

The complaint

Mr S's complaint is about a mortgage taken out with a business which is now part of Yorkshire Building Society (YBS). Mr S says that YBS acted unfairly when it appointed Law of Property Act Receivers (LPARs) over the secured property. Mr S has also complained about other administrative errors and issues on the part of YBS.

To settle the complaint, Mr S wants to be compensated for the LPARs taking possession of the property, compensation for damage the LPARs caused to the property and for the distress he has been caused.

What happened

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, including detailed opinions from two of our Investigators, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr S being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision.

Mr S had a self-certified, self-build residential mortgage with YBS taken out in 2006, secured over a property I will refer to as DH. The terms and conditions of the mortgage stated that this was an all monies charge, so it covered any and all borrowing Mr S had with YBS. Mr S also had a mortgage with YBS on a property I will refer to as CB, which YBS was told was a two-bedroomed bungalow.

Mr S was declared bankrupt in June 2021. At that point Mr S's liability for the mortgages came to an end.

The Trustee in Bankruptcy (TiB) noted Mr S's former wife (Mrs S) continued to occupy DH as a family home and so no action was taken by the TiB to take possession of the property, although a restriction was entered on the title at the Land Registry. Although the mortgage had come to an end due to the bankruptcy, Mrs S continued to pay the mortgage, and YBS took no action at the time. I am told that the equitable interest in the property was held in trust for Mrs S as sole beneficiary.

The TiB disclaimed any interest in CB. This is generally done when the TiB considers the property is, or has become, onerous due to the outstanding mortgage and the value of the property. The TiB noted that CB did not, in fact, exist.

In February 2024, after Mr S's ex-wife left DH, YBS appointed LPARs, who took possession of DH. Mr S complained to YBS, saying this action was unjustified and illegal, because there was no possession order or warrant of possession. Mr S was also concerned that the LPARs had caused damage to the property.

YBS didn't uphold the complaint. Mr S complained to our service. Two investigators considered the complaint but didn't think it should be upheld. Both noted the following:

- DH hadn't been repossessed under a court order; rather, LPARs had been appointed pursuant to breaches of the mortgage terms and conditions.
- Mr S's bankruptcy was a breach of the terms and conditions.
- It appeared CB didn't exist, which was another breach of the terms and conditions.
- The appointment of LPARs was not due to mortgage arrears.
- Once Mrs S had left the property, it was reasonable for YBS to appoint LPARs.
- If Mr S was concerned about the actions of the LPARs or that they had caused damage to the property, this would need to be taken up with the LPARs.
- There was no evidence of any error in the balances on the mortgage accounts but if Mr S disagreed, he was free to have his own audit carried out.
- The £50 compensation paid to Mr S for being inconvenience by poor communication in relation to a redemption figures was fair in all the circumstances.
- There was no evidence of a data breach by YBS.
- The Mortgage Charter didn't apply in this case, as YBS's actions weren't as a result of mortgage arrears.
- After Mr S moved back into the property, the LPARs were dis-instructed, which was reasonable.

Mr S didn't accept either Investigator's findings and asked for an Ombudsman to consider the complaint. Mr S said that on the day the LPARs took possession, they waited until Mrs S had left. But Mr S said he'd told YBS that he was moving into the property. Mr S disputed that CB didn't exist at the time the mortgage on it was taken out. However, the property had been demolished in 2015 and was now a building plot.

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.

Having done so, I've reached the same conclusion as the Investigators, for broadly the same reasons.

Appointment of LPARs: The crux of the complaint is that Mr S believes YBS acted unreasonably when it appointed LPARs in February 2024.

I'm satisfied that when Mr S became bankrupt in 2021, his estate (including all property in his name) vested in his TiB. Because Mrs S occupied DH and had a declaration of trust in relation to the equitable interest in her favour, the TiB took no action at that time, albeit a restriction was entered on the title at the Land Registry.

Once Mrs S ceased to occupy DH, YBS appointed LPARs. This is because the bankruptcy of the borrower, Mr S, is a breach of the terms and conditions of the mortgage. In the circumstances, YBS was entitled to appoint the LPARs, and acted reasonably in doing so. This is because, once Mr S had been declared bankrupt, his liability for the mortgage ceased. Mrs S was the beneficial owner of the property (Mr S being the legal owner). It was therefore reasonable for YBS to wait until Mrs S had vacated before the LPARs were appointed, given her interest in the property.

