

## **The complaint**

Mr and Mrs M complain about the amount Yorkshire Building Society increased their contractual monthly payment by following a payment holiday.

## **What happened**

On 6 September 2005, Mr and Mrs M took out a mortgage with Yorkshire Building Society (YBS). The mortgage had four parts and was for a total borrowing of £184,659 (including fees).

On 21 September 2005, Mr and Mrs M wrote to YBS enclosing a cheque for the sum of £14,400. They asked for this amount to be used to repay the majority of Part 3 of their mortgage. YBS applied this payment to the mortgage as requested, giving Part 3 of the mortgage a credit balance.

A further advance of £25,000 was later arranged for Mr and Mrs M with YBS releasing the funds in November 2005 – giving the mortgage five parts.

In 2009, Mr and Mrs M requested a payment holiday on their mortgage for a period of ten months – running from October 2009 until July 2010 – and YBS agreed to the request. It wrote to Mr and Mrs M at the time explaining that the overall mortgage balance would increase, and that interest is charged on the amount outstanding on a daily basis.

In March 2020, Mr and Mrs M contacted YBS to request a further payment holiday due to the Covid-19 pandemic. The letters sent to Mr and Mrs M indicate a two-month payment holiday was agreed for April and May 2020 which was later extended for a further three months from June 2020. However, the contact notes and arrears schedule indicate a payment holiday of six months was agreed from March 2020 until August 2020.

At the end of the first Covid-19 payment holiday, YBS wrote to Mr and Mrs M on 31 May 2020 to inform them their contractual monthly payment would be increasing by £316.06. On 30 July 2020, YBS sent a further letter explaining that the information in its previous letter had been incorrect as the new monthly payment hadn't included Mortgage Protection Insurance – it clarified that the new monthly payment would be £1,733.38.

Following the end of the second Covid-19 payment holiday, YBS wrote to Mr and Mrs M again explaining the new monthly payment would be £1,798.10. It sent a further letter on 11 September 2020 explaining the payment would actually be £1,832.45. Concerned about the high increase to their monthly payment Mr and Mrs M raised a complaint.

YBS responded explaining that due to an administration error, the capital repayment of £14,400 made in 2005, hadn't been apportioned to the mortgage correctly, resulting in Mr and Mrs M's monthly payments being calculated at an incorrect lower amount. It explained this error had been highlighted following the recent Covid-19 payment holiday, and therefore the monthly payment had increased by approximately £300 to allow for the mortgage to be repaid in full by the end of the remaining term. In recognition of this it offered Mr and Mrs M £500 compensation.

Our Investigators considered the complaint and didn't think YBS had acted fairly. They explained that both parties agreed an error had occurred when calculating Mr and Mrs M's monthly mortgage payment and this had resulted in the mortgage account being underfunded.

In resolution of the complaint the Investigator said YBS should deduct any underfunding that accrued on the mortgage account before May 2013 – as the monthly payments during this time had been met. However, as Mr and Mrs M had struggled to meet their monthly payments from May 2013 and arrears had accrued on the account, they should be required to repay the arrears balance going forward. The investigator also felt the £500 compensation offered was fair in the circumstances.

Mr and Mrs M disagreed and asked for an Ombudsman's decision. They raised several different points for why they disagreed. In summary, they didn't think they should be held responsible for any underfunding on the account and felt their monthly payment going forward should be for the amount before any underfunding occurred, plus the amount of the recent Covid-19 payment holiday. They also felt the £500 offered wasn't fair.

I issued a provisional decision for this complaint on 29 April 2022 where I said:

*“Mr and Mrs M have kindly provided a significant amount of evidence to support their complaint and have raised several different points about why they think YBS have treated them unfairly. I'd like to be clear that my decision won't address every point made by either Mr and Mrs M or YBS. I mean no discourtesy by this and I would like to reassure both parties that I've carefully considered all the evidence provided. But my decision will only address what I see to be relevant in reaching a fair and reasonable outcome to this complaint.*

*In September 2005, Mr and Mrs M made an overpayment of £14,400 towards their mortgage. I've seen a copy of the letter they sent to YBS and this clearly explains that their mortgage consisted of four parts and they wanted the payment to be allocated to Part 3 which had an approximate outstanding balance of £14,600, at a rate of 6.09%.*

