as well as guidance relating to calls which dealt with specific customer circumstances. The call model included the following sections:
- (1) determining the reason for the arrears;
  - (2) questioning and using account information to understand the customer's situation and their ability to keep up future payments;
  - (3) performing a full I&E assessment to establish the customer's disposable income; and
  - (4) negotiating a maximum but affordable and sustainable payment, to be paid at the earliest possible opportunity.
- 4.13. Other guidance provided to staff included the details of how to interact with vulnerable customers (see paragraphs 4.19 to 4.23 below) and procedure maps to inform staff of the process to follow when carrying out specific tasks (for example receiving an online I&E form or reviewing a vulnerable customer's account). These procedure maps were complex and, in practice, Collections staff used these less frequently than online support tools when on calls to customers (see also paragraphs 4.73 to 4.76). Whistletree processes did not make use of decision trees or workflow diagrams to support customer journeys but referred to procedural manuals (Business Risk Rules).

- 4.14. TSB's C&R policies (known as "Technical Standards") stipulated that I&E assessments had to be completed when setting forbearance plans and that for a repayment plan to be set up the customer must have a surplus of funds above their essential living costs.
- 4.15. I&E assessments could be completed on a call by a member of Collections staff or by the customer (either online or by mailing a form). When Collections staff completed I&E assessments on calls, they inputted details directly into the C&R Platform. Staff would ask the customer for details of income and essential spending.
- 4.16. There were certain exceptions to the requirement that I&E assessments had to be completed:
- (1) If the customer had zero income, an I&E assessment was not required.
  - (2) As soon as Collections staff were aware that a customer's essential spending was more than their income, they were not required to continue completing the I&E assessment but would note the deficit amount.
  - (3) Customers who were unwilling (or who did not have time on the call) to complete a full I&E assessment were permitted a single, short-term repayment arrangement if the Collections staff member considered the proposed arrangement realistic based on the information provided.
  - (4) Customers who offered to make an initial payment on the call were also permitted to do so without a full I&E assessment being completed.
- 4.17. Whistletree C&R staff were permitted to set up an arrangement with the customer without an I&E assessment being completed in a broader range of situations. In practice, this could result in agents disregarding current circumstances in favour of the customer's previous payment record, or otherwise ignoring indicators that the proposed arrangement would not be sustainable, as identified by TSB in April 2020.

### ***Forbearance***

- 4.18. TSB offered forbearance which included a wide range of short-term and long-term repayment options, and which varied according to product type. The choice of option was largely determined by a customer's circumstances, including whether they were in short or longer-term financial difficulties and whether they would be able to clear arrears within a short-term period or required longer-term support.

### ***Treatment of vulnerable customers***

- 4.19. TSB had a specialised collections treatment process in place for customers identified as vulnerable during the Relevant Period.
- 4.20. The process defined a vulnerable customer as a person who is “*due to their personal circumstances, especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care*”, in accordance with the definition in the Authority’s Occasional Paper on Consumer Vulnerability published in February 2015. C&R trained Collections staff in identifying vulnerable customers.
- 4.21. As part of the process, a Sensitive Review Case Panel within TSB would consider vulnerable customers’ individual circumstances and make recommendations to the staff member managing the account. In addition, specific process maps provided guidance to staff members on managing calls with vulnerable customers.
- 4.22. If classified as vulnerable, a customer was eligible for treatments ranging from freezing or suspension of interest to a write-off of the loan. TSB defined common write-off scenarios in its Technical Standards. The guidance stated that capitalisation of mortgage arrears was not to be considered for customers classed as vulnerable.
- 4.23. Whistletree introduced a Vulnerable Customer Policy in 2016. This policy referred to vulnerability training and treatment by specialist team members. It also referred to warning markers being placed on the account to remove the customer from business-as-usual contact strategies.

## **Governance and oversight between 2014 and 2020**

### ***Three lines of defence***

- 4.24. TSB operated a risk and control environment using a “three lines of defence” risk management model throughout the Relevant Period:

#### *First line of defence*

- (1) The 1LOD included monthly outcomes testing carried out by C&R’s BUCF to assess whether TSB’s customers were receiving fair outcomes in C&R that were in line with TSB’s risk appetite (see paragraph 4.98). TSB’s Risk division also included 1LOD teams, including Credit Risk, which reviewed secured and unsecured collections in 2019 (see paragraph 4.33).
- (2) The BUCF tested a minimum of 40 customer complaints and a minimum of 100 customer contacts, to determine whether customers received fair

outcomes in their interactions with TSB. Separately, 10 complaints and 15 customer contacts were tested per month for Whistletree. Each tested outcome was rated either as "Fair", "Fair – Near Miss" (meaning the outcome in different circumstances would have been unfair) or "Unfair".

- (3) The results of BUCF testing were reported in MI to senior management, for example, to the ERC. The monthly results throughout the 2016 to 2019 period and up to April 2020 were consistently in the range of 87% to 98% fair outcomes and the majority of testing conducted identified customer outcomes as falling within TSB's risk appetite. While other issues were identified, unfair outcomes were often attributed to staff error rather than potential process failings.
- (4) However, until July 2020 (that is, shortly after the end of the Relevant Period) the BUCF's outcome testing relied on PIT testing for reviewing and assessing conduct outcomes. In other words, the BUCF tested single points of contact between TSB and a customer rather than reviewing the entirety of communications between TSB and that customer during the C&R process. There was no regular end-to-end outcome testing of customer journeys carried out in collections and recoveries until July 2020 and this was initially low volume and frequency (20 cases per quarter for secured and unsecured lending).

*Second line of defence*

- (5) The 2LOD involved TSB's Risk function, including the Conduct Risk team, carrying out reviews to assess C&R's and Whistletree C&R's compliance with standards and regulation, and adherence to TSB's risk appetite.
- (6) TSB did not carry out any outcomes focused internal assurance testing on C&R or Whistletree C&R until 2019 and early 2020 respectively, when a series of Internal Audit and Conduct Risk Oversight reviews were conducted and reported. Prior to that TSB had commissioned an independent third party to perform a review of the key areas of the secured collections handling processes. This included follow-on outcome testing in 2018. Therefore prior to these reviews, senior management continued to rely on the 1LOD BUCF's PIT outcome testing results which indicated to senior management that outcomes for customers were appropriate and fell within TSB's risk appetite.

*Third line of defence*

- (7) The 3LOD was TSB's Internal Audit function. Internal Audit audited both Unsecured and Secured Collections in the first two years of the Relevant Period. The audit report relating to Unsecured Collections dated 17 December 2014 concluded that significant improvement was required. However, neither this audit or an audit report dated 25 June 2015 involved outcomes testing and as explained above TSB did not carry out outcomes focused internal assurance testing until later in the Relevant Period.

***LBG's Cross-Entity Notice to TSB***

- 4.25. Early in the Relevant Period, TSB senior management considered the need to improve and invest in C&R. However, TSB made limited changes to its collections and recoveries processes between June 2014 and November 2019 and these largely related to system changes accompanying MME in April 2018. The policies and processes were not, for example, reviewed following the Authority's publications on arrears management (referred to above at paragraph 4.3) to consider whether they continued to reflect what the Authority considered to be good practice in relation to the rules in place. However, BUCF PIT outcome testing results at the time did not indicate material issues and therefore did not indicate a more holistic policy review was required.
- 4.26. TSB also missed the opportunity following 2016 to investigate and validate the issues in its unsecured C&R, having been told by LBG of potential concerns that could have a direct impact on TSB's own customers.
- 4.27. As part of TSB's divestment, LBG agreed to provide TSB with information on issues that may have an impact on TSB customers, and which would require rectification. LBG notified TSB on 15 December 2016 that it had identified potential poor customer outcomes relating to approximately 400,000 cases within TSB's unsecured collections population (the "Cross-Entity Notice"). LBG informed TSB that these outcomes might have been caused by one or more of the following issues:
- (1) customers' personal and financial circumstances might have not been fully explored;
  - (2) inappropriate forbearance may have been applied relative to customer circumstances, or appropriate forbearance may not have been applied; and



- (3) some customers continued to accrue interest, fees and/or charges that could have exacerbated their arrears.
- 4.28. Between February and September 2017, TSB took some initial steps to understand the scope of the issues including discussing the issues with LBG. While TSB carried out some initial analysis, including a review of its I&E assessment process, this failed to identify any historic issues.
- 4.29. TSB made limited progress in identifying the scope of the notice and nature of the impact until 2020, when it sought additional clarity from LBG and when discussions with the Authority commenced (see paragraph 4.38 below). Although it sought in 2018 to apply the findings of a recent external consultant's review of its secured collections processes to its unsecured collections portfolio, the process to appoint another external consultant to carry out a review of unsecured collections was paused in mid-2019 due to personnel changes.
- 4.30. TSB accepts that, while impacted by MME issues and personnel changes, the process to identify the scope of rectification relating to the issues identified in the Cross-Entity Notice and the nature of the customer impact took too long. Had TSB carried out a more detailed investigation and consideration of these issues in 2017, several of the themes later highlighted by the Skilled Person could have been identified and rectified at a far earlier stage.
- 4.31. LBG separately completed the process of remediating its own customers in relation to the issues raised in the Cross Entity Notice.

