

The complaint

Mr F and Miss S complain that Yorkshire Building Society (YBS) unfairly set up their mortgage in two parts, one of which was on its standard variable rate (SVR) rather than the fixed rate they wanted. They also complain that, having found out about YBS's error, they had to decide between switching interest rates to save money or waiting so that the mortgage rate could be backdated if the complaint was upheld.

What happened

Mr F and Miss S originally took a mortgage with YBS in 2015 and successfully applied for a new rate product in 2018. Their mortgage at that time was approximately £177,000 and their new interest rate was 1.84%, fixed until 30 April 2020.

In February 2020 YBS wrote to Mr F and Miss S reminding them their fixed rate would expire soon and inviting them to apply for a new one. But Mr F and Miss S were planning to move so contacted YBS around the same time to discuss their mortgage as a whole. They booked an appointment with one of YBS's mortgage advisors and that took place on 28 February 2020.

During the appointment Mr F and Miss S explained they were in the process of selling their home and buying another. They hoped to complete in the next few months. The advisor explained that if they completed before 1 May 2020, they'd have to have the mortgage in two parts – the new part on an interest rate of their choosing and the existing part on their existing interest rate product – unless they wanted to pay the early redemption charge (ERC) applying to their existing mortgage rate product. After the existing interest rate product expired – 30 April 2020 – they could apply for a new one or remain on the SVR for that part of their mortgage.

The advisor said, alternatively, if they paid the ERC or completion was after 30 April 2020, they could have the whole mortgage on one interest rate product. Mr F and Miss S said they wanted the whole mortgage on one rate and they didn't want to pay the ERC, but they thought it was likely their sale and purchase would complete before the end of April.

Based on that, YBS sent them a mortgage offer dated 17 March 2020 (valid until 13 September 2020). That offer showed a new mortgage in two parts – Part 1 was for a fixed rate of 1.84% until 30 April 2020 and applied to their existing balance. Part 2 was for a fixed rate of 2.10% until 31 May 2022 and applied to the new amount required in addition to their existing mortgage.

Unfortunately, Mr F lost his job before completion and while he found new employment relatively soon after, that delayed completion of their sale and purchase to July 2020. YBS's underwriting notes show that Mr F and Miss S sent it copies of their employment letters and contracts in June 2020. A new mortgage offer was issued to them on 24 June 2020. That offer showed a mortgage in two parts – Part 1 was on the SVR (4.49% at that time) and applied to their existing balance. Part 2 was for a fixed rate of 2.10% until 31 May 2022 and applied to the new amount required in addition to their existing mortgage.

Mr F and Miss S say they didn't notice that the new offer showed that the mortgage would be partly on SVR. They complained to YBS in February 2021 and, soon after, discussed moving Part 1 of their mortgage to a fixed rate. However, they say they were told moving to a new rate before their complaint was decided may mean YBS may not be able to backdate their mortgage rate from July 2020 if their complaint is upheld. So, Mr F and Miss S delayed getting a new rate product until March 2021.

In its final response letter dated 9 March 2021, YBS said it hadn't made an error or acted unfairly to Mr F and Miss S. It said Mr F and Miss S were told in the call of 28 February 2020 that if Mr F and Miss S ported their mortgage and if the mortgage did not complete until after 30 April 2020, they would need to complete an "Existing Borrower Transfer" and they would be on SVR until they did so. And it said the mortgage offer of June 2020 confirms Part 1 of the mortgage would be on SVR.

YBS also didn't uphold Mr F and Miss S's complaint about having no choice but to pay the SVR while waiting for the outcome of their complaint in February 2021. It said Mr F and Miss S were told they could change product and if YBS had made an error they could've asked for the rate to be backdated. But Mr F and Miss S opted not to go ahead with a product change at that time.

Dissatisfied with YBS's response, Mr F and Miss S asked us to consider their complaint. Our investigator thought YBS hadn't acted unfairly in respect of the first part of Mr F and Miss S's complaint. He said YBS gave Mr F and Miss S fair warning that their fixed rate product was ending. With regard to the second part of Mr F and Miss S's complaint he didn't think YBS had told them to wait for the outcome of the complaint before changing interest rate product. But he did conclude that YBS had subsequently charged more interest for part of the month of March 2021, when the new interest rate should have applied. He said Mr F and Miss S should decide whether they want that refunded or treated as an overpayment.