*YBS has provided evidence to show the payment of £14,400 was allocated to Part 3 of the mortgage as requested – and having reviewed this I'm satisfied it was. As YBS were following the instructions of Mr and Mrs M, I don't think they have done anything wrong by applying the payment as they did.*

*In September 2009, Mr and Mrs M requested a payment holiday on their mortgage. YBS has said that when Mr and Mrs M contacted it about this payment holiday, they were told they could utilise the credit on the account (the £14,400 overpayment) and therefore it agreed to the payment holiday for a period of ten months.*

*YBS has acknowledged that the information given to Mr and Mrs M when they requested the payment holiday was incorrect. At the point Mr and Mrs M requested the payment holiday in 2009, they had five parts to their mortgage. However, only Part 3 had a credit balance as this is where the overpayment of £14,400 had been allocated – something which YBS has acknowledged its system didn't identify at the time. YBS has said that it should have made Mr and Mrs M aware of this when they requested the payment holiday, and if it had done so, Mr and Mrs M would have been provided with the options of either taking a payment holiday on only Part 3 of the mortgage, or to have the overpayment spread across all parts of the mortgage to enable the payment holiday on all five parts.*

*As YBS didn't identify that only Part 3 of the mortgage had a credit balance, it resulted in the other four parts of the mortgage falling into arrears. The reason for this is because only Part 3 of the mortgage was utilising the credit balance. However, it should be noted that at this point the mortgage as a whole wasn't in arrears due to the credit balance – which is evidenced by the arrears schedule I've been provided with.*

*YBS has explained that its policy is for arrears to be 'stripped out' from the calculation of the monthly mortgage payments, as it is expected that a separate arrangement will be agreed with its Mortgage Collections and Recoveries team to clear the arrears within a specified timeframe. This meant the arrears, caused by the credit balance not being utilised by all five parts of the mortgage, were excluded from the outstanding balance for the calculation of the monthly mortgage payments – which resulted in Mr and Mrs M paying less to the mortgage than they should have been, in other words underfunding the mortgage.*

*YBS didn't identify the issue with its system until after Mr and Mrs M's Covid-19 payment holiday finished in August 2020, and the monthly payments were recalculated to take into account the missed payments because of the payment holiday. I've seen nothing to suggest that Mr and Mrs M should have been aware that their monthly payment was incorrect before YBS identified the problem – and from the information I've been provided with they have, excluding times of arrears due to struggling to meet payments, paid the amount which was requested of them from YBS.*

*Mr and Mrs M now find themselves in a position where their monthly payments have increased to account for both the Covid-19 payment holiday and the underfunding – something which they say they can't easily afford.*

*Where an error such as this has occurred – and where I don't think the customer should reasonably have known they weren't paying enough, as is the case here – I would generally expect the business to put the customer back in the position they would have been in if the mistake hadn't happened. So, in this case, as if underfunding hadn't occurred.*

*However, I also need to take into consideration the individual circumstances of the complaint before recommending YBS rework the entire account to remove any underfunding as Mr and Mrs M have requested. The underfunding issue with Mr and Mrs M's mortgage account only occurred following the October 2009 payment holiday. Therefore, I will only be considering any underfunding from this date forward and for ease I will explain my reasoning under separate headings to address each milestone of Mr and Mrs M's mortgage history.*

*October 2009 payment holiday until April 2013*

*In order to consider any potential underfunding, I need to consider what payments Mr and Mrs M actually made, against what payments they should have made if the mortgage had operated as it should have.*

*With this in mind, if YBS had explained the options of the credit balance to Mr and Mrs M before the payment holiday was agreed in October 2009, I think it likely that they would have decided to have it proportioned over all five sub accounts, as I think they would have wanted to avoid arrears on the mortgage account. Therefore, any calculations for the payments Mr and Mrs M should have made need to take this into account.*

*YBS has provided a set of calculations for consideration. These calculations have been carried out under the assumption that the appropriate amount of credit would have been moved to each part of the mortgage to accommodate the payment holiday agreed in*

October 2009. And then calculate what Mr and Mrs M's monthly mortgage payment should have been, taking into account the interest rates applied to each part of the mortgage, if no error occurred – allowing for any underfunding to be identified.