#### **Concerns identified by 2LOD and 3LOD reviews in 2019 and 2020**

- 4.32. TSB became increasingly aware of the problems relating to its operations in C&R and Whistletree C&R when it carried out outcomes focused 2LOD reviews of these areas in 2019 and 2020 respectively. These assurance reviews were carried out not due to any specific concerns, for example arising from MI or as a result of concerns raised in the Cross-Entity Notice, but simply due to the passage of time since prior reviews.
- 4.33. Between 2019 and 2020, Credit Risk produced three reports and Conduct Risk produced three reports, whilst Internal Audit produced an audit report. Of these seven reports, five were rated 'amber' meaning that significant improvement was required and two were rated 'red' meaning that the area was deemed to be unsatisfactory and not fit for purpose. At the same time as these reviews (which

contained actions relating to issues identified), TSB also developed a Strategic Plan for improving the performance of C&R and Whistletree C&R (see paragraph 4.38).

4.34. These reviews together highlighted significant issues within C&R and Whistletree C&R, including:

- (1) concerns around MI and the documentation of procedures, which needed updating;
- (2) errors resulting from the training of staff and quality of checking by team managers, with the need to improve both;
- (3) systems defects, which included difficulties in administering some forbearance options, faults in charging-off accounts, incorrect addressing of collections letters and other defects affecting contact with customers. Some of these issues arose following MME and did not occur prior to 2018;
- (4) Policies that allowed for repayment arrangements to be agreed, in some circumstances without conducting an I&E assessment (see also paragraphs 4.15 to 4.17) and, in relation to Whistletree, which only included the requirement to review repayment arrangements in limited circumstances; and
- (5) unfair outcomes, with the 'red' rated reports showing a significant minority of customers suffering actual harm when compared with potential harm.

4.35. TSB's 3LOD function, Internal Audit, also noted that limited changes to collections and recoveries strategies had occurred between 2015 and 2019, which it attributed to TSB prioritising MME and IT issues.

4.36. The range of concerns identified in these reviews overlapped with the issues raised by LBG in the Cross-Entity Notice in December 2016. These reviews also demonstrated that the PIT outcome testing previously carried out by the BUCF was ineffective.

4.37. However, the testing conducted by the Skilled Person in 2020 found an even higher level of unfair outcomes than the levels found in these 2LOD reviews (see paragraph 4.43 below).

### **Appointment of Skilled Person**

4.38. The Authority identified concerns with TSB's collections and recoveries activities both through its own supervisory work carried out in 2019 and by being informed by TSB of the findings in the 2LOD reviews and 3LOD audit referred to above. These led the Authority to request, in September 2019, that TSB carry out a strategic review and an assessment of current and historical harm. The Authority reviewed TSB's Strategic Plan and subsequent remediation work and, due to the Authority's ongoing concerns, on 28 July 2020 it required TSB to provide it with a report by a skilled person under section 166 of the Act.

4.39. The Skilled Person's review was carried out in the following stages:

- (1) in Stage 1a, which concluded on 18 December 2020, the Skilled Person assessed evidence of actual and potential customer harm by the end-to-end testing of a weighted sample of 400 customer cases;
- (2) in Stage 1b, which concluded on 31 March 2021, the Skilled Person assessed the adequacy and effectiveness of TSB's governance and oversight, policies and procedures and systems and controls;
- (3) in Stage 2a, which concluded on 2 March 2021, the Skilled Person assessed the adequacy of TSB's programme to redress actual and potential customer harm; and
- (4) in Stage 2b, which concluded on 26 April 2023, the Skilled Person tested the effectiveness and robustness of the remediation programme and of changes to TSB's governance and oversight, policies and procedures, and systems and controls following the recommendations made in Stage 1b.

#### **Extent of customer harm**

4.40. In Stage 1a, the Skilled Person tested a random sample of 400 individual customer journeys in secured and unsecured C&R, and in Whistletree C&R from across the period October 2013 to September 2020. The population from which the sample was drawn was weighted in favour of those who spent a longer period within Collections and Recoveries rather than the 90% of cases that self-cured over a short time. The Skilled Person's sample therefore represented those customers more at risk of unfair treatment.

4.41. The Skilled Person provided a view on whether any actual and/or potential harm, unfair customer treatment, or regulatory failings had taken place and identified the root causes for those failings.

- 4.42. For each case, the Skilled Person reviewed and documented the key facts of the case including relevant background; a summary of the customer journey; key interactions/communications with the customer; an overall outcome and rationale; any additional observations; and the root cause indicators, together with details of any testing undertaken by TSB.
- 4.43. The Skilled Person identified that 219 (55%) of the 400 outcomes were 'Unfair'. The 45% of outcomes described as 'Fair' were divided into two groups: 34% of outcomes were categorised as 'Fair with opportunities' (where the overall outcome was fair however there were either areas for enhancement or TSB took action during the journey to correct any potential unfair outcomes) and 11% of outcomes were identified as 'Fair' without any qualification. The level of 'Unfair' outcomes was high for both TSB (52%) and Whistletree (63%).
- 4.44. The Skilled Person concluded that actual detriment had occurred in 121 of the 219 'unfair' cases because of fees, charges and interest, or other quantifiable impacts. The average actual detriment per case, where the Skilled Person was able to identify it, was £246.42, from a range of between £6.90 and £3,590. In the other 98 unfair cases, in the absence of a quantifiable impact, the Skilled Person concluded that there was potential detriment.
- 4.45. TSB acknowledged that these findings were unacceptable and agreed with the recommendations in the Stage 1a report.

#### **Themes of unfair treatment**

- 4.46. The Skilled Person found that the unfair treatment of customers by TSB included a wide range of issues, which the Authority has grouped into the following four themes: assessment of customer circumstances; forbearance; fees and charges; and bank errors and communication.
- 4.47. Although these four themes are addressed separately below, the Skilled Person often found that unfair cases involved more than one issue from these themes. Each of these themes is illustrated with examples taken from cases reviewed by the Skilled Person.

#### ***Assessment of customer circumstances***

- 4.48. The Skilled Person found that in 16% of cases sampled within TSB's secured portfolio and 14% of cases sampled within the Whistletree portfolio, TSB failed to properly assess affordability before repayment arrangements were set or payments

taken from customers. This included cases where the lack of an I&E assessment appears to be consistent with policy exceptions, but where other indicators of financial difficulty or vulnerability would have required more detailed exploration.

4.49. These findings were part of a wider picture that included TSB's approach to considering customer circumstances, including the needs of vulnerable customers. The tested cases evidenced a range of issues relating to TSB's assessment of customer circumstances, including:

- (1) failures by TSB staff to discuss affordability with the customer in 31 cases;
- (2) in two cases inappropriate pressure from staff members to record the customer's situation more favourably than was the case;
- (3) failures to complete an I&E assessment when required, or, in two cases conducting an assessment that was inaccurate or incomplete;
- (4) in 8 cases, a lack of probing of customer circumstances;
- (5) staff members ignoring or giving insufficient attention to markers of financial distress or vulnerability in 5 cases; and
- (6) in 37 cases, setting unaffordable or unsustainable arrangements.

4.50. Examples of cases that demonstrate these issues are outlined below:

- (1) In a Whistletree case, the staff member queried items of expenditure within the I&E Assessment which they removed or reduced to allow an arrangement to be set. This included removing £20 per month allocated for children's clothes (including a school uniform that was being paid off in instalments) and removing a buffer of £50 per month for emergency expenditure, which the customer said they could not afford. The staff member also asked the customer to consider making sandwiches for their son instead of paying for school meals, which the customer refused. As a result of the reduced expenditure, the I&E assessment showed an unrealistic surplus of funds. The staff member also failed to consider alternative forbearance options, including a switch to interest-only, which could have relieved the short-term financial pressure on the customer, particularly given the potential for their circumstances to improve as they were expecting a salary uplift. This created the risk of Collections' action

compounding the customer's short-term financial difficulty when this could have been alleviated.

- (2) One customer's serious health condition affected their ability to repay the mortgage. After a written request from the customer to increase the value of their repayment arrangement, TSB sent a letter accepting the arrangement but made no attempt to call the customer to conduct an I&E assessment or discuss affordability. After the payment arrangement broke down, TSB agreed a revised payment arrangement at the customer's request but without completing an I&E assessment, albeit the partner had attempted to do so. Although letters were sent to the customer, TSB did not make a record of the customer's vulnerability despite being informed of it in a letter and on a phone call. Given the previous arrangements breaking, TSB should have examined the customer's circumstances, including conducting an I&E assessment that established the effect of the customer's vulnerability on their ability to make repayments, and established an appropriate forbearance solution. This could have reduced the risk of further broken arrangements, the customer's arrears balance increasing, and further charges being applied to the account.
- (3) While an I&E assessment was conducted later on in the customer journey, TSB took individual payments from a mortgage customer who was in arrears and agreed multiple payment arrangements without insisting on an I&E assessment to confirm they were affordable. This was despite reminding the customer on some calls that an assessment was required, and was in breach of TSB's policy relating to I&E assessments (referred to in paragraphs 4.14 to 4.17). This increased the risk that the arrangement could break, potentially leading to additional charges, worsening the customer's arrears position and affecting their credit file. TSB took payment of the CMP on calls with the customer on several occasions without setting an arrangement that was capable of clearing arrears on the account. When the customer subsequently made substantial payments against arrears, staff did not ask questions about affordability or the source of funds. TSB later conducted an I&E assessment, which showed a surplus of funds despite the customer stating that they were struggling with making monthly payments. TSB did not probe this inconsistency further or review the I&E assessment despite the customer's assertion that payments were not affordable, casting doubt on the accuracy of the I&E assessment.