In the circumstances, in relation to DH, I'm satisfied YBS acted reasonably in appointing LPARs due to the breach of the mortgage terms and conditions requiring full repayment of the mortgage if Mr S was declared bankrupt. The fact that Mr S's bankruptcy had been discharged by the time the LPARs were appointed does not affect this.

The TiB disclaimed CB, on the basis that the property didn't exist.

Section 315(3) of the Insolvency Act 1986 says:

“(3) A disclaimer under this section-

(a) Operates so as to determine, as from the date of the disclaimer, the rights interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and

(b) Discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.”

By disclaiming CB, the TiB had decided he no longer wanted to have any interest in it. The Insolvency Service's manual confirms that:

“A disclaimer does not end third party rights or liabilities, the mortgagee will retain its security over the property and its right to appoint a receiver of rents or take possession...”

The disclaimer may have brought an end to the TiB and Mr S's interests in CB, but I'm satisfied that neither the bankruptcy nor the disclaimer brought the mortgage to an end. Section 315(3) quoted above specifically excludes third party rights (such as those of a mortgagee) from the TiB's disclaimer.

Mr S says that CB *did* exist at the time the mortgage on it was taken out in 2008, but that it was demolished in 2015 due to structural concerns. I can see from Google street view images that in 2008 there was a commercial property with what looks like a bungalow attached to it where Mr S says CB was located. But by June 2016 street view shows that both buildings had been demolished. By August 2024 what appear to be two semi-detached properties were under construction on the site.

If CB either didn't exist at the time of the mortgage, or was demolished after the mortgage was taken out without the knowledge and consent of YBS, this was a breach of the mortgage terms and conditions which obliged Mr S to keep the property in good repair, and prevented him from making any structural alterations to the property without the consent of YBS.

In the circumstances, and given that the mortgages were “all monies” charges securing Mr S's borrowing across all his YBS mortgages, I'm satisfied YBS was also entitled to appoint LPARs over DH for the breach of the mortgage conditions in relation to CB. The LPARs weren't instructed due to mortgage arrears, but because of breaches of the mortgage terms and conditions.

I don't uphold this part of the complaint.

Actions of the LPARs: The LPARs were Mr S's agents, not those of YBS. Therefore, whilst I've noted Mr S's concerns about damage to the property caused by the LPARs, that's something he'll need to take up with them. LPARs aren't subject to the jurisdiction of the Financial Ombudsman Service.

Mortgage Charter: Mr S says that, because his mortgage wasn't in arrears, under the Mortgage Charter YBS acted in breach of the Charter when it took possession. However, as explained above, the property wasn't taken into possession due to mortgage arrears, and therefore the Mortgage Charter has no effect in this case.

Account balances: The Financial Ombudsman Service doesn't provide an auditing service, and so it's not for me to say whether or not there have been any mistakes by YBS in relation to the charging of interest, the application of payments or if there have been accounting errors. If Mr S doesn't believe the account balances are accurate, it is open to him to arrange for the mortgage accounts to be audited by a suitably qualified and independent party such as an accountant or actuary.

Mr S would have to meet the cost of the audit, albeit if errors were found that were to his detriment, he could reasonably expect YBS to reimburse any reasonable cost of the audit as well as taking any corrective action the audit revealed to be necessary. And if that wasn't resolved to his satisfaction, Mr S would still have the opportunity to refer that complaint to us.

However, my review of the account histories does not lead me to conclude there has been any error on the part of YBS. I therefore don't uphold this part of the complaint.

Data breach: During the course of the investigation, Mr S said that YBS had committed a data breach by providing information to Mrs S. YBS found no evidence of this to corroborate Mr S's claim, and neither have I, and so I am unable to uphold this part of the complaint.

Communication issues: Mr S was passed between the LPARs and YBS in relation to a redemption statement. I'm satisfied Mr S was caused some inconvenience by this, but the £50 paid by YBS for this is, in my opinion, fair in all the circumstances. I therefore don't require YBS to do anything further in relation to this.

Conclusion

After careful consideration of everything Mr S and YBS have said, I'm not persuaded YBS acted unreasonably in its appointment of LPARs, given the breaches of the mortgage terms and conditions detailed above. I've also found no other account administration or data protection errors on the part of YBS. I'm satisfied the £50 paid for inconvenience caused to Mr S by poor communication is fair in all the circumstances.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 July 2025.

Jan O'Leary
Ombudsman