I understand Mr and Mrs M have raised concerns about the calculations being handwritten but I see no reason to think they are inaccurate. As part of its submission, YBS have provided various ledgers (detailing balances and interest rates applied at the time) and screen shots of the account at specific times to support the calculations. And having reviewed the calculations they show what I would expect to see if they had been generated solely by its system. However, if Mr and Mrs M accept my decision, I would ask that YBS provide system generated calculations to Mr and Mrs M to satisfy any accuracy concerns they may have when finalising the settlement.

I think it should also be noted that our service is informal and decides complaints on a fair and reasonable basis. We are not auditors or forensic accountants. If Mr and Mrs M would like for their account to be fully audited at a professional level, they may wish to seek advice about employing a suitably qualified professional.

Following the end of the October 2009 payment holiday in July 2010, I can see from the payment schedule that Mr and Mrs M maintained all agreed monthly payments until April 2013 – at times utilising some remaining credit and also making two agreed interest only payments in November 2011 and February 2012.

YBS has said for the purpose of its calculations it has assumed that if the monthly payments were correctly calculated, Mr and Mrs M would have paid the higher payments between August 2010 and April 2013. I think this is a fair assumption to make as Mr and Mrs M maintained all the requested payments during this time and I've seen no indication that they would have had difficulties paying the higher payments.

YBS calculated the underfunding for the account between August 2010 and April 2013 as £2,762.03. This should be paid to Mr and Mrs M's mortgage to reduce the outstanding balance, putting them back in the position they would have been in if underfunding hadn't occurred between these dates.

May 2013 until February 2020

YBS has said that from May 2013 until February 2020, before the Covid-19 payment holiday was put in place, Mr and Mrs M struggled to meet the lower (underfunding) monthly payments to their mortgage. Therefore, they say that it's unlikely they'd have been able to meet the higher monthly payments if underfunding hadn't occurred and these should be included in the arrears.

I've reviewed Mr and Mrs M's account history between May 2013 and February 2020. I've also reviewed the contact notes for this period as well. It's clear that Mr and Mrs M were experiencing financial difficulties with problems relating to cashflow and other debts. This resulted in payments towards the mortgage becoming sporadic or being missed entirely, resulting in arrears. Therefore, I agree with YBS and think that Mr and Mrs M would have been unlikely to meet the higher monthly payments. However, I don't think it's fair that YBS now treat the whole period from May 2013 until February 2020 as having no underfunding when calculating the impact to Mr and Mrs M. I'll explain why.

In the months where Mr and Mrs M have either missed their monthly payment or paid less than what was requested, they have currently benefited as their arrears balance hasn't increased by as much as it should have done. This is because the arrears balance has only increased by the lower (underfunding) monthly payment and not the higher (correct) monthly

payment. For these payments I don't think it's unreasonable that YBS recalculate them as being processed at the higher monthly payment, as I think Mr and Mrs M would always have missed these payments no matter whether or not underfunding occurred. I should be clear that there are 35 payments in this category and by YBS recalculating these missed payments, it would increase Mr and Mrs M's arrears balance to the level it should have been.

However, in the other months Mr and Mrs M have either paid what was requested of them (the lower underfunding payments) or paid more than what was requested. In these months I think Mr and Mrs M would have likely paid the equivalent required payment, based off the higher payment, if they had been informed of the correct monthly payment from the outset. I say this because its clear that Mr and Mrs M were trying to address the arrears on the account. Therefore, for these payments, of which there are 47, underfunding has occurred and the amount of underfunding needs to be calculated and deducted from the outstanding mortgage balance.

I have attached a document with a table outlining the payments which should be treated as underfunding for the period from May 2013 until February 2020.

Once the calculations and necessary amendments outlined above have been made to the account, YBS should calculate what Mr and Mrs M's monthly payment would have been from March 2020 onwards.

March 2020 onwards

The letters Mr and Mrs M received about their Covid-19 payment holiday indicate that it was agreed from April 2020 until August 2020. However, the contact notes from 27 March 2020 and the calculations YBS have sent indicate that a six-month payment holiday was agreed – running from between March 2020 until August 2020. This is further supported by the arrears schedule which shows six-months' worth of arrears being capitalised during the Covid-19 payment holiday.

