

The complaint

This complaint is about a mortgage Mr D and Mrs L hold with Yorkshire Building Society (YBS). Mr D and Mrs L are unhappy that they weren't notified of impending increases in the standard variable rate (SVR) that would apply to the mortgage as it came off its existing fixed rate product.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll give a brief summary (rounding the figures) 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.

The fixed rate on Mr D and Mrs L's mortgage was due to end on 28 February 2023, meaning interest would start being charged at SVR from 1 March 2023. However, this was at a time when rates generally were increasing, and YBS was making a series of changes (all upward) to its SVR.

YBS doesn't routinely increase borrowers' contractual monthly payment (CMP) each time there's a change to SVR. It changes the CMP once a year – on 31 December – unless the borrowers expressly ask for it to change in line with an SVR variation. To help borrowers decide, rate change letters are issued to tell borrowers what the CMP would be if they asked for it to be altered to reflect the rate change immediately

On 1 March 2023, Mrs L's mortgage reverted to SVR and the CMP was set at a little under £1,120, and took account of recent SVR changes up to that date. YBS increased its SVR again on 19 March 2023, but accepts it failed to send Mr and Mrs L the rate change letter. This means Mr D and Mrs L were unaware of the latest rate change and how much they should increase the CMP to if they didn't want to wait for the annual recalculation.

Mr D and Mrs L only found out about the 19 March 2023 increase in SVR in July 2023 when YBS increased it again. They immediately complained, and due to confusion on YBS's part on whether this was a new complaint or the continuation of an earlier one, a final response wasn't issued until October 2023, when YBS admitted the oversight and offered £110 by way of compensation.

Mr D and Mrs L didn't accept the offer and asked us to look into the case. Initially, our investigator thought YBS' offer was fair, but when Mr D and Mrs L rejected that opinion, she looked into the case further. The result of the investigator's further enquiries was a revised settlement offer from YBS. The new offer, in addition to paying the £110 for poor service, was to calculate the extra amounts Mr D and Mrs L would have paid each month from March to July 2023 if they'd been informed of the 19 March 2023 rate change (and requested the CMP change immediately) and credit the extra amounts to the mortgage account, backdated to the months they would have been paid.

Again, the investigator endorsed this being a reasonable settlement but Mr D and Mrs L disagreed. Having noted that the overall mortgage balance increased by almost £2,000 during 2023, they said that's what they should receive in redress. The investigator didn't agree and so the case has come to me to review.

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.

To be clear, in this decision, I'm not revisiting the events that led to the preceding complaint. Here, I deal solely with the issue around the complaint raised in July 2023, and answered in October 2023, about the 19 March 2023 rate increase.

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

I've considered all the available evidence and arguments to decide what's fair and reasonable. That includes listening to and taking account of what Mrs L said in conversation with our investigator on 9 August 2024.

This is not a case where I have to decide fault. Mr D and Mrs L wouldn't have received notices of SVR changes that took place before 1 March 2023, because they were still on their fixed rate product until then, But YBS has admitted that Mr D and Mrs L were left off the mailing list for notification of the 19 March 2023 increase in SVR. It has apologised and offered redress; my role therefore is confined to deciding if that offer is fair or if YBS should do more.

Having taken account of everything both parties have said and provided, I'm satisfied YBS's current offer is not just fair; it's generous. I'll explain why.

Firstly, in conversation with our investigator on 9 August 2024, Mrs L said that failing to notify them of the February 2023 SVR increase meant they were paying the wrong CMP from 1 March 2023. She says the new CMP from that date was based on 6.49%, when it should have been 6.99%. I don't agree that's the case.

I appreciate that all other things being equal, the annual review of the CMP to take account of changes in SVR takes place on 31 December each year. But it's important to remember that the new CMP from 1 March 2023 wasn't driven by a *change* in SVR but by a switch *to* SVR when the previous product ended.

On 26 January 2023, in response to a separate complaint, YBS had written to tell Mr D and Mrs L that the correct new CMP from 1 March 2023 at 6.49% would be just over £1,010. But the actual CMP put into effect on 1 March 2023 was over £100 more at just under £1,120.

Meanwhile, the letter YBS failed to send notifying them of the increase from 6.99% to 7.49% on 19 March 2023 referenced that higher CMP as its starting point. All of that suggests to me

that the February increase to 6.99% had been factored in when the monthly CMP was re-calculated on 1 March 2023.

Secondly, YBS has agreed to credit the mortgage account with the extra payments Mr D and Mrs L would have made, but didn't, if they'd known about the 19 March 2023 increase in SVR. But those extra payments are sums that Mr D and Mrs L owed YBS under the mortgage contract. Their loss is not the extra amounts themselves; it's merely any additional interest charged because Mr D and Mrs L didn't pay the extra payments in the months they would have been paid. YBS' current offer doesn't only cover that loss, by virtue of the backdating, it also covers the extra payments themselves which Mr D and Mrs L were contractually required to pay.

The third point to make is that YBS is quite right to stop the redress at July 2023, because whatever it failed to tell Mr D and Mrs L in March 2023, it told them in July 2023. The letter they received notifying them of the July 2023 SVR increase also told them what they could change the CMP to if they didn't want to wait for the annual recalculation. That figure also took into account not just the 19 March 2023 SVR change but the one before it that Mr D and Mrs L also believe they missed out on (albeit I have explained above why I don't think they did).

So it seems to me Mr D and Mrs L had the opportunity fully to mitigate their position in July 2023. In addition to raising the new complaint, they could, and arguably should, also have instructed YBS to increase the CMP with immediate effect. They didn't need to wait for YBS to reply to the complaint.

The position in law is that mitigation requires a person 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. In my view, that's relevant and appropriate here, as I am required to take into account, amongst other things, relevant general legal principles. I consider that Mr D and Mrs L should reasonably have increased their CMP in July 2023 without waiting for a response to the complaint they'd raised.

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 D and Mrs L feel. That's a natural, subjective reaction, and entirely understandable.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae, focussing on the broader picture. That's what I've done.

My final decision

My final decision is that this complaint should fairly be resolved by Yorkshire Building Society implementing the settlement proposal set out above; that is,

- calculate the extra amounts Mr D and Mrs L would have paid each month from March to July 2023 if they'd been informed of the 19 March 2023 rate change (and requested the CMP change immediately) and credit the extra amounts to the mortgage account,

- backdated to the months they would have been paid; and
- pay Mr D and Mrs L £110 compensation.

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 D and Mrs L to accept or reject my decision before 9 September 2024.

Jeff Parrington

Ombudsman