

The complaint

Mx B complains that Yorkshire Building Society made a report about her to a fraud prevention database following an application for a mortgage. She also complains that YBS has discriminated against her.

What happened

Mx B applied to YBS for a mortgage. YBS refused her application and made a report about her to the National Hunter fraud prevention database.

Mx B complained. She said that YBS had treated her unfairly and discriminated against her as a transgender person. She said that when she spoke to YBS staff members she was addressed as “sir”, and that she was mocked and laughed at. She said that YBS didn’t treat her application fairly and wrongly made a National Hunter report. She said that YBS continued to victimise her during the investigation of her complaint, including by hand-delivering sensitive correspondence to her neighbours rather than sending it to Mx B.

YBS didn’t think it had acted unfairly. It said that it had found inconsistencies in the employment information Mx B had given with her application. It accepted it had addressed Mx B as Mr B in an initial email and telephone call. But it said that was because the mortgage application form said her title was Mr. Once Mx B made clear she wanted to be referred to as Mx and female pronouns used it had done so. It said that a particular call Mx B had referred to in which an underwriter had misgendered her couldn’t have happened because the underwriter was working from home and only had email, not phone, access. And it said it had posted its final response and wasn’t responsible for any problems with its delivery.

Our investigator didn’t think YBS had acted unfairly in making a report to National Hunter, or in rejecting her mortgage application. However, he thought that YBS could have handled some of the contact with Mx B better, and said it should pay £500 compensation.

Mx B didn’t agree, and asked for an ombudsman to review her complaint. She didn’t agree with the investigator’s view of her correspondence with YBS, the recording of a call she provided, or that YBS had considered her application fairly. So the complaint comes to me for a final decision to be made.

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 particular, I’ve carefully considered everything Mx B has said about her interactions with YBS and how that made her feel – as well as the impact on her of turning down her mortgage application and making a report to National Hunter. I’ll deal with the latter first, before turning to the former.

But first I note that Mx B told our investigator she has made a subject access request to YBS

and has yet to receive a response. However, I don't think it's necessary to wait for that to happen. I'm satisfied that I have the evidence I need to be able to decide this complaint, and given our remit is to resolve cases quickly and with minimum formality I don't consider it's necessary to wait for the outcome of the subject access request to do so. Both parties have already given us the evidence we need, and we're not reliant on subject access requests from complainants to obtain evidence.

Whenever an application for a mortgage is made, a lender is required to consider the application fairly, against its lending criteria and within the regulator's rules. A lender doesn't have to accept an application – there's no obligation to provide a mortgage. But an application shouldn't be turned down for unfair or unlawful reasons, such as for a discriminatory reason.

I agree with Mx B that YBS was required to tell her the outcome of her application, and it did that when she rang up to find out how it was progressing. There's no obligation to do that in writing, though it did confirm that in writing when Mx B complained. But beyond telling her it wouldn't agree to offer a mortgage, it wasn't under any obligation to explain why or give reasons for the refusal.

In its response to this complaint, YBS has explained to us why it rejected Mx B's mortgage application. I'm not going to go into detail about the underwriting checks it carried out, since underwriting procedures are confidential to protect the integrity of the mortgage application process. Under our rules I'm allowed to receive evidence in confidence where I consider it appropriate – subject to providing a summary of what it contains – and I think it's appropriate in this case.

But, in summary, what the evidence YBS has provided shows is that it had concerns about the income Mx B declared on her mortgage application, including the sources of that income. It was concerned that the employment information she had declared might not be genuine. Having reviewed the evidence myself, and looked at the checks YBS carried out, I think its concerns were reasonable.

YBS is a member of fraud prevention databases. The databases play an important role in allowing information sharing, in the interests of fraud prevention, across the financial industry. There's a good reason for their existence – but because the consequences for an individual of a report about them can be serious, a firm should only make a report where there are good grounds to do so. In this case, I'm satisfied that YBS had good grounds for making the report it did – that it had identified discrepancies in the employment information Mx B had provided – and so I don't think it acted unfairly.

I've also thought about whether further information has come to light which would suggest the report should now fairly be removed, even if it was reasonable for YBS to make it at the time. Having considered all the evidence – including further evidence available on a separate complaint Mx B has made about a broker who she asked to arrange a mortgage after being refused by YBS – I'm not persuaded that there's new evidence that would mean the report is no longer reasonably justified.

In all the circumstances, therefore, I won't be asking YBS to remove the report.