The Financial Conduct Authority's (FCA) guidance on Covid-19 payment holidays, is that it could be put in place for a maximum of six months. Based on the evidence outlined above I'm satisfied that YBS agreed to the maximum six-month payment holiday from March 2020 until August 2020. Therefore, following the calculations outlined above, YBS must use the new March 2020 monthly payment in its Covid-19 payment holiday calculations and it must adhere to all the guidance issued by the Financial Conduct Authority (FCA) with regards to the Covid-19 payment holiday when reworking the account.

YBS should then calculate what Mr and Mrs M's monthly payment should have been in September 2020, following the end of the Covid-19 payment holiday, and recalculate the mortgage taking into account the payments Mr and Mrs M have made since the payment holiday.

If the account remains in arrears, I think it only fair that Mr and Mrs M be responsible for these. I say this because their mortgage account would have been reworked to represent the position it should have been in but for the errors that YBS made. So, any arrears would be due to payments having been missed by Mr and Mrs M.

YBS should also make any necessary amendments, if any, to Mr and Mrs M's credit file to ensure that it accurately reflects the conduct of the mortgage account following the rework of it.

*YBS has offered £500 compensation for the distress and inconvenience caused by the errors which it made. I understand that Mr and Mrs M feel that more compensation should be awarded. They've said that since the £500 was offered they have been forced to bring the complaint to our service and have had continued mental pressure and stress. I appreciate the points Mr and Mrs M have raised but I wouldn't award compensation for needing to bring a complaint to our service. I think the £500 offered is fair and reasonable in the circumstances of this complaint, as I think it recognises the upset that Mr and Mrs M would have been caused by finding out they hadn't been paying the correct amount to their mortgage.*

*I understand that Mr and Mrs M have also raised concerns with regards to their high interest rate compared to market rates. To be clear, I haven't considered this as part of this complaint as Mr and Mrs M wanted to keep the issue separate. However, they may still be able to raise this issue with our service and if this is something they wish to do, they can contact us to discuss it."*

YBS responded accepting my provisional decision. However, it said it would be unable to provide system generated calculations. It said the calculations are bespoke and the data used doesn't exist within its system.

Mr and Mrs M didn't agree to my provisional decision and provided a detailed submission outlining their reasons why. As with my provisional decision, I won't detail every point Mr and Mrs M included in their submission, but I have summarised below the points which I consider are relevant in reaching a fair and reasonable outcome for this complaint.

Mr and Mrs M say they asked for their overpayment to be against Part 3 of their mortgage in 2005 because it had the highest interest rate. They question how paying £14,400 off the part of their mortgage with the highest interest rate, and then borrowing it back across the other parts of their mortgage with lower interest rates, can equate to them owing £18,000 at the end of the mortgage term. With this in mind they question where the £14,400 credit for Part 3 of their mortgage is – and where the interest they would have accrued is, if this sum had been put in a savings account.

They say when they raised concerns about the increase to their contractual monthly payment, YBS raised a complaint on their behalf. Mr and Mrs M say YBS admitted they could request the overpayment only be applied to one part of their mortgage, but say they were told by the advisor that when the overpayment was made in 2005 it should have been allocated across all parts of the mortgage at the time. They say the advisor confirmed YBS would never insist they pay the new contractual monthly payments as it was clearly unfair – and that if there was an error, YBS would mitigate the payments required by extending the term or reducing the amount owed.

Mr and Mrs M disputed why the missed payments between May 2013 until February 2020 should be calculated at the higher monthly payment – as if underfunding hadn't occurred – when they were unaware of the problem with the payments being made. They also raised concerns over how the underfunding would be calculated in this timeframe, and whether it would be based on the quantity of payment or the contractual monthly payment.

Mr and Mrs M also didn't think the £500 compensation offered for the upset caused was enough in the circumstances of the complaint.

### **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 explained that Mr and Mrs M had made an overpayment of £14,400 to Part 3 of their mortgage - with the highest interest rate of 6.09% - in September 2005. Having reviewed the available evidence, I'm satisfied the overpayment of £14,400 was made to Part 3 of the account and that YBS followed Mr and Mrs M's instructions by applying the payment as it did.

