

The complaint

Miss M complains that after she made overpayments to her mortgage in 2020 that her contractual monthly payments ("CMP") were reduced by Yorkshire Building Society in its annual review in 2021. Miss M says that she has been penalised covertly. Her understanding was that during the fixed term period her CMPs would remain the same. Miss M wants the term to be reduced so that she can make the higher payments that she hoped to make.

What happened

Miss M took out a mortgage with Yorkshire in 2020. Miss M has a mortgage product which allows her to make overpayments to reduce the outstanding balance by up to 10% per year. Although it's a fixed interest rate product for a fixed term, the CMPs are reviewed in January each year to take effect in March. In 2020 Miss M's CMP was £399.33 per month. She also made overpayments. In the January 2021 review Yorkshire advised Miss M that going forward her payments would be reduced to £359.16. Miss M complained saying that that this wasn't her understanding of how the mortgage product worked.

Yorkshire says that it tried to contact Miss M and sent a final response letter, but Miss M says that she didn't receive it. Yorkshire in its letter set out that it was an annual review company and that Miss M should contact the company at each account review to ensure that the payment arrangement continues to meet their requirements.

Our investigator's view

Our investigator recommended that this complaint should be upheld. She felt that when Miss M contacted Yorkshire in January 2021 that it failed to explain her options to her including that she could maintain her existing CMP if she chose to reduce her mortgage term. Our investigator felt that Yorkshire should rework Miss M's mortgage as if her overpayments were used to decrease the term of the mortgage rather than her CMP taking into consideration Miss M's payments from 2020 together with a payment for distress and inconvenience of £150.

Yorkshire disagreed saying in summary that Miss M misunderstood how her mortgage worked and didn't say that she wanted to reduce the mortgage term. Yorkshire also objected to taking the overpayments made in 2020 into consideration in a complaint that related to January 2021 and that Yorkshire is physically unable to temporarily change a mortgage term as its subject to an income and expenditure assessment and an advice process

My provisional findings

As my view differed from that of our investigator, I issued a Provisional Decision as follows:

"Miss M's expectations for her mortgage product was that she would be able to continue making the same monthly payments as she had done before and not be reduced because of the overpayments she had made. She was therefore shocked and annoyed when this happened and felt that by reducing the CMPs that she was being penalised by Yorkshire as

it reduced her ability to make overpayments. But Yorkshire says that her expectations of how the mortgage worked wasn't actually how it worked and although this was a fixed interest rate mortgage product, the payments wouldn't be fixed but subject to an annual review when the payments would change depending on the remaining outstanding balance.

I can see Yorkshire's point. That's the mortgage Miss M took out even if she expected something different. But then when Miss M got notification of the new CMP following the monthly review, she contacted Yorkshire to express her dissatisfaction. I listened to that call and I noted that the Yorkshire adviser whilst acknowledging her complaint and pointing out that Yorkshire operated by way of annual review, didn't seek to deal with the source of her dissatisfaction or direct her to others in the Society who could assist.

Our investigator understood from talking to Miss M that she wanted to maintain the same CMP to allow her more room to make overpayments with the object of shortening the mortgage term. Yorkshire's Terms and Conditions suggest two ways of dealing with this. Firstly, by contacting Yorkshire to change the term and as it's a change in the contractual term, it would be done on an advised basis with an affordability check. Or, alternatively, to register a static payment which again requires contact with Yorkshire at Annual Review. Our investigator's view was influenced by the fact that Miss M clearly explained what she wanted to achieve and so Yorkshire should have been able to elicit the same information as to what her objectives were. Our investigator suggested that Yorkshire should rework Miss M's mortgage as if her overpayments were used to decrease the term of the mortgage rather than her contractual monthly payments, taking Miss M's overpayments from 2020 into consideration.

I agree with our investigator that Yorkshire should have recognised what Miss M was trying to achieve and facilitate her to do that but within the terms of how the product that Miss M purchased operated. So, I agree that the complaint should be upheld and that an award of £150 seems appropriate for Miss M's distress and inconvenience.