Mr F and Miss S didn't agree. They said they feel YBS has taken advantage of them and they paid a higher rate of interest for no reason. They say the documentation to move home was ridiculously complicated and overloaded with jargon. With regard to the second part of their complaint, they say there was another phone call where they were told by YBS the rate could not be backdated after the complaint was resolved.

YBS also didn't agree with our investigator's findings – in particular regarding the second part of Mr F and Miss S's complaint. It said Mr F and Miss S were aware they were on the SVR since February 2021, but didn't apply for a new rate until 23 March 2021. And it said it is satisfied Mr F and Miss S knew about the implications of not applying sooner. YBS said the product transfer was processed quickly, but Mr F and Miss S weren't charged at the new rate until 1 May 2021 and that was in line with the completion letter. In any event, the new rate was applicable in April and it applied the difference as an overpayment. So, Mr F and Miss S didn't lose out financially in that regard.

As neither party agreed with our investigator's findings, their complaint has been passed to me to make a final decision.

What I've decided – and why

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

In my provisional decision I said:

To decide Mr F and Miss S's complaint, I've thought about whether it was fair for YBS to set up their mortgage, partially on its SVR, given what it knew about their

wishes from the mortgage interview of 28 February 2020. And I've thought about whether Mr F and Miss S should have known from the mortgage offer dated 24 June 2020 that the mortgage offered wasn't what they wanted. I've also thought about whether YBS acted unreasonably in respect of Mr F and Miss S's complaint and potential interest rate product switch from February 2021.

YBS says that if Mr F and Miss S ported their mortgage and if the mortgage did not complete until after 30 April 2020, they would need to complete an "Existing Borrower Transfer" and they would be on SVR until they did so. I've thought carefully about that.

Mr F and Miss S's fixed rate expired at the end of April 2020. At that time their mortgage rate automatically changed to the SVR and an early redemption charge no longer applied. I think it's reasonable that their mortgage changed to SVR at that time – Mr F and Miss S's mortgage offer of 2018 said it would, they'd been sent a letter informing them of that and they hadn't arranged to switch to a new interest rate product. The reason for Mr F and Miss S not switching was they hadn't completed on their sale and purchase and they wanted to have the whole mortgage on one rate. I think it's clear, from their mortgage interview of 28 February 2020, that would have been their intentions should they not complete by the end of April 2020. I'll address that interview in more depth later in my decision.

Generally, there would be no need or benefit to porting a mortgage that was on an SVR and I've not seen anything to suggest that it was necessary in this case. That's because Mr F and Miss S had no benefit in taking the interest rate with them to the new mortgage and were not 'tied' to the rate because of an early redemption charge. So, there was no need to set up the mortgage in two parts. And YBS's statement about what they would need to do if porting their mortgage after the end of April 2020 shouldn't have any relevance here. If that was what the advisor meant in the mortgage interview of 28 February 2020, I don't think that was correct. That's because she shouldn't have suggested Mr F and Miss S should port their existing mortgage if their sale and purchase didn't complete before the end of April 2020.

YBS has provided a recording of the telephone mortgage interview of 28 February 2020. During that interview, the YBS advisor asked lots of questions to establish Mr F and Miss S's wants and needs and carefully discussed the scenarios of completing before the end of April and after. It was clear that Mr F and Miss S expected to complete before the end of April, but aspects of that scenario weren't ideal for them, particularly the separate parts to the mortgage. They discussed the possibility of paying the early repayment charge rather than having the mortgage in two parts, but Mr F and Miss S didn't want to do that because it was an additional and avoidable expense. The advisor said the downside if Mr F and Miss S didn't complete before 1 May was that Mr F and Miss S will be on the SVR until they do. Mr F and Miss S said they'd want to consolidate products as soon as possible and the advisor explained that consolidation could only happen at the end of a rate period.

It isn't clear whether the advisor suggested a mortgage in two parts would be necessary if completion was after the end of April. I think her saying – in that scenario – Mr F and Miss S would be on SVR until they did complete would lead them to believe they wouldn't be on SVR after they completed.

I think it was reasonable for YBS to base the mortgage offer of 17 March 2020 on two separate parts as it was Mr F and Miss S's expectation that they'd complete before the end of April, but I think it was clear what they wanted if they didn't complete

before then. YBS has also provided a copy of its underwriting notes. Recorded on those are the following comments from the advisor:

“Did highlight the 3y was only a few pounds more however Mr said they would rather try to align the products sooner rather than later and not delay it any longer.”