Next, I've thought about the contact Mx B had with YBS. At the start of the process, she submitted an application form and a copy of her passport as identification. The application form gives her title as "Mr", and her passport describes her as male. Having received that application, I don't think it was unreasonable that in initial contact to raise questions about her application, YBS's underwriter addressed her as "Mr" B.

That initial contact was by email. Mx B didn't at that point, when responding to the email, correct the underwriter or ask to be addressed as Mx B or for female pronouns to be used.

Mx B says that she had a phone conversation with the underwriter on 25 September 2023. She says that in that call the underwriter called her "sir" and explained why, but that the underwriter laughed at her and continued to do so. She's provided a witness statement from a friend who says they also heard this call.

YBS says this call didn't take place. It says that on that day the underwriter was working at home. It's been able to confirm this because its IT records show that the underwriter was using a remote system rather than an office system to work. It says that as a result the underwriter couldn't make or receive calls that day. It's offered to check for call recordings on other days – and has provided several recordings of other calls to us. But Mx B is adamant the call happened on 25 September.

Mx B says YBS's account isn't true. She says that YBS has invented this to protect the underwriter. She says the underwriter included a phone number in her email signature, which shows she must have access to calls.

There's a clear dispute of fact here. In such situations, I have to decide – on the balance of probabilities – what I think most likely to have happened.

On balance, I'm not persuaded that there was a call on this date, or that this call took place on another date.

I say that because I accept YBS's records show that the underwriter was working at home without access to phone calls on that day. The phone number in her email signature is YBS's central number, not a direct line number – and in any case, the underwriter would have access to calls on other days when not working at home. So I don't think the email signature is evidence YBS has lied about this.

YBS's underwriting records show that the underwriter did work on Mx B's application on 25 September, requesting her employment contracts and evidence of salary payments. But there's no record of a phone call. I've also reviewed all the correspondence between this underwriter and Mx B. It's all by email. None of the emails refer to a phone call, or imply that there has been a phone call. And later emails don't show that Mx B has any concerns or complaints about the underwriter.

Set against that I have Mx B's testimony, supported by the witness statement of her friend. I've taken that into account. But I'm not persuaded by it. I say that because I think the evidence shows that YBS's underwriter didn't – and couldn't – make or receive calls that day, and there's no evidence from the time that she did. I also bear in mind what I say below about the plausibility of another witness statement Mx B has provided, which I think means I can attach less weight to this statement.

I do think there were other calls, with different members of staff, where YBS could have handled matters better. On one later call, YBS did call Mx B "sir". The adviser hadn't yet looked at Mx B's customer profile but nevertheless made an assumption about her based on their conversation which wasn't correct. On another call, an adviser appeared to laugh when Mx B asked about YBS's policy to transgender customers. I don't think this was malicious or deliberate, I think it was unconscious. But nevertheless it made Mx B uncomfortable and shouldn't have happened. However, I also think that on occasion Mx B was impatient and combative with YBS staff, which put them under some pressure.

Mx B also says that YBS hand-delivered its final response to her complaint to a neighbour.

She's provided a witness statement from her neighbour, in which the neighbour says the man who hand-delivered the final response said:

"Hahaha, he is Mr, and I am from the Yorkshire Building Society. I want you to pass this letter to him. We refused his mortgage application because he is a deceptive, dodgy man; he is a fraudster. Make sure you keep your wallet away from him, hahaha".

I'm afraid I don't find this at all plausible. I don't think it's likely YBS would hand deliver a final response on a Saturday at the other end of the country from its offices, or that it would say this – or words like it – when doing so. YBS's records show it posted the final response. That's how it sends all correspondence. It's possible the letter was accidentally delivered to a neighbour who handed it to Mx B due to an error with the postal service – though the vast majority of letters are accurately delivered – but I don't think it's likely YBS would instruct one of its staff to hand-deliver a letter to the wrong address accompanied by an insulting message.

Putting things right

In conclusion, I'm not persuaded that YBS sent the final response to a neighbour with a message about Mx B. I don't think it acted unfairly when it refused her mortgage application or when it made a report to National Hunter. However, I do think there were occasions when it could have handled calls with Mx B better. I would expect its staff to be careful not to misgender customers, and to handle queries from transgender customers with appropriate sensitivity, whatever its other concerns about her application. I don't think it always did that, and in doing so did cause Mx B real and avoidable upset. I'm satisfied £500 is fair compensation.

My final decision

My final decision is that I uphold this complaint and direct Yorkshire Building Society to pay Mx B £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mx B to accept or reject my decision before 15 April 2024.

Simon Pugh
Ombudsman