- (4) TSB agreed an arrangement on a credit card account, based on general income and expenditure figures supplied by the customer, without carrying out a full I&E assessment or a detailed discussion of the customer's finances. This appears to be consistent with TSB's policy referred to in paragraph 4.16(3), which allowed a single arrangement without a detailed I&E assessment. As a result of this policy, TSB did not establish the affordability of the proposed arrangement. In later calls, when the I&E assessment was carried out, the customer confirmed that the payment set on the first call was unaffordable. Later in the same case, the inclusion of the minimum rather than average figure for the customer's receipt of maintenance funds from their ex-husband, although motivated by prudence, meant that an arrangement was not set and a monthly amount of £100, which the customer maintained was affordable, was not agreed to by TSB. Additionally, setting a lower payment plan on a loan also held with TSB would have enabled a plan to also be agreed on the credit card. As a result of no plan being set, the account was moved to Recoveries, which affected the customer's credit file. A more thorough discussion of the customer's circumstances and the options available may have prevented this.

4.51. The failure to identify and flag customer vulnerability was a significant issue within the theme of assessment of customer circumstances. The Skilled Person identified multiple instances of customers disclosing matters which ought to have been treated as a potential trigger to explore vulnerability further, but which were not adequately flagged or recorded by TSB. In the earlier part of the Relevant Period, TSB's processes contained gaps relating to tagging of vulnerable customers (see paragraph 4.69 below), and over the whole of the Relevant Period there were weaknesses in the training of staff in identifying vulnerability markers (discussed further at paragraph 4.92 below).

### ***Forbearance***

- 4.52. The Skilled Person identified several issues relating to TSB's use of forbearance, including (some cases featured more than one issue):
- (1) In the secured portfolio, a failure to offer appropriate alternative forbearance options in 19 cases;
  - (2) the provision of over-forbearance in 19 cases; and

- (3) pressure being applied to the customer to make a CMP or a partial arrears payment before they could access forbearance options in 10 cases.
- 4.53. In addition, in 12 of the cases reviewed by the Skilled Person, TSB did not review arrangements while the account was in Collections.
- 4.54. Examples of cases that demonstrate these issues are outlined below:
- (1) In an example from TSB's mortgage portfolio, a staff member took a CMP over the telephone and made a two-month arrangement despite an I&E assessment which showed a deficit (in breach of TSB's policy). Neither the CMP nor the arrangement was affordable, and the arrangement subsequently broke down. In addition, the staff member insisted on a minimum payment to set up a further arrangement which was more than the amount the customer said they could afford. In this case, unaffordable arrangements were set, and the customer was pressured to make a payment to access further forbearance options.
  - (2) A staff member failed to consider forbearance options for a vulnerable mortgage customer before TSB transferred the account to Recoveries, resulting in unnecessary litigation fees and distress for the customer. TSB only discussed additional options and referred the customer to a mortgage adviser after the account had been transferred. As the customer was considering selling the property and stated that they were having difficulty completing renovations, the staff member should have offered voluntary surrender of keys as an option. In addition, the staff member pressured the customer to make a full CMP before they could access forbearance options.
  - (3) In a Whistletree case, the customer had a mortgaged property where they were not living. The customer was in financial difficulty and had a deficit recorded on the I&E assessment. Contrary to MCOB 13.3.4AR(1), the only forbearance option discussed was an overpayment arrangement. This may have been less suitable than alternatives, which included temporary conversion to interest-only. In this case, the staff member pressured the customer to make payment without checking affordability, and also inappropriately asked whether the customer could borrow money from family or friends to pay the arrears balance.

***Interest, fees and charges***



- 4.55. Inappropriate, disproportionate, or otherwise unfair application of arrears fees, interest and other charges was another key theme identified by the Skilled Person. In 84 cases (21% of all 400 cases tested), the application of fees and charges was unfair given the customer's circumstances.
- 4.56. Some cases include fees and charges that contributed to or caused repeated breaches of the credit limit. A small number of customers who had entered a nil or token repayment arrangement, under which interest or charges should have been suppressed, continued to be charged.
- 4.57. The Skilled Person identified the following issues where customer circumstances, including vulnerability and long-term financial difficulty, should have resulted in TSB applying a hold on arrears fees to treat the customers fairly:
- (1) The litigation by TSB against a mortgage customer who had substantial arrears, but who was in the process of selling the property, and in relation to which the sale was already agreed. This led to the unfair application of £682.80 in litigation fees to the account. TSB should have held the account to allow the sale of the property, as this would have resulted in the customer repaying the loan arrears.
  - (2) Application of arrears fees to customers who were vulnerable, including a customer living in a care home after an Alzheimer's diagnosis and another who was unable to work due to caring responsibilities and whose partner was also finding it difficult to maintain a job as a result of injury. Arrears fees were applied to a mortgage in a deceased customer's sole name where there was no grant of probate or personal representative in place, meaning that there was no prospect of repayment activity taking place on the account at that time.
- 4.58. The issue of unfair application of fees was linked in some cases with failures in TSB's customer contact strategy. In one case, TSB sent multiple arrears letters to a customer when mail to that customer had already been returned to TSB as "gone away" without attempting to contact the customer by phone, despite TSB holding phone contact details for the customer. It was unfair for TSB to continue issuing letters and charging fees without attempting to trace the customer or contact by other means, in circumstances where it was aware previous letters to that customer had been returned.

4.59. In another instance, a payment arrangement had broken but TSB had not managed to contact the customer to give notice of this. This failure, and the failure to advise the customer that a Field Agent visit would be instructed as a result and give them the chance to rectify the situation, rendered the application of the associated fee unfair.

***Bank errors and poor communication***

4.60. The Skilled Person identified 51 cases where errors or poor communication were a contributing factor to unfair outcomes. Mistakes by staff and systems-generated faults in the handling of customer accounts led or contributed to a range of unfair outcomes, including:

- (1) an increase in arrears in thirteen cases;
- (2) higher interest charges in two cases; and
- (3) an inappropriate notification of arrears or of a broken arrangement in three cases.

4.61. These errors could have a detrimental effect on customers. For example:

- (1) In one case, TSB applied a large payment as a debit rather than a credit to the account and wrongly applied subsequent corrections. The errors brought the account over the threshold for litigation, which TSB commenced improperly (as the true arrears position was under the litigation threshold).
- (2) TSB did not credit payments made by a customer to their credit card account over a two-year period, both when requested by the customer and when correction should have been made as the payments had been posted by TSB to another account. This led to the customer paying a higher rate of interest than if the payments had been properly applied.
- (3) TSB failed to record the payment made by another customer against their arrears balance in accordance with the arrangement made on the account and recorded a broken arrangement as a result. In a further error on this account, TSB did not refund interest wrongly applied because of the initial error.

4.62. Poor communication by TSB also led in some cases to customer disadvantage or distress. This included:

- (1) additional stress for customers experiencing financial difficulty as a result of errors and poor communication;
  - (2) in several cases a lack of clarity for the customer over how the arrears position would be resolved; and
  - (3) a negative effect on the customer's credit file for longer than was necessary.
- 4.63. In 5% of tested cases, TSB's contact strategy was ineffective and led to a failure in contacting the customer, for example by continuing to use invalid phone numbers. In 7% of tested cases (which partially overlap with the 5% of cases detailed above), TSB did not attempt to contact the customer to discuss their arrears position for either the whole, or a significant part of the review period. In some cases, there was no contact by any means, in other instances customers only received arrears letters and no attempts at outgoing contact by phone. Doing so would have enabled TSB to better understand the customer's circumstances and manage their arrears.
- 4.64. TSB did not always trace the customer effectively once it was known that they were not locatable at recorded contact details. This issue was in some cases a significant contributor to unfair outcomes. For example, due to the failure to notify a customer of their falling one month into arrears, which would have given the customer an opportunity to correct the position, the customer would instead pay a higher rate of interest and would be reported to credit reference agencies for the shortfall.

#### **Root causes of customer harm**

- 4.65. The Skilled Person found that the unfair outcomes that they identified in their review of the 400 customer cases referred to above were driven by deficiencies in TSB's policies and processes, training and people (including incentivisation), systems, and testing. In many cases, the unfair outcomes arose from a combination of these deficiencies.

#### ***Policies and processes***

- 4.66. As stated in paragraph 4.25 above, TSB made limited changes to its collections and recoveries policies and associated processes between June 2014 and November 2019. The changes that were made mainly dealt with the system changes which occurred following MME in April 2018. The policies and processes were not, for example, reviewed following the Authority's publications on arrears management (referred to above at paragraph 4.3) to consider whether they continued to reflect what the Authority considered to be good practice, albeit there had not been any

new rule changes. The Skilled Person found that the effect of the Authority's publications, the changes in Consumer Credit regulation, and the Cross-Entity Notice ought to have prompted a more holistic review during the Relevant Period.

