

The complaint

This complaint is about a mortgage and offset savings account (OSA) Mr V and Ms P hold with Yorkshire Building Society (YBS). The essence of the complaint is that after having allowed Mr V and Ms P to set up a direct debit to pay the mortgage from the OSA, YBS later told them this had been a mistake and withdrew the direct debit facility.

Mr V and Ms P now pay the mortgage from an external current account, and transfer funds from the OSA each month to the external account. They say this causes them inconvenience and lost interest offsetting and, on one occasion, the mortgage payment wasn't made in time, resulting in adverse credit file reporting. They believe the mortgage was mis-sold. Whilst the complaint has been brought by Mr V and Ms P jointly, all of our dealings have been with Ms P on their joint behalf.

What happened

The broad circumstances of this complaint are known to Mr V and Ms P and YBS. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mr V and Ms P being identified.

Instead I'll give a brief summary in my own words, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

In addition, YBS has acknowledged it made mistakes and has offered redress and compensation. Therefore all I need to decide is whether that is sufficient to put things right or if there is more that needs to be done.

The mortgage began in September 2021; it's on a fixed rate of 1.85% until October 2026. Initially, the monthly payments were made by direct debit from an external current account, but in a phone conversation on January 2022, Ms P changed this to a direct debit from the OSA. In September 2023, YBS wrote to say it had made a mistake by setting up the wrong type of OSA, and that direct debits weren't actually allowed. YBS apologised and gave Mr V and Ms P 60 days' notice of its intention to cancel the direct debit, cancel an ATM card associated with the account, and switch the OSA to the correct version. Also in that letter, YBS explained that Mr V and Ms P would need to set up a fresh direct debit from another source.

Ms P says she and Mr V took this for a generic letter; in particular the reference to an ATM card (which they had apparently not received) made them think the letter didn't apply to them. The account switch went ahead but the November 2023 payment wasn't made within the month. Mr V and Ms P made two payments manually in December 2023, and since January 2024, have reverted to paying from an external source. However, they now transfer funds each month from the OSA to the external account to cover the mortgage payment.

They say that's time consuming and inconvenient. Also, whereas the previous direct debit payment was instantaneous, the transfer to the external account needs to be done a couple of days in advance, so they're losing interest.

YBS accepted liability, apologised, and as redress, offered the following steps:

- back-dating of the payment for November 2023 and removal of the late payment entry from Mr V and Ms P's respective credit files;
- a six-month grace period* during which it would waive the early repayment charge (ERC) if they switched the mortgages to a different YBS mortgage product or re-mortgaged to a different lender; and
- £150, later increased to £200, compensation for their time, trouble and upset.

*The six-month grace period initially ran to 18 July 2024 but was later extended to 12 August 2024.

Our investigator thought YBS' settlement proposal was fair. Mr V and Ms P have asked for the case to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

We operate a two-stage process whereby a case will be considered by an investigator first, and only referred for review by an ombudsman if either party (or sometimes both) is dissatisfied with the investigator's findings. But the investigator has a responsibility to ensure that all of the points he or she considers relevant to the outcome have been addressed *before* that happens. So it doesn't automatically follow that because one party has requested a case be referred to an ombudsman, that will always be the next thing that happens.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

That includes listening to recordings of around 25 phone calls between Ms P and YBS between January 2022 (when the direct debit was set up on the OSA) and February 2024 (when the second final response was sent on the complaint).

This is not a complaint where I have to decide fault; YBS readily admitted the service it provided to Mr V and Ms P fell short of what they should reasonably have received. All I need to decide, therefore, is whether the settlement proposal it offered when they complained about this was enough. Having considered all the circumstances, I'm satisfied it was.

I'll start with the notion that the mortgage was mis-sold. For a product to be deemed as having been mis-sold, the feature or benefit that was wrongly presented (here, that was the facility to pay the mortgage by direct debit from the OSA) needs to be the key feature that

drove the Mr V and Ms P's decision to buy the product. So I need to think about what Mr V and Ms P might have done differently at the outset if YBS hasn't led them to believe they could pay by direct debit from the OSA.

Clearly, it's something they were interested in doing; Ms P says as much early on in the conversation of 22 January 2022, and the outcome of the phone call was that a direct debit was set up. But that was after the mortgage had started, so it can't have influenced their decision to choose the mortgage. Also, from listening to the call, the impression I get is that reference to paying by direct debit from the OSA was in the context of an enquiry as to whether that was possible, rather than a statement of intention. It's possible Ms P's enquiry was to verify something she'd been told previously, but I can't be sure of that.

In any event, the test I need to apply is more onerous than whether this facility was something in which Mr V and Ms P were interested. To find in their favour, I need to be persuaded that the ability to pay the mortgage from the OSA was the sole or over-riding factor in their decision to choose that specific mortgage. The most I could conclude is that it was most likely a contributory factor. All things considered, therefore, I'd be slow to conclude the mortgage was mis-sold.

Meanwhile when the error did come to light, YBS did everything that I'd reasonably expect a business that has made a mistake to do. Firstly, it owned up and apologised. Secondly, it undid the immediate and obvious adverse effect of the error by back-dating the payment for November 2023 (which was actually received in December) and agreeing to remove the late payment markers from their credit files. Thirdly, YBS provided two six-month grace periods (they overlapped so in effect, Mr V and Ms P had seven months) during which they could switch mortgage product or change lender altogether, without incurring an ERC. Finally, it paid them compensation (I'll come back to that).