In September 2009, Mr and Mrs M requested a payment holiday on the entirety of their mortgage. YBS has said that at this point Mr and Mrs M were incorrectly told they could utilise the credit on the account (the £14,400 overpayment) for the whole mortgage and therefore it agreed to the payment holiday for a period of ten months.

When Mr and Mrs M contacted YBS for the payment holiday in September 2009, it should have provided them with two options. Either that they could only take a payment holiday for Part 3 of the mortgage (utilising the £14,400 credit) as this is where the overpayment had been made – meaning they would still need to make payments to the other four parts of their mortgage. Or, have the £14,400 credit re-apportioned and spread across all parts of the mortgage to allow for a payment holiday with no payments being made to the whole mortgage.

Re-apportioning the credit balance doesn't mean that Mr and Mrs M are borrowing back the money at the lower interest rates of the parts of the mortgage where the credit is now applied. It is just applying the credit to a different part of their mortgage to enable them to have a payment holiday without accruing arrears. This means that the balance of Part 3 of their mortgage won't be reduced by the full £14,400 they had initially requested and would be increased to represent the proportion of credit applied to allow for a ten-month payment holiday on all parts of the mortgage.

Taking into consideration the options which *should* have been explained to Mr and Mrs M before the payment holiday was agreed in October 2009, I think it more likely than not that they would have decided to have the credit balance apportioned over all five sub accounts, as I think they would have wanted to continue with their ten month payment holiday on all parts of the mortgage and avoid any arrears accruing on the mortgage.

#### *October 2009 payment holiday until April 2013*

As explained in my provisional decision, in order to consider underfunding I need to think about what payments Mr and Mrs M *actually* made, against what payments they *should* have made if the mortgage had operated as it should have. Therefore, any calculations for payments Mr and Mrs M *should* have made need to take into account how the credit balance would have been applied to allow for the ten month payment holiday.

I have already addressed the calculations that YBS provided for the time period of October 2009 until April 2013 in my provisional decision. I won't go into the detail again here as my reasoning can be seen above in the quoted provisional decision. However, for completeness, I have reviewed the calculations YBS provided and I'm satisfied they fairly calculate the underfunding for this time period.

YBS has calculated the underfunding for the account between August 2010 and April 2013 as £2,762.03. This should be paid to Mr and Mrs M's mortgage account to reduce the outstanding balance, ensuring they are in the position they would have been in if underfunding hadn't occurred between these dates.

#### *May 2013 and February 2020*

From May 2013 until February 2020, before the Covid-19 payment holiday was put in place, Mr and Mrs M struggled to meet the lower (underfunding) monthly payments to their mortgage.

I've reviewed the account history and contact notes for this period and it's clear that Mr and Mrs M were experiencing financial difficulties. Their payments were either sporadic or missed entirely which resulted in arrears accruing on the mortgage. Therefore, I agree with YBS and think that Mr and Mrs M would have been unlikely to meet the higher (correct) monthly payments.

In my provisional decision, I outlined that I didn't think it would be fair to treat the whole period, from May 2013 until February 2020, as having no underfunding as YBS suggested. Neither did I think it was fair to treat the whole period as having underfunding as Mr and Mrs M feel it should be.

I said that in the months where Mr and Mrs M either paid what was requested of them (the lower underfunding payments) or paid more than what was requested, I thought they would likely have paid the equivalent required payment, based off the higher monthly payment, if they had been informed of the correct monthly payment from the outset. But in the months where Mr and Mrs M either missed their monthly payment or paid less than what was requested, I didn't think they would have been able to meet the higher (correct) monthly payments. Therefore, I said that when calculating the underfunding for this period, YBS should calculate the missed, or less payments, at the higher (correct) monthly payment and adjust the arrears accordingly. And for the payments where Mr and Mrs M either paid the requested amount, or more, treat this as underfunding and deduct it from the account.