4.67. The Skilled Person found that the following aspects of TSB's policies and procedures created a risk of unfair outcomes:

- (1) The Skilled Person described the exception to the requirement to undertake an I&E assessment before agreeing a short-term payment arrangement (see paragraph 4.16) as a "*policy or process driving unfair outcomes*". The cases reviewed by the Skilled Person indicated a small number of instances of the exception being applied multiple times to the same customer account. The Skilled Person also identified eight other unfair cases which related to the use of another exception in the I&E policy, where no review of affordability was required when the customer made an initial payment against a longer-term arrangement, or the application of both exceptions on multiple occasions. In such cases, TSB's reliance on the exception meant that it did not sufficiently probe the customer's situation and understand whether the customer was in financial difficulty, even when there were signs of financial difficulty that should have prompted a more detailed assessment. TSB had considered the issue of customers making arrears payments without an I&E assessment in Risk Oversight's review of unsecured collections dated 8 November 2019, but TSB considered this was an issue of staff error rather than identifying the shortcoming of the underlying policy.
- (2) Until November 2019, TSB had stringent requirements for medical evidence to be supplied by the customer before vulnerable customers' accounts were assessed for a separate treatment strategy by the Sensitive Review Case Panel. This policy created an unnecessary barrier in providing support to vulnerable customers. This was removed as a policy requirement after identification by the Skilled Person that it was a driver of unfair outcomes.
- (3) Policies relating to fees and interest charges contributed to unfair outcomes. Continuing to apply fees and charges to customers in arrears could significantly increase their arrears position and make it more difficult to provide effective forbearance. This was particularly when customers were in long-term financial difficulties and unable to clear their arrears over a short period or were not in regular contact with TSB. During the Relevant Period, TSB did not actively monitor the extent to which customers incurred repeat

fees as an indicator of financial difficulty. During the Relevant Period TSB voluntarily suspended the use of secured arrears fees for C&R in May 2018 and Whistletree C&R in January 2020. Following the report by the Skilled Person, TSB made policy changes to ensure that charges were frozen for customers in financial difficulty. The impact on some customers within the unsecured collections population continuing to accrue interest, fees and/or charges had been raised within the Cross-Entity Notice and was also identified in TSB's 2019 internal audit in relation to secured collections.

4.68. The requirement, relating to certain TSB secured customers, to take a payment before setting a repayment arrangement was also articulated in TSB's call model. The model envisaged a "*maximum but affordable and sustainable payment, to be paid at the earliest possible opportunity*", with this step being prior to the stages of the model relating to the agreement of forbearance. This requirement was identified by the Skilled Person as a cause of unfair outcomes in several secured cases, and the policy requirement was removed in 2021. Weaknesses in the application of TSB's contact strategy also created a risk of unfair outcomes:

- (1) As detailed at paragraph 4.58 above, collections letters repeatedly sent to a 'gone away' address, including when a phone number was held by TSB, but outbound dialler contact was not attempted, and collections letters that included a misleading arrears balance.
- (2) Cases reviewed by the Skilled Person include the failure to review the dialler contact strategy when:
  - (a) a number was unanswered or invalid and another number held; and
  - (b) when one contact method was ineffective, for example letters were unanswered, other means of contact were not used.
- (3) A proportion of accounts in arrears had no contact strategy applied at all, despite up-to-date contact details being held. This largely applied to cases in the two-year period prior to and post-MME.

4.69. Although the Collections team could identify customers who were being handled as vulnerable through data extraction, the lack of a flag to identify vulnerable customer accounts was a gap in TSB processes until one was introduced in April 2018. This was replaced by an augmented flag (which allowed for improved MI relating to vulnerability) in August 2019.

4.70. Policies and processes were inconsistently applied across TSB's operations and did not always give staff clear and accessible guidance on engaging with customers:

- (1) The steps outlined in the call model were not always followed by TSB staff on calls with customers. For example, TSB's outcome testing in 2019 (by 2LOD review rather than BUCF) identified problems with the identification by staff of customer complaints due to a lack of probing, in addition to other failures in following the call model. A failure to identify customer complaints would result in TSB not following its own policies and potentially not following rules relating to complaint handling by authorised firms.
- (2) TSB staff did not always follow the guidance relating to completing I&E assessments. The Skilled Person identified examples of multiple payments being made by customers without an I&E assessment (when only one payment without conducting an I&E assessment was permitted under TSB policies), and examples of payment arrangements being made when the customer provided information showing a deficit in income against expenditure (which was not permitted under TSB policies). Inconsistencies in guidance and process documentation (see paragraph 4.71 below) made it more difficult for staff to ensure that TSB's policy was followed when interacting with customers.

4.71. The Skilled Person found that as at March 2021, gaps and inconsistencies existed within the current versions of the C&R Policies, known as Technical Standards (discussed at paragraph 4.14 above), which contained areas where important information was missing and where guidance was unclear:

- (1) there was no clear link between the Technical Standards and the operational processes that TSB staff had to follow which, in some areas, did not clearly articulate the policy rules;
- (2) gaps and inconsistencies existed within standards applying to different products; and
- (3) defects existed in the Unsecured Technical Standards relating to forbearance treatments. A lack of clarity increased the likelihood of over-forgiveness or failing to establish that a treatment was in a customer's interests.

4.72. Analysis of Whistletree policies by an external consultant (conducted after the Relevant Period but considering policies that had been largely unchanged since

2018) identified several of the issues referred to above were relevant to both TSB and Whistletree policies within the Relevant Period, including:

- (1) the weaknesses in policy around I&E assessments;
- (2) taking of payments as a condition for providing forbearance;
- (3) weaknesses around considering vulnerable customer circumstances; and
- (4) failures in customer contact strategy.

4.73. TSB used two separate call flow tools for secured and unsecured products, which were preferred by staff to the individual process maps (as they were complex and therefore under-utilised by staff – see paragraph 4.13 above) albeit not mandatory for staff in unsecured collections. However, there were shortcomings in those call flow tools.

4.74. In relation to the call flow tool for unsecured products:

- (1) The steps provided to staff within the tool were not necessarily aligned to the natural flow of conversation with a customer. As a result, the tool required staff to make an assessment regarding vulnerability at an early stage of the call, without any further reminder to reassess this before completion of the call.
- (2) The tool provided staff with details of different vulnerabilities but did not provide context as to how these may impact a customer and did not assist staff to understand whether the customer should be referred to the Tailored Support Team.
- (3) Staff were not provided with sufficient information within the call flow tool to assist them with identifying a regulated complaint. This was noted by the Skilled Person as a root cause of several unfair customer outcomes identified.
- (4) Staff in secured collections relied on a spreadsheet to assist in setting forbearance arrangements. While the tool prompted questions in relation to vulnerability and other areas, it lacked guidance in key areas such as vulnerability, requiring staff to seek other guidance on potential indicators and assessment of vulnerability. While the Skilled Person acknowledged this tool was a helpful prompt for partners, the tool focused purely on short-term forbearance treatments, with no ability for staff to consider whether a

longer-term solution would be more appropriate in the customer's circumstances.

4.75. Whistletree staff used a different tool to aid conversations with customers. There were also shortcomings with this tool:

- (1) The tool did not include sufficient guidance relating to the identification of vulnerability or on when a formal I&E assessment was required.
- (2) When the I&E assessment was completed, the tool categorised customer household expenditure using a red/amber/green status rating system, prompting challenge by staff. However, this signposting did not extend to flagging certain types of priority outgoings (mortgage payments, council tax and utilities). Potentially, inaccurately low figures could be provided by a customer without the system prompting a challenge from staff, which would have an impact on the automatically generated recommendation for an arrangement.

4.76. The gaps and weaknesses referred to above contributed to the risk of unfair customer outcomes.

### ***Training and People (including incentivisation)***

#### *Training and People*

4.77. TSB was responsible for ensuring its staff were adequately trained and competent to perform their roles. The testing carried out by the Skilled Person identified that training and staff competency was a root cause of unfair outcomes in customer journeys for both secured and unsecured products (see paragraph 4.65 above). The Skilled Person found that 57 of the 219 cases assessed as unfair had the underlying root cause of 'Training' and 'People'. The unfair outcomes for this root cause were primarily identified in cases where there were issues in relation to effective probing of circumstances and assessing affordability, identification and handling of complaints and vulnerable customers.

4.78. The Skilled Person conducted a review of TSB's training materials covering the Relevant Period. The Skilled Person found that TSB did not deliver a '*material training programme*' that equipped staff with the key skills they would have required, particularly in relation to understanding and probing customer circumstances and establishing affordability. While TSB's 2019 Strategic Plan was focused on fixing policies and procedures, as well as making other operational



enhancements, before training was to be rolled out (which was not a focus area), TSB acknowledged that training was required as part of its 2021 Strategic Plan to support the development of its current partners, alongside the updating of training material for new joiners.

- 4.79. During the Relevant Period, TSB provided internal training to new and existing C&R staff members. The Skilled Person identified that there were gaps in the training received by staff during the Relevant Period, which related directly to unfair customer outcomes including affordability, vulnerable customers and complaints. TSB used a "Learning Pathway" during the Relevant Period for new staff members which consisted of two stages: an induction programme and a learning Academy. The induction training covered four principal areas: introduction, customer conversations, TSB systems and the Academy, and was delivered through trainer-led presentations, group activities, discussions, and demonstrations. TSB created new induction workbooks for secured and unsecured operations in 2019. New staff members were provided with an induction workbook, which was divided into sections aligned to the Learning Pathway depending on the role they were to perform.
- 4.80. Between 2018 and 2020, TSB updated and created new training materials. Training topics included vulnerable customers, changes to available funds, debt manager update (income and expenditure update) and complaints. TSB provided updated induction workbooks to the Skilled Person to consider as part of their Stage 1b review.
- 4.81. The Skilled Person reviewed the training materials from the Relevant Period, including the new and updated induction workbooks referred to in the previous paragraph, focusing on the unfair outcome themes identified in their Stage 1a report of fees, charges and interest, assessment of affordability, forbearance treatments, complaint identification and handling, and vulnerable customer identification and management. Following the updates TSB had made to the induction training materials, the Skilled Person identified gaps and required enhancements in the different induction workbooks for C&R staff relating to these outcome themes.

#### Assessment of customer circumstances

- 4.82. As part of the induction training on fact finding and assessment of affordability, staff were provided with a fact-finding guide in the induction workbooks to prompt them to ask questions to understand the customer's circumstances in order to

assess affordability. The workbooks provided information on the purpose of the I&E assessment and when staff were or were not required to complete one.