The interview of 28 February 2020 was the only fact finding discussion which took place before the mortgage completed. So, it was that interview from which YBS gained an understanding of Mr F and Miss S’s wants and needs.

I think it’s likely – from the format in which they were provided by YBS to us – that the underwriting notes were available to the underwriter before YBS produced the mortgage offer letter dated 24 June 2020. I don’t think that mortgage offer reflects the needs and wants of Mr F and Miss S. And I haven’t seen anything to suggest the mortgage needed to be set up in two parts. So, I don’t think it was reasonable for YBS to set up the mortgage in a way that was clearly disadvantageous to Mr F and Miss S and didn’t meet their stated preference. In that regard, I’m mindful of the Financial Conduct Authority’s (FCA’s) principles about businesses treating customers fairly. Principle six says:

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

It isn’t clear from the mortgage offer letters whether YBS considered that it gave advice to Mr F and Miss S in relation to their new mortgage. However, as I’ve said above, YBS has provided a copy of the call recording of the mortgage interview between its adviser and Mr F and Miss S in February 2020. During the call the adviser asked lots of questions to establish what Mr F and Miss S wanted to achieve. The discussion was detailed about their circumstances and the adviser had a good understanding of what they wanted to achieve in either of the potential scenarios.

I think it would be reasonable, from that call, for Mr F and Miss S to assume YBS was providing advice to them. With regard to ‘Principle six’ I think YBS paid regard to Mr F and Miss S’s interests by carefully establishing what they wanted to achieve. But I think it disregarded that knowledge when it set up their mortgage in two parts, one of which was on the SVR. In doing that, I don’t think YBS treated Mr F and Miss S fairly.

I accept that YBS did inform Mr F and Miss S in its offer letter of 24 June 2020 how the mortgage would be set up. And I agree that Mr F and Miss S should have read the mortgage offer and asked YBS if there was anything they didn’t understand. But I also accept that documentation of that type is not always easy to understand and individual points are easy to miss.

Mr F and Miss S have said the documentation to move home was ridiculously complicated and overloaded with jargon. They were not the experts in this relationship and they cannot necessarily be expected to have understood the process – in particular the apparent need for another fact finding interview to establish their wants and needs after April 2020.

I think Mr F and Miss S are likely to have gained confidence that YBS would be acting in their best interests, given the detail they provided to the adviser. And I think they had no reason to believe YBS would apply SVR to a substantial part of their mortgage given that their previous offer was all on fixed rates – albeit in two parts.

I think YBS should have been able to understand what Mr F and Miss S wanted from the February 2020 interview and I think it was reasonable for Mr F and Miss S to think that too. So, I think it was reasonable, in the circumstances, for them to assume the mortgage offer of June 2020 reflected their wants and needs. I don't think, given that YBS failed to set the mortgage up in line with Mr F and Miss S's stated wishes, it would be fair to conclude that was negated by Mr F and Miss S's responsibility to read and understand the offer in this case.

Given what I've said, I think YBS made an error in the setting up of Mr F and Miss S's mortgage and I think they should put that right. I'll explain how below.

With regard to the second part of Mr F and Miss S's complaint, I think my proposed resolution to the first part of their complaint may make that irrelevant. But if either party disagrees, I'll consider their comments.

Both parties have now responded to my provisional decision.

Mr F and Miss S accepted my decision and, of the options I outlined in my provisional decision, said they would like YBS to refund the difference between the payments they actually made and the payments they would have made on the fixed rate.

YBS also accepted my provisional decision.

As both parties have accepted my decision and I've received no new evidence or arguments to consider, I won't change the outcome outlined in my provisional decision.

Putting things right

To resolve Mr F and Miss S's complaint, YBS should put them back in the position they would have been in – or as close to it as possible – had its error not occurred. So, it should:

- Rework the mortgage assuming that part 2's fixed rate product applies to the whole mortgage amount and change the mortgage to one part only.
- Refund the difference between payments Mr F and Miss S's actually made and the payments they would have made on the fixed rate to them.
- Pay them £300 for the distress and inconvenience caused. Mr F and Miss S have been put to some trouble to resolve this matter and I've seen from their correspondence just how frustrating the whole issue has been for them.

My final decision

My final decision is I uphold Mr F and Miss S's complaint about Yorkshire Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Miss S to accept or reject my decision before 1 June 2022.

Gavin Cook
Ombudsman