I understand that Mr and Mrs M have disputed the missed, and lower, monthly payments being calculated at the higher (correct) monthly payment when calculating the underfunding. However, I'm satisfied that this is fair in the circumstances of this complaint. I say this because when a customer misses or pays less than their monthly payment, arrears will accrue on the account. Arrears is money that Mr and Mrs M would always have owed and needed to repay before the end of the mortgage term. Therefore, if underfunding hadn't occurred on the account, the arrears would always have accumulated at the higher (correct) monthly payment and needed to have been repaid by Mr and Mrs M. By not taking this into account in the calculations this would effectively put Mr and Mrs M in a better position than they would have been in if underfunding hadn't occurred.

Mr and Mrs M have also questioned the methodology behind how the underfunding should be calculated for this period. For the avoidance of any doubt I have provided some examples below to demonstrate how I expect YBS to calculate underfunding for each scenario. The Underfunding Payment is the actual payment requested from Mr and Mrs M and the Adjusted Payment is what the contractual monthly payment should have been if no underfunding occurred.



Date	Underfunding Payment	Adjusted Payment	Payment made	Outcome
May-13	£1,243.12	£1,334.14	£0	£1,334.14 added to the arrears.
Jun-13	£1,243.12	£1,334.14	£1,243.12	£91.02 of underfunding deducted from the outstanding mortgage balance.
Jul-13	£1,243.12	£1,334.14	£2,486.24	£91.02 of underfunding deducted from the outstanding mortgage balance and £1,243.12 deducted from the arrears.
Oct-13	£1,243.12	£1,334.14	£1,300	£91.02 of underfunding deducted from the outstanding mortgage balance and £56.88 deducted from the arrears.
Aug-14	£1,248.56	£1,332.97	£1,225	£107.97 added to the arrears.

Once the calculations and necessary amendments outlined above have been made to the account, YBS should calculate what Mr and Mrs M's monthly payment would have been from March 2020 onwards.

#### *March 2020 onwards*

As outlined in my provisional decision, YBS should apply Mr and Mrs M's Covid-19 payment holiday from March 2020 until August 2020. It should then calculate what Mr and Mrs M's monthly payment should have been in September 2020, following the end of the Covid-19 payment holiday, and recalculate the mortgage taking into account the payments Mr and Mrs M have made since the payment holiday.

If the account remains in arrears, I think Mr and Mrs M should be responsible for these. This is because the mortgage account would have been reworked to represent the position it should have been in but for the errors that YBS made. And as explained any arrears would be payments that Mr and Mrs M would always have needed to have made.

YBS should also make any necessary amendments to Mr and Mrs M's credit file to ensure that it accurately reflects the reworked conduct of the mortgage account.

I understand that Mr and Mrs M don't agree the £500 compensation for the distress and inconvenience is fair in the circumstances. However, as I have previously explained in my provisional decision, I think the award fairly recognises the upset that Mr and Mrs M would have been caused by finding out they hadn't been paying the correct amount to their mortgage.

I note that YBS has also said that it will be unable to arrange for its system to generate the calculations as they are bespoke, and the data doesn't exist within its system. Whilst I accept that YBS's system may not be able to generate the calculations, I would expect these to be provided to Mr and Mrs M in an easy to follow format – such as a spreadsheet.

To be clear, I haven't considered the complaint point Mr and Mrs M have raised about their interest rate being higher compared to other market rates. They may still be able to raise this issue with our service and if this is something they wish to do, they can contact us to discuss it.

## **My final decision**

My decision is that I uphold this complaint and instruct Yorkshire Building Society to:

- Pay the calculated underfunding of £2,762.03 for the period of August 2010 until April 2013 to Mr and Mrs M's mortgage to reduce the outstanding balance.
- Calculate the underfunding which occurred on the account from May 2013 until February 2020 on the payments where Mr and Mrs M either met the lower underfunding monthly payment or exceeded it. Pay the calculated amount to Mr and Mrs M's mortgage to reduce the outstanding balance.
- Calculate any payments that were either missed or didn't meet the lower underfunding payment as being processed at the correct higher payment – and adjust the arrears on the account accordingly.
- Rework the account from March 2020 to take into account the Covid-19 payment holiday (adhering to FCA guidance), the new correct monthly payment and payments made to the account by Mr and Mrs M from this date.
- Amend Mr and Mrs M's credit files to accurately reflect the conduct of the mortgage account.
- Pay £500 compensation for the distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 13 July 2022.

Robert Woodhart  
**Ombudsman**