- 4.83. For unsecured operations staff, an assessment was required when a customer could not clear arrears within 28 days or had broken a previous plan. However, the workbook did not tell unsecured operations staff that an assessment should also be conducted where a customer was showing signs of financial difficulty.
- 4.84. The Skilled Person noted that, in contrast, such an instruction was included within the secured operations workbook.

#### Forbearance

- 4.85. The Skilled Person identified inconsistencies between the induction workbooks relating to the availability and application of forbearance treatments. The workbooks set out the forbearance treatments that were available to staff depending on their area.
- 4.86. Unsecured UK-based operations staff received a hierarchical explanation of the plans with a description of the type of customer they were intended for. However, other unsecured operations staff did not receive the same explanation but instead received a limited description of the treatments according to the type of product. The Skilled Person found that the induction training workbooks did not set out clearly how different forbearance treatments were designed to support different customer populations and the characteristics of customers for whom they would be appropriate.
- 4.87. The Skilled Person noted that the induction training workbook for the secured operations staff provided that a reduced or nil payment arrangement could be agreed during a period of financial difficulty and that the partner should refer such cases to TSB's Payment Assistance Line team, who may also agree a temporary interest-only conversion. However, the training did not discuss the circumstances or criteria by which a customer would be eligible for (and thus the TSB staff member could offer) this forbearance measure. This absence risked TSB staff being unclear as to when they could offer this forbearance measure, and so failing to offer it in appropriate cases.
- 4.88. The forbearance training primarily focused on short-term arrangements; clear guidance was not provided in relation to where long-term forbearance options may be appropriate for customers.

### Interest and fees

- 4.89. The training material provided to staff did not set out that staff should consider waiving fees, charges and interest where a customer was experiencing financial difficulties or was vulnerable. This lack of guidance for staff gave rise to a risk that a waiver of fees, charges and interest in these circumstances may not have always been considered and therefore potentially contributed to the unfair customer outcomes identified by the Skilled Person.
- 4.90. TSB defined a customer as “*suffering from Financial Difficulty if the amount of money they earn is less than the amount of money they are committed to spend, often meaning important expenditure cannot be met*”. While this definition of “financial difficulty”, alongside the examples provided by TSB to illustrate how a customer could experience financial difficulties in the context of a reduction of incomes and an increase in expenditure, set out in the C&R induction workbooks captured a large proportion of the instances of financial difficulty C&R staff would experience, this was narrower than the guidance set out in CONC 1.3.1G. The TSB material did not include examples of outstanding County Court Judgments for non-payment of debt or the failure to meet consecutive repayments. Therefore, staff may not have been able to identify all relevant factors indicating financial difficulty from the workbooks for the purposes of completing an I&E assessment. An inaccurate assessment of a customer’s financial circumstances could potentially have led to an unaffordable arrangement to repay arrears being set.

### Complaints

- 4.91. Induction training to UK-based operations staff did not provide sufficient guidance on recognition and handling of complaints. This included a lack of key indicators or key phrases staff should be aware of during customer calls to recognise a complaint. Further, the training did not include an explanation of the Financial Ombudsman Service, their role in customer complaints and guidance to staff advising customers in relation to their complaint. As a result of the absence of sufficient training, in 25 of the 400 cases considered by the Skilled Person, customer complaints were either not identified by C&R staff or where they were identified were not addressed and/or logged appropriately. Therefore, there was a risk that C&R staff potentially missed recognising customer complaints and informing them of the FOS, resulting in customer complaints not being handled appropriately.

### Vulnerability

4.92. At times during the Relevant Period, staff training did not sufficiently cover certain categories of vulnerability, such as mental health. Ongoing staff communications did not regularly raise and maintain awareness of where to locate vulnerable customer support materials. Following the identification of these issues by an internal audit in 2017, a Tailored Support Tool was launched to assist staff members with the identification and support of vulnerable customers, and further training was provided on the use of the Tailored Support flag and the need to make good quality notes of their interactions with vulnerable customers. However, a review relating to the implementation of these measures in January 2020 indicated the inaccurate use of the tag and failures in note keeping (although the introduction of the tag did dramatically increase the numbers of customers recorded with vulnerabilities).

4.93. Examples of unfair customer outcomes identified by the Skilled Person as being caused by insufficient training include:

(1) An arrangement was set for a TSB secured customer and a payment taken to clear arrears during a telephone call on 26 March 2016. The staff member did not complete an I&E assessment, following the customer's insistence that they did not want to complete one, meaning that the affordability of the arrangement or the payment had not been assessed. On 27 June 2016, the customer called TSB to arrange a change to the due date of the CMP. A change to the due date could only be achieved by the customer making additional payments across three months (totalling the amount of one CMP) on top of the monthly CMP due. The staff member agreed the arrangement without completing the I&E assessment to establish the customer's circumstances and therefore assess the affordability of the new arrangement. The customer was a contractor and therefore did not have a fixed or guaranteed income. The arrangements were agreed without an I&E assessment on either occasion despite the history of the account being in arrears and the last formal I&E assessment being completed in January 2016, which had showed a negative disposable income.

(2) An unaffordable arrangement was set for a TSB secured customer on 22 October 2018, relying on an I&E assessment completed in 2017, showing a deficit between income and outgoings. Across 4 separate telephone calls, the staff members did not question the affordability of the arrangement. During the fifth telephone call, the customer explained that payments came from savings which were running out and they had sold their car to afford

the payments. Despite the financial difficulty demonstrated by the customer, a further arrangement was agreed for 3 months. A system error caused correspondence to be sent to the customer informing them they had broken the arrangement, despite having paid the CMP. The customer raised a complaint with TSB because receipt of that letter caused them stress. A further system error occurred resulting in a further letter being sent. The customer demonstrated clear signs of vulnerability, which were not identified or addressed by the staff members. Signs of vulnerability included medical issues, depression, bereavement, and alcohol dependency. The customer made repeated references to suicide and death during telephone calls. The customer was not flagged as vulnerable until a late stage, by which time numerous opportunities to explore the customer's circumstances and arrangement of an appropriate forbearance solution had been missed. The customer was advised by a staff member that a "special panel" could assist if medical evidence was provided to them. The Skilled Person concluded it was inappropriate for additional support to be delayed while awaiting medical evidence.

- (3) The inappropriate application of fees was identified as a customer harm by the Skilled Person for a Whistletree customer. The customer advised the sale of the property was necessary due to financial difficulty as they were unable to meet the interest payments without support from family and friends. Forbearance was declined pending evidence of the sale of the property. An arrears fee was applied at the same time as the telephone call and a further arrears fee was applied 4 months later even though the customer had continued to make payments as agreed and the sale of the property was progressing. The Skilled Person identified the case as unfair due to the application of fees while the customer was engaging with TSB to agree a plan pending the sale of the property due to financial difficulty.

4.94. TSB had also identified unfair outcomes which were considered in an external review conducted in June 2018 as having root causes of individual and process errors, and TSB's 3LOD review in May 2019 which concluded that unfair outcomes were partially driven by insufficient training:

- (1) In June 2018, an external consultant tested accounts which had entered the secured collections process between January 2016 and December 2017. Its report identified 28 unfair outcomes in a sample of 150 cases. The report identified individual agent errors as a root cause of unfair outcomes and

recommended that TSB implement training and guidance around vulnerable customers, affordability, and accurate completion of I&E assessments.

- (2) In May 2019, an internal audit identified that control gaps and weaknesses in unsecured C&R leading to unfair customer outcomes were, in part, the result of insufficient training and lack of clarity in the roles and responsibilities of staff. Training was not a focus area within TSB's 2019 Strategic Plan, which focused on policy and procedures and other operational enhancements, prior to rolling out training.
- (3) In November 2019, a Conduct Risk Oversight Report identified concerns about customer harm within C&R and noted that out of 75 cases assessed, 20 were categorised as actual or potential customer harm. Five of those 20 cases had a root cause of staff error, for example affordability not appropriately being assessed when setting a repayment. The report noted that, in light of the findings, there was a risk that some customers were not being treated fairly and not provided with appropriate forbearance.

#### *Incentivisation*

4.95. Some elements of certain incentivisation programmes implemented by TSB to manage staff performance during the Relevant Period, while including metrics which promoted the positive treatment of customers, had the potential to contribute to the risk of the unfair outcomes identified:

- (1) C&R staff were eligible to participate in TSB's annual bonus scheme which was directly related to their performance at the end of year review. Certain measures embedded into the performance objectives for C&R included 50% first point of contact resolution as well as targets for average call handling times. The use of performance objectives such as these had the potential to encourage staff to focus on achieving targets and may not have supported the delivery of fair outcomes.
- (2) Some C&R staff were eligible for a monthly incentive scheme which provided a variable award for meeting performance objectives. This included average call handling times until September 2020, which may not have supported the delivery of fair outcomes for customers as staff may have been focused on the volume of calls they were handling. These productivity objectives were balanced against conduct outcome testing, meaning that some C&R

staff were not judged solely on the volume of calls handled by them, but that the overall outcome was also considered.

- (3) Whistletree C&R staff were eligible for a quarterly incentive scheme which provided for bonus payments on a sliding scale to be awarded based on performance above their targets. The incentive scheme had four performance measures by which Whistletree C&R staff were assessed. Two of the metrics considered the quality of interactions with customers and the sustainability of arrangements made. However, two of the performance measures used between July 2018 and July 2020 had the potential to contribute to unfair outcomes as they were based on staff productivity and considered the value of the arrangement obtained by the staff member (as a percentage of the CMP) and the volume of arrangements to pay achieved by the staff member per hour. These metrics risked contributing to staff focusing on the volume of calls and obtaining a payment rather than fully probing the customer's circumstances and assessing affordability.