Turning to the appropriate way to deal with the issue now, the problem is that Yorkshire missed this opportunity in 2021 to advise Miss M and I have to decide what was likely to have happened if that occurred. I believe that Miss M is likely to have wanted to maintain the payments that she was making and to foreshorten the mortgage term based on that. Yorkshire says that this can be done on an advised basis and that affordability checks "may" be required (see page 25 of terms and conditions)

But we've gone past the date when that advice and affordability assessment should have been done. The reason for the affordability assessment is to determine whether Miss M could afford the £399.33 monthly payments going forward. As our investigator indicated Miss M passed an affordability assessment just a year previously in 2020 and could afford the payment of £399.33 and nothing had changed since. The problem is that if the term is reduced and interest rates go up as they are beginning to do, that there is the potential for Miss M to have to make payments in the future that may be unaffordable and I believe that in order to make that decision she should get advice and an assessment as to its affordability going forward.

So, whilst I am sympathetic to Miss M and I intend to uphold this complaint, I don't want her to miss out on the opportunity to get advice and want to avoid putting her in a potentially worse position than she would be in without that advice. This is a point that Yorkshire raised in response to our investigator's view. So, I'm going to suggest the following way to resolve the matter which differs from that proposed by our investigator but seems a fair resolution:

1. If Miss M wants to shorten the term of her mortgage, she should make application to

Yorkshire in accordance with Yorkshire's terms and conditions. I would ask Yorkshire to make an adviser available to Miss M and let our investigator know who Miss M is to contact.

2. If, following this advice, Miss M wants to proceed with shortening the mortgage term and Yorkshire considers she is eligible, Yorkshire should apply to the shortening of the term any overpayments that Miss M made from January 2021 until now. Unlike our investigator, I don't believe that it's appropriate that the overpayments before 2021 should be used as Yorkshire had done nothing wrong before then but were simply allocating the payments to the mortgage balance in accordance with the terms of the mortgage.

3. If, following this process, either Miss M doesn't want to proceed or she is ineligible and the term is not shortened, any overpayments Miss M has made to this date should be applied to the reduction of the mortgage balance. If these overpayments have exceeded the allowable limit under the terms of the mortgage and would have led to an early repayment charge ("ERC") I would expect Yorkshire not to raise such a charge. This is to avoid any unfairness because of the application having to be made now rather than in January 2021. Of course, any overpayments in the future beyond those allowed by the terms of the mortgage would attract such ERCs.

4. Yorkshire should pay Miss M £150 for her distress and inconvenience."

I then issued this provisional decision and invited comments from Miss M and Yorkshire before coming to 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 response to my provisional decision Miss M told me that she didn't want compensation but was grateful for the offer of £150. As Miss M had not exceeded the 10% overpayment she felt that no action was needed but would like to discuss her mortgage lifespan at no cost to her. Yorkshire was concerned that part of my provisional decision didn't reflect properly what the contact notes said and asked me to confirm if I believed that Miss M was reasonably aware as to how the overpayments worked before 2021.

After considering the further submissions from Miss M and Yorkshire and reviewing the complaint I believe that my provisional decision represents a fair outcome to this complaint. The section of my provisional decision that Yorkshire asked me to review appears in the background section of the complaint in which I was setting out Yorkshire's objections to our investigator's views. I'm content to remove it but it doesn't lead me to a different conclusion as to why I should uphold this complaint. Yorkshire has asked me to comment on the state of Miss M's understanding of how overpayments worked before 2021 but this complaint deals with the issues she encountered in 2021 and I have not investigated her state of knowledge before that date as I believe that I can come to a fair decision without further investigation about that. For the above reasons I uphold this complaint.

Putting things right

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4. Yorkshire should pay Miss M £150 for her distress and inconvenience.

My final decision

I uphold this complaint and require Yorkshire Building Society to take the action referred to above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 30 September 2022.

Gerard McManus
Ombudsman