Ms P says YBS hasn't evidenced the amendments to the mortgage payment and credit file reporting. I've no reason not to take what YBS has said at face value. YBS isn't in a position to evidence what now shows on Mr V and Ms P's credit files, and nor is this service. If Mr V and Ms P weren't convinced, it was up to them to access their credit files, check whether the November 2023 payment was still showing as late, and if so, send us that evidence to consider. They could still do that now, but it would need to form part of another complaint, where YBS was first given an opportunity to investigate.

If it hasn't already done so, it might help if YBS provides an updated statement showing either the November 2023 payment as having been backdated, or an interest adjustment to that effect having been made. But in the absence of any corroborating evidence from Mr V and Ms P that it hasn't been done (such as for example, a copy of their credit file still showing a late payment) I'm not persuaded it's necessary for me to *order* YBS to do this.

I draw no adverse inference from the fact that Mr V and Ms P didn't take YBS up on the ERC grace periods. Whatever mortgage product they changed to – whether that be internal or external – might well have attracted a higher interest rate than the 1.85% deal they are on with YBS. Nonetheless, offering that option was the right thing to do on YBS' part.

I said I'd come back to compensation, and I do that now. Assessing compensation isn't an exact science; everyone's reaction to events is unique to them. It's clear from their testimony that Mr V Ms P have found this episode hugely upsetting, and I appreciate that.

I imagine the letter from September 2023 will have come as a surprise to Mr V and Ms P, and an unwelcome one at that. I've listened to what Ms P said to YBS on the phone on 7 December 2023 about how she interpreted the letter. However, I agree with the investigator that it was clear in setting out the steps Mr V and Ms P needed to take to

minimise the impact of switching offset products. I'm not persuaded that the reference to an ATM card reasonably justifies them not taking the necessary steps.

I've noted Ms P's point about busy lives, and whilst I won't disclose the reason for privacy purposes, clearly hers was especially busy that month. But most people's lives are busy, and most people from time to time find themselves with unexpected tasks to deal with. Also, there are two borrowers here, and if one was prevented by circumstances from dealing with YBS' letter of September 2023, it's not unreasonable to conclude that the other might have done so instead.

The general legal position is that a person is expected to mitigate; that is, to take steps to minimise their loss and to avoid taking unreasonable steps that increase their loss. A person can't recover damages for any loss (whether caused by a breach of contract or breach of duty) which could have been avoided by taking reasonable steps. A person is said to have a "duty to mitigate".

This isn't a duty that's enforceable by anyone, rather it is a recognition that if a person fails to do so, their capacity to seek redress will be affected by that failure. This is the general position the courts would take. Although we aren't a court, and don't operate in the same way, we do take into account the same kind of legal principles a court would apply when we are deciding what's fair and reasonable.

Therefore, in my view, the issue of mitigation is relevant and appropriate here. When assessing the fairness or otherwise of YBS' offer of £200 compensation, I have to take into account that Mr V and Ms P didn't do all they could or might have done to mitigate the adverse effect of YBS' error, once they became aware of it from the September 2023 letter. I've noted what Ms P has said about the investments they made during 2023, which means they don't maintain a float of money in the external current account, hence why they transfer funds monthly from the OSA. They might find that task irksome, but I couldn't fairly find it to be onerous. Viewed in that context, I find £200 to be more than fair. If that offer had not already been made, I would not have awarded more.

As far as lost interest is concerned, I can see logic in the argument that transferring money two days in advance each month results in a loss of interest offsetting; two days' worth per month on a little under £2,000 at 1.85%. But if Mr V and Ms P hadn't made the investments that they say make this a necessity, they wouldn't be receiving the returns they're getting on those investments.

Meanwhile, if they'd known before they made those investments that they'd need to revert to paying the mortgage from an external current account, it seems to me that the only reason Mr V and Ms P would not still have made those investments (and instead kept a float of money available in the external current account to cover the mortgage direct debit) is if the anticipated return from making them was *lower* than the nominal interest loss they're now unhappy with. That seems very unlikely; overall, I see this as a loss of expectation.

Put all of those points together, and I'm satisfied this element of YBS's offer is as generous as it needs to be. YBS originally paid the £200 compensation by way of two cheques, for £150 and £50 respectively. Mr V and Ms P said that's inconvenient and would prefer to receive payment by other means. Both of those cheques will have expired by now, so in the event Mr V and Ms P accept my final decision, YBS will need to make the payment afresh. It's not up to me to dictate the method of payment; in the event Mr V and Ms P accept the final decision and it becomes binding on both parties, I'd expect that to be something they agree between them afterwards.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr V and Ms P feel. That's a natural, subjective reaction, and entirely understandable.

But I have to take a different approach. I'm impartial and I have to take a step back from the minutiae, use professional detachment and look at things objectively, and focus on the broader picture. That's what I've done.

I will however make a further observation. There's more (and sometimes less) to complaint resolution than simply deciding who's right or who's wrong. It's not just about winning the argument or pursuing a perfect solution that might not exist. Sometimes it's about compromising to reach a *fair* conclusion that both parties can accept without recrimination over what has gone before. In my view, my decision provides that here.

My final decision

My final decision is that this complaint should be settled in full by Yorkshire Building Society paying Mr V and Ms P £200.

I make no other order or award. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V and Ms P to accept or reject my decision before 1 April 2025.

Jeff Parrington

Ombudsman