- 4.96. While the impact of these historic incentives on the customer journey was unclear, incentivisation measures such as average call handling times potentially led to an incomplete understanding of customer circumstances and may have prevented a full exploration of setting an appropriate arrangement. In this respect, the Skilled Person noted that the length of arrangement calls were shorter than those of peer organisations and average handling time targets may have impacted sufficient probing of customer circumstances. The shortened call times and therefore limited probing of customer circumstances may have impacted the ability to set affordable and sustainable arrangements for customers, potentially contributing to unfair customer outcomes identified by the testing.

### **Systems**

- 4.97. The Skilled Person identified several systems deficiencies that related to unfair customer outcomes:

- (1) Systems defects created problems with the addressing and sending of letters to customers. In one case, the Skilled Person identified that addresses were not updated onto the C&R Platform after being updated on other records held by TSB. TSB separately identified that the Collections system was unable to hold more than one address, which caused issues when corresponding with personal representatives of deceased customers.

- (2) Fees and charges were inappropriately levied because of failings in automated systems. For example, in a small number of cases, TSB issued letters to customers and charged fees despite the application of a hold on the account. In other instances, customers were charged multiple fees in the same billing cycle for missing a payment or were charged a fee when TSB took payments that were less than the CMP, for instance when setting off the balance between two accounts.
- (3) Other failings in the C&R process included a failure to transfer to Recoveries (to 'charge-off') unsecured accounts that had a long history of arrears and were tagged for age-out (and so should on that basis have been transferred). In one case, despite the tagging of the account for charge-off, no review took place, and it remained within Collections. In one case identified by the Skilled Person, a charge-off was resubmitted on multiple occasions without the transfer to Recoveries taking place: in this instance, the account was transferred a month later after seven unsuccessful attempts. Failing to progress accounts to charge-off extends the period by which a customer's credit file is impacted and may also see an increase in arrears balance due to interest and charges. Questions had been raised during the Credit Risk Committee in November 2018 in relation to delays in the charge-off process and its impact on customers. These charge-off delays had not been resolved by the end of the Relevant Period.
- (4) TSB separately identified some accounts being moved to Recoveries too quickly as this was erroneously determined by the number of days in Collections rather than the number of days the account was past due.

### ***Testing***

4.98. The Skilled Person found that:

- (1) Until July 2020, C&R's BUCF's outcome testing relied on PIT testing for reviewing and assessing conduct outcomes. In other words, the BUCF tested single points of contact between TSB and a customer rather than reviewing the entirety of communications between TSB and that customer during the C&R process. There was no regular end-to-end outcome testing of customer journeys carried out in C&R or Whistletree C&R until July 2020 and this was initially low volume and frequency (20 cases per quarter for secured and unsecured).



- (2) The lack of regular end-to-end testing of sufficient volume before 2020 meant that TSB had very limited visibility over issues which could arise in accounts with complex or lengthy arrears histories, and which concerned linked themes, such as contact strategy, application of fees, charges and interest, over-forbearance and recoveries.
- (3) The PIT testing conducted by TSB was in any event insufficiently robust. Whereas the BUCF reported that 87% to 98% of customer outcomes were 'Fair' during the Relevant Period, the Skilled Person found that in 45% of the unfair outcomes it identified in its sample of 400 customers, at least one of the reasons for the unfair outcome was as a direct result of a single customer interaction (for example a telephone call, customer letter or other action by TSB).
- (4) The 2LOD and 3LOD assurance testing conducted in 2019 and 2020 (referred to in paragraphs 4.24(6) and 4.32 to 4.33 above) did not include independent challenge of TSB's policies and did not distinguish between instances of genuine agent error versus inadequate assessments of affordability which were as a result of insufficient guidance or training. When unfair outcomes were identified, outcome testing tended to identify individual staff member error as root causes rather than process or policy issues. The Skilled Person did not consider isolated staff errors to be a key driver of the unfair outcomes identified.
- (5) The high level of 'Fair' customer outcomes reported in BUCF outcomes testing and the lack of historic 2LOD and 3LOD oversight may have contributed to TSB not updating its policies and processes during this period.

4.99. As part of a case sampling exercise within secured C&R, Credit Risk had identified in 2019 from three out of four cases reviewed that individual staff issues were not always identified by secured C&R team managers in quality control checks of cases. Random sampling testing of staff calls by secured C&R team managers was limited. In 2019, it was not considered achievable to extend this checking by secured C&R team managers beyond payment arrangement cases (but this risk was mitigated as issues had not been identified from other customer treatment cases and 100% checks were being undertaken of capitalisation cases). Unfair outcomes tended to be reported to risk committees as isolated breaches rather than systemic issues.

4.100. Further observations made by the Skilled Person relating to oversight by TSB included:

- (1) In the Outcome Testing Forum, C&R Specific Outcome Testing results were not clear within the MI, which could result in a lack of attention to specific themes and issues arising out of the C&R outcome tests.
- (2) Whistletree Monthly Service Review MI packs did not note the type of forbearance agreed, only the volume of arrangements (although the Skilled Person noted this information was reported into TSB's Credit Risk Function via secured PQR packs) and did not report information on the identification and treatment of vulnerable customers. As a result, there was a limit to the extent to which TSB governance could assess Whistletree's performance with regards to vulnerability.
- (3) Within monthly governance fora, a lack of information regarding how C&R performance was measured against expectations.
- (4) Within review of litigation and recoveries, enhancement of MI supporting TSB's oversight was recommended by the Skilled Person to provide insight into the success of the Recoveries strategy.
- (5) More clarity was required on what MI was being developed with the roll-out of new treatment strategies to monitor performance.
- (6) TSB lacked sufficient MI relating to vulnerable customers. Although it identified this as an issue in 2017, MI was still not being actively utilised by management in 2019. TSB made significant progress regarding this point during 2020, and the Skilled Person identified that improved MI was in place.

### **Remediation and redress**

4.101. Following feedback from the Authority and the Skilled Person, TSB took extensive action to enhance its collections and recoveries framework and a comprehensive remediation and redress programme for affected customers, and customers who were at risk of being affected.

4.102. The key workstreams under TSB's Strategic Plan included affordability, inappropriate application of fees charges and interest and forbearance. Other broad workstreams included an enhanced contact strategy, improvements relating to vulnerability policies, training, improved MI, and testing.

4.103. When the Skilled Person's review concluded in March 2023, they found that the changes, enhancements, and controls implemented through the Strategic plan had

had a positive impact on the customer journey and rectified the systemic issues previously identified. TSB's outcome testing also indicated that customer outcomes had improved significantly, and the Skilled Person found that the root cause issues that had caused unfair outcomes in the Relevant Period had been substantially addressed.

4.104. As part of its customer remediation exercise which began in Q4 2020, TSB remediated 232,849 customers (226,848 TSB and 6,001 Whistletree), which included refunding fees and charges of £69,551,883.88 (£47,381,173.36 plus £22,170,710.52 compensatory interest) as follows:

- (1) in relation to TSB mortgages, a total of £733,616 (£467,636 plus £265,980 compensatory interest);
- (2) in relation to TSB's unsecured portfolio, a total of £66,219,003 (£44,851,013 plus £21,367,990 compensatory interest), comprising:
  - (a) Current Account overdrafts: £29,376,591 (£20,185,095 plus £9,191,496 compensatory interest);
  - (b) Loans: £15,444,144 (£10,385,513 plus £5,058,631 compensatory interest);
  - (c) Credit Cards: £21,398,269 (£14,280,405 plus £7,117,863 compensatory interest); and
- (3) in relation to Whistletree, TSB refunded a total of £2,626,291.88 (£2,089,524.36 plus £536,767.52 compensatory interest).

4.105. The Skilled Person, in respect of the remediation and redress programme, observed that decisions to remediate were made by TSB expeditiously and in the customer's favour. This included customers who had re-entered collections within a 90-day period, with TSB assuming that this had been the result of unfair treatment in the form of inadequate affordability assessments, and so remediated these customers accordingly.

## **5. FAILINGS**

5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.

- 5.2. The Principles set out the fundamental obligations of authorised persons under the regulatory system. Amongst others:
- (1) Principle 6 requires firms to pay due regard to the interests of its customers and treat them fairly.
  - (2) Principle 3 requires firms to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 5.3. The Principles are then supported by more detailed rules set out in the Authority's Handbook.
- 5.4. Where a firm carries on consumer credit lending, CONC 7 requires the firm to:
- (1) treat customers in default or in arrears difficulties with forbearance and due consideration; and
  - (2) establish and implement clear, effective and appropriate policies and procedures for dealing with customers whose accounts fall into arrears.
- 5.5. Where a firm acts as mortgage lender, MCOB 13 requires the firm to:
- (1) deal fairly with any customer who has a payment shortfall on a regulated mortgage contract; and
  - (2) consider whether, given the individual circumstances of a customer in payment difficulties, it is appropriate to provide forbearance.
- 5.6. Based on the facts and matters detailed above, the Authority considers that TSB breached Principles 3 and 6 during the Relevant Period as explained below.

### **Principle 3 breaches**

- 5.7. Principle 3 requires that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 5.8. TSB breached this requirement as follows:

### ***Policies and processes***

- (1) Certain policies relating to TSB secured lending contained requirements which increased the risk of unfair customer outcomes such as the requirement for customers to make a payment before a forbearance

arrangement was offered (see paragraph 4.68 above). Similarly, the exception to the policy requirement to carry out an I&E assessment where a customer made an arrangement to clear their arrears within a short period meant, in some instances that TSB did not sufficiently probe the customer's situation to determine affordability and understand whether the customer was in financial difficulty (see paragraph 4.67(1) above).

- (2) Until November 2019, where the policy was changed, TSB's policies contained stringent requirements around the provision of medical evidence in order for certain forbearance options connected to vulnerability to be explored (see paragraph 4.67(2) above).
- (3) TSB did not actively monitor the extent to which customers incurred repeat fees as an indicator of financial difficulty during the Relevant Period (see paragraph 4.67(3) above). The impact of customers continuing to accrue fees was discussed during the Relevant Period, including in the Cross-Entity Notice and in the 2019 Secured Collections Audit, but this did not result in a policy change until 2021.
- (4) Policies and processes were not consistent in providing staff with clear and accessible guidance on engaging with customers, and were also inconsistently applied by staff which increased the risk of unfair outcomes for customers (see paragraphs 4.70 to 4.76 above).

### ***Training and incentivisation***

- (5) TSB's training programme did not adequately equip its staff with the necessary skills to understand and probe customer circumstances and establish affordability (see paragraphs 4.77 to 4.81 above). Some of the training materials provided to staff did not clearly explain some of the underlying policy requirements relating to I&E assessments and forbearance treatments (see paragraphs 4.82 to 4.88 above).
- (6) Staff bonus schemes included performance objectives that may have incentivised shorter customer calls or prioritising the number of payment arrangements made. While TSB also had metrics that could encourage positive behaviour, the use of performance measures could have increased the risk that staff may have focussed on achieving targets instead of spending time to fully understand a customer's circumstances and assess affordability accurately (see paragraph 4.95 and 4.96 above).

## **Systems**

- (7) Faults with TSB's automated systems led to issuing of unfair charges and fees on customer accounts, including, in some instances, multiple charges in the same billing cycle, and the failure of holds applied to customer accounts to suppress fees and charges (see paragraph 4.97(2) above and failures in charging off accounts to recoveries (see paragraph 4.97(3) above). Systems failings also affected the ability of TSB to execute its contact strategy due to problems with addressing correspondence and utilising the correct contact details (see paragraph 4.97(1) above).

## **Testing and assurance**

- (8) TSB's 1LOD outcome testing did not adequately identify unfair customer outcomes in its collections and recoveries operations (see paragraph 4.98 above). The BUCF's outcome testing relied on PIT testing for reviewing and assessing conduct outcomes, testing single points of interaction between TSB and a customer rather than reviewing the entirety of communications between TSB and that customer. This lack of regular end-to-end testing meant that TSB had limited visibility over issues which could arise in accounts with complex or lengthy arrears histories.
- (9) The PIT testing conducted by TSB was insufficiently robust: in 99 (45%) of the 219 unfair outcomes the Skilled Person identified in its sample of 400 customers, at least one of the reasons for the unfair outcome was as a direct result of a single customer interaction (for example a telephone call, customer letter or other action by TSB).
- (10) Oversight of collections and recoveries was not sufficiently effective in the Relevant Period, with no outcomes focused internal assurance testing in C&R or Whistletree until 2019 and early 2020 respectively, when a series of Internal Audit and Conduct/Credit Risk Oversight reviews were conducted and reported. Prior to that TSB had commissioned an independent third party to perform a review of the key areas of the secured collections handling processes. This included follow-on outcome testing in 2018. However, the 2LOD and 3LOD assurance reviews that took place in 2019 and 2020 characterised some issues as isolated staff actions or errors, rather than recognising wider problems as potential root causes. The scope of these reviews or subsequent activity did not include a full review of policies and

processes or training to understand the underlying drivers and root cause for these staff errors.

### **Principle 6 breaches**

- 5.9. Principle 6 requires that a firm must pay due regard to the interests of its customers and treat them fairly.
- 5.10. During the Relevant Period, TSB's breaches of Principle 3 identified above created a risk of unfair treatment of customers. That risk crystallised, at the very least, in the instances of unfair treatment identified by the Skilled Person. In particular:
- (1) TSB failed to adequately explore customers' circumstances and assess the affordability of arrangements properly. Inaccurate and/or incomplete assessments were used to assess affordability; customer circumstances were not sufficiently probed; and staff did not respond appropriately to customer indications of financial difficulty. In 5% of cases tested, inappropriate pressure was applied by staff during assessment in order to obtain payment (see paragraphs 4.48 to 4.51 above).
  - (2) Vulnerable customers were also not consistently identified by TSB and treated accordingly, despite the introduction of a Tailored Support Tool in 2017. Customers disclosing indicators of vulnerability were not always identified as vulnerable by staff members, leading to their individual circumstances not being assessed by the Sensitive Review Case Panel and not being offered forbearance treatments such as freezing or suspension of interest or write-off of the loan (see paragraphs 4.19 to 4.23, paragraph 4.51, and paragraph 4.92 above).
  - (3) TSB failed to fully explore forbearance options for customers. The lack of exploration led in some cases to a failure to offer alternative forbearance options, over-forbearance and/or pressure being applied to make payment before forbearance options were offered. TSB did not always review payment arrangements while the account remained in Collections to ensure it remained appropriate and affordable for the customer (see paragraphs 4.52 to 4.54 above).
  - (4) Customers were inappropriately subjected to fees and charges given their financial circumstances (see paragraphs 4.55 to 4.59 above). Examples of these include, in some circumstances:

- (a) fees and charges were not suppressed under nil or token payment arrangements, increasing the customer's arrears position and lengthening the time period an account remained within the C&R function;
  - (b) charges were applied inappropriately resulting in customers exceeding their credit limits and being subject to further charges, increasing their debt position further; and
  - (c) TSB failed to appropriately apply holds on arrears fees, including vulnerable customers and those with long term financial difficulty.
- (5) Bank errors and poor communication led some customers to experience an increase in arrears, higher interest charges and inappropriate notifications (see paragraphs 4.60 to 4.64 above).
- 5.11. Poor communications with customers had the potential to create a lack of clarity on how the issue would be resolved, cause additional stress for customers, and cause a prolonged adverse effect on credit files (see paragraph 4.62 above).

## 6. **SANCTION**

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP.
- 6.2. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

### **Step 1 – Disgorgement**

- 6.3. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.4. DEPP 6.5A.1G(2) states that, where a firm agrees to carry out a redress programme to compensate those who have suffered loss as a result of the breach, or where the Authority decides to impose a redress programme, the Authority will take this into



consideration. In such cases, the final penalty might not include a disgorgement element or the disgorgement element might be reduced.

- 6.5. TSB has undertaken a significant remediation exercise to compensate customers who have suffered quantifiable harm as result of its actions and omissions during the Relevant Period as described in this Notice. The Authority is satisfied that this negates any direct financial benefit that may have accrued to TSB from its arrears handling activities.
- 6.6. TSB has compensated approximately 232,800 customers who were impacted by its breaches, with the total remediation in respect of fees, charges and interest (including compensatory interest of 8%) equating to £69,551,883.88. The Authority considers in that, in these circumstances, it is not appropriate for there to be a disgorgement element within the penalty.
- 6.7. Step 1 is therefore £0.

#### **Step 2 – seriousness of the breach**

- 6.8. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
- 6.9. The Authority considers that the revenue generated by TSB from customers in arrears who were exposed to the risk of being treated unfairly is indicative of the harm or potential harm caused by TSB's breaches. The Authority has therefore determined a figure based on a percentage of TSB's relevant revenue. TSB's relevant revenue is the total level of fees and interest payments received from customers while their accounts were in arrears during the Relevant Period. This excludes customers in arrears where there was a negligible risk of potential harm.
- 6.10. Over the course of the Relevant Period, this figure amounted to £259,775,490.
- 6.11. In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

6.12. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

- (1) the breaches caused a significant loss or risk of loss to individual consumers; and
- (2) the breaches revealed serious or systemic weaknesses in TSB's management systems and internal controls relating to the firm's handling and managing of customers in arrears.

6.13. DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these the Authority considers the following factors to be relevant:

- (1) little, or no, profits were made, or losses avoided as a result of the breaches, either directly or indirectly; and
- (2) the breaches were committed negligently or inadvertently.

6.14. The Authority also considers that the following factors are relevant:

- (1) the breaches had an effect on particularly vulnerable people, as a substantial proportion of customers in financial difficulties are likely to be vulnerable (DEPP 6.5A.2G(6)(d)).

6.15. Taking all of these factors into account, the Authority considers the level of seriousness of the breaches to be level 3, so the Step 2 figure is 10% of £259,775,490.

6.16. Step 2 is therefore £25,977,549.

### **Step 3: aggravating and mitigating circumstances**

- 6.17. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.
- 6.18. The Authority considers that the following factors aggravate the breaches:
- (1) The thematic reviews (see paragraph 4.3 above) and the Final Notice in respect of Yorkshire Building Society published by the Authority either immediately prior to or during the Relevant Period collectively emphasised the importance of firms developing effective policies and practices relating to arrears management to prevent poor customer outcomes.
  - (2) TSB's senior management could have taken action sooner to rectify and prevent many of the types of unfair outcomes later identified by the Skilled Person. In particular, TSB ought to have carried out a far more thorough investigation of the issues highlighted by LBG in December 2016 in its Cross-Entity Notice (see paragraph 4.27 above). A number of internal reviews subsequently conducted by TSB's 2LOD and 3LOD in 2019 and 2020 consistently highlighted the same or similar issues within collections and recoveries. However, it was not until the appointment of the Skilled Person in 2020 that TSB took effective action to fully address these issues.
- 6.19. The Authority considers that the following factors mitigate the breach:
- (1) As part of its customer remediation programme, TSB paid £69,551,883 compensation in respect of total fees, charges, interest and compensatory interest to customers who were in arrears during the Relevant Period. In addition to this, TSB also paid remediation of £29,952,227 to customers who were in arrears outside of the Relevant Period. TSB followed a detailed roadmap for remediation and chose to remediate customers even if it was unclear detriment had occurred, ensuring no customers were left out.
  - (2) TSB has taken considerable steps to remedy the failings in its systems and controls and dedicated considerable resources to making improvements (see paragraphs 4.101 to 4.105).

(3) TSB fully cooperated with the Authority during its investigation. In particular, TSB accepted the findings of the Skilled Person and agreed to the Authority's reliance on those findings in this Notice.

6.20. Having considered these aggravating and mitigating factors, the Authority has determined that the Step 2 figure should be reduced by 40%.

6.21. Step 3 is therefore £15,586,529.

#### **Step 4: Adjustment for deterrence**

6.22. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.23. The Authority considers that the Step 3 figure of £15,586,529 represents a sufficient deterrent to TSB and others, and so has not increased the penalty at Step 4.

6.24. Step 4 is therefore £15,586,529.

#### **Step 5: Settlement discount**

6.25. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement.

6.26. The Authority and TSB reached agreement at Stage 1 and so a 30% discount applies to the Step 5 figure.

6.27. It is the Authority's usual practice to round down the final penalty figure to the nearest £100. Step 5 is therefore £10,910,500.

#### **Penalty**

6.28. The Authority hereby imposes a total financial penalty of £10,910,500 on TSB for breaching Principles 3 and 6.

## **7. PROCEDURAL MATTERS**

- 7.1. This Notice is given to TSB under and in accordance with section 390 of the Act. The following statutory rights are important.

### **Decision maker**

- 7.2. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

### **Manner and time for payment**

- 7.3. The financial penalty must be paid in full by TSB to the Authority no later than 23 October 2024.

### **If the financial penalty is not paid**

- 7.4. If all or any of the financial penalty is outstanding on 24 October 2024, the Authority may recover the outstanding amount as a debt owed by TSB and due to the Authority.

### **Publicity**

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **Authority contacts**

- 7.7. For more information concerning this matter generally, contact Edwin Harvey or Mark Lewis at the Authority (email: [edwin.harvey@fca.org.uk](mailto:edwin.harvey@fca.org.uk) / [marklewis2@fca.org.uk](mailto:marklewis2@fca.org.uk)).

**Kerralie Wallbridge**

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY REQUIREMENTS**

#### **1. Relevant Statutory Provisions**

*The Financial Services and Markets Act 2000*

- 1.1. The Authority's operational objectives, set out in section 1B(3) of the Act, include securing an appropriate degree of protection for customers.
- 1.2. Section 206(1) of the Act states:

*"If the appropriate regulator considers that an authorised person has contravened a relevant requirement imposed on the person, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."*

#### **2. Relevant Regulatory Requirements**

- 2.1. In exercising its powers to impose a financial penalty, the Authority has had regard to the relevant regulatory provisions published in the Authority's handbook. The main provisions that the Authority considers relevant are set out below.

*Principles for Businesses ("Principles")*

- 2.2. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows.
- 2.3. Principle 3 (management and control) which states:

*"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."*

- 2.4. Principle 6 (customers' interests) which states:

*"A firm must pay due regard to the interests of its customers and treat them fairly."*

*Consumer Credit sourcebook ("CONC")*

2.5. The relevant provisions of CONC are as follows:

2.6. CONC 6.7.3AR states:

*"A firm must monitor a retail revolving credit customer's or a credit card customer's repayment record and any other relevant information held by the firm and take appropriate action where there are signs of actual or possible financial difficulties."*

2.7. CONC 7.2.1.R states:

*"A firm must establish and implement clear, effective and appropriate policies and procedures for:*

- (1) dealing with customers whose accounts fall into arrears;*
- (2) the fair and appropriate treatment of customers, who the firm understands or reasonably suspects to be particularly vulnerable."*

2.8. CONC 7.3.4R states:

*"A firm must treat customers in default or arrears difficulties with forbearance and due consideration."*

2.9. CONC 7.3.5R states:

*"Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:*

*(1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);*

*(2) allowing deferment of payment of arrears;*

*(a) where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or*



*(b) provided that doing so does not make the term for the repayments unreasonably excessive;*

*(3) accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills)."*

2.10. CONC 7.3.11R states:

*"A firm must suspend the active pursuit of recovery of a debt from a customer for a reasonable period where the customer informs the firm that a debt counsellor or another person acting on the customer's behalf or the customer is developing a repayment plan."*

2.11. CON 7.4.1R states:

*"A firm must provide the customer or another person acting on behalf of the customer with information on the amount of any arrears and the balance owing."*

2.12. CONC 7.14.8R states:

*"A firm must give due consideration to a reasonable offer of repayment made by the customer or the customer's representative."*

*Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB)*

2.13. The Relevant provisions of MCOB is as follows:

2.14. MCOB 13.3.1R states:

*"(1) A firm must deal fairly with any customer who:*

*(a) has a payment shortfall on a regulated mortgage contract or home purchase plan;*

*(b) has a sale shortfall; or*

*(c) is otherwise in breach of a home purchase plan.*

*(2) A firm must put in place, and operate in accordance with, a written policy (agreed by its respective governing body) and procedures for complying with (1). Such policy and procedures must reflect the requirements of MCOB 13.3.2A R and MCOB 13.3.4A R."*

2.15. MCOB 13.3.1R (1A) states:

*"(1) Where a customer has a payment shortfall in relation to a regulated mortgage contract or home purchase plan, a firm must not attempt to process more than two direct debit requests in any one calendar month.*

*(2) Where a firm's direct debit request, in respect of a customer who has a payment shortfall on a regulated mortgage contract or home purchase plan, has been refused, on at least one occasion in each of two consecutive months, due to insufficient funds, the firm must:*

*(a) consider whether the method of payment remains suitable for the customer;*

*(b) make reasonable efforts to contact the customer to discuss whether the method of payment remains suitable for the customer; and*

*(c) not pass on any costs to the customer which were incurred as a consequence of presenting direct debit requests during this period of consideration."*

2.16. MCOB 13.3.2AR states:

*"A firm must, when dealing with any customer in payment difficulties:*

*(1) make reasonable efforts to reach an agreement with a customer over the method of repaying any payment shortfall or sale shortfall, in the case of the former having regard to the desirability of agreeing with the customer an alternative to taking possession of the property;*

*(2) liaise, if the customer makes arrangements for this, with a third party source of advice regarding the payment shortfall or sale shortfall;*

*(3) allow a reasonable time over which the payment shortfall or sale shortfall should be repaid, having particular regard to the need to establish, where feasible, a payment plan which is practical in terms of the circumstances of the customer;*

*(4) grant, unless it has good reason not to do so, a customer's request for a change to:*

*(a) the date on which the payment is due (providing it is within the same payment period); or*

*(b) the method by which payment is made; and give the customer a written explanation of its reasons if it refuses the request;*

*(5) where no reasonable payment arrangement can be made, allow the customer to remain in possession for a reasonable period to effect a sale; and*

*(6) not repossess the property unless all other reasonable attempts to resolve the position have failed."*

2.17. MCOB 13.3.4AR states:

*"(1) a firm must consider whether, given the individual circumstances of the customer, it is appropriate to do one or more of the following in relation to the regulated mortgage contract or home purchase plan with the agreement of the customer:*

*(a) extend its term; or*

*(b) change its type; or*

*(c) defer payment of interest due on the regulated mortgage contract or of sums due under the home purchase plan (including, in either case, on any sale shortfall); or*

*(d) treat the payment shortfall as if it was part of the original amount provided (but a firm must not automatically capitalise a payment shortfall where the impact would be material); or*

*(e) make use of any Government forbearance initiatives in which the firm chooses to participate;*

*(2) a firm must give customers adequate information to understand the implications of any proposed arrangement; one approach may be to provide information on the new terms in line with the annual statement provisions."*

2.18. MCOB 13.3.9R states:

*"(1) A mortgage lender or administrator must make and retain an adequate record of its dealings with a customer whose account has a payment shortfall or a sale shortfall, which will enable the firm to show its compliance with this chapter. That record must include a recording of all telephone conversations between the firm and the customer which discuss any amount in arrears or any amount subject to payment shortfall charges.*

*(2) A mortgage lender or administrator must retain the record required by (1) for three years from the date of the dealing."*

2.19. MCOB 13.4.1R states:

*"If a customer falls into arrears on a regulated mortgage contract, a firm must as soon as possible, and in any event within 15 business days of becoming aware of that fact, provide the customer with the following in a durable medium:*

*(1) the current MoneyHelper information sheet "Problems paying your mortgage";*

*(2) a list of the due payments either missed or only paid in part;*

*(3) the total sum of the payment shortfall;*

*(4) the charges incurred as a result of the payment shortfall;*

*(5) the total outstanding debt, excluding charges that may be added on redemption; and*

*(6) an indication of the nature (and where possible the level) of charges the customer is likely to incur unless the payment shortfall is cleared.”*

*Decision Procedures and Penalties Manual (DEPP)*

- 2.20. Chapter 6 of DEPP, which forms part of the Authority’s Handbook, sets out the Authority’s statement of policy with respect to the imposition and amount of financial penalties under the Act.

*The Enforcement Guide*

- 2.21. The Enforcement Guide sets out the Authority’s approach to exercising its main enforcement powers under the Act.

- 2.22. Chapter 7 of the Enforcement Guide sets out the Authority’s approach to exercising its power to impose a financial a penalty.