

The complaint

Mr A complains about how Yorkshire Building Society ('YBS') has administered his mortgage. He disputes the validity of the mortgage agreement, the interest rates applied and the calculation of his contractual monthly payment. Mr A also questions the legality and fairness of YBS taking enforcement action, such as possession proceedings.

What happened

Following advice from a third-party broker, Mr A took out a mortgage with YBS in July 2015. Mr A borrowed £230,850 (inclusive of fees added to the loan) on a capital repayment basis to be repaid over a term of 28 years. The interest rate was to be fixed at 4.74% until 31 January 2017, after which it would revert to YBS's Standard Variable Rate ('SVR') – 4.99% at the date of the offer.

Unfortunately, Mr A hasn't always been able to make his contractual monthly payments in full or on time. Because of this his mortgage has been in arrears since May 2016 and YBS began litigation in 2022. A court hearing took place in August 2022 and the Court issued a suspended possession order – this required Mr A to pay his contractual monthly payment plus £50 each month to clear the arrears.

Around the same time, in 2022, Mr A raised a complaint to YBS. In summary, he was unhappy that YBS didn't accept a promissory note as repayment of his mortgage debt and he wanted YBS to release its charge over the mortgaged property. YBS didn't uphold Mr A's complaint and said he remained liable for the full mortgage balance.

Mr A referred that complaint to this Service in December 2022. Our Investigator said YBS didn't need to take any further action. He explained that this Service doesn't have the power to decide if a mortgage is void, invalid or unenforceable – that's something for a court to decide. He said that where a consumer has borrowed money from a lender, it's fair and reasonable for the lender to expect repayment of the debt, in line with the terms and conditions of the mortgage contract. Because Mr A didn't continue with his complaint, we closed our file a short time later.

Mr A complained to YBS in January 2024 because he was unhappy that he wasn't eligible for a new interest rate product on his mortgage. YBS didn't uphold the complaint. It said it couldn't offer Mr A a new interest rate due to the arrears position on his mortgage.

Mr A contacted YBS several times between July and September 2024 about his interest rate and his contractual monthly payments, including how they'd been calculated following a reduction in the Bank of England Base Rate ('BoEBR'). He asked YBS to recalculate his Contractual Monthly Payment (CMP) and to provide a full explanation as to how the CMP is calculated. Ultimately, Mr A was unhappy with the explanation YBS provided so he made a complaint in September 2024. He raised several concerns, including about the CMP and interest calculation, the interest rate, and the validity of his mortgage agreement.

YBS sent its final response to Mr A's complaint on 11 October 2024. It said the mortgage offer is an outline of the terms and conditions of the mortgage and acceptance of that is Mr

A's agreement to these terms. It noted that annual statements had been sent to Mr A detailing the interest rate, monthly payment and all payments made. It also wrote to Mr A on 5 and 6 September 2024, providing details of the CMP along with a breakdown of the arrears and charges on Mr A's mortgage account. Ultimately, it didn't agree that it'd made an error or acted unfairly towards Mr A. So, it didn't uphold his complaint.

Mr A asked the Financial Ombudsman Service to look into his complaint. Our Investigator didn't think YBS had acted unfairly. He concluded that YBS had sent a copy of Mr A's mortgage agreement to him and that it wasn't unreasonable for YBS to exercise its rights. He found that YBS hadn't acted unfairly regarding the interest rate and that it'd applied interest to Mr A's agreement fairly. Finally, he concluded that YBS had acted fairly in terms of administering the arrears balance while Mr A wasn't making his CMP.

Mr A didn't agree with that and reiterated his concerns. He also asked for his case to be reviewed by an Ombudsman, so the case has been passed to me to decide. I reached the same overall outcome as the Investigator but, in part, for different reasons. So, I issued a provisional decision.

I have since issued a separate decision setting out the parts of this complaint we can, and can't, consider. In this decision I'll set out my findings on those parts of the complaint I have determined we can consider.

My provisional decision

I didn't think YBS had acted unfairly. I said:

"Mr A has referred to several rules and regulations. Many of those do not apply here. For example, s.140A of the Consumer Credit Act 1974 regarding unfair relationships. This is because Mr A's mortgage is a regulated mortgage contract which is specifically excluded under s.140A (5) of the Act. He has also referred to the Consumer Credit Sourcebook (CONC) 13.1.6. But that doesn't apply here either, because regulated mortgage contracts are exempt agreements – as set out in Art. 60B and 60C of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. The rules that apply to regulated mortgage contracts are set out within the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). I have taken into account the relevant rules, law and good industry practice when reaching my decision.

I note that Mr A complained to YBS previously because it didn't accept a promissory note as repayment of his mortgage debt. He also referred that complaint to this Service and our Investigator didn't recommend that the complaint should be upheld. The Investigator explained that this Service doesn't have the power to decide if a mortgage is void, invalid or unenforceable – that's something for a court to decide. And the investigator said that YBS doesn't have to accept a promissory note in settlement of the mortgage - a promissory note is simply a promise to pay at some time in the future, and YBS is entitled to treat the mortgage as outstanding until payment is actually made. We don't generally reconsider a complaint that has previously been referred to us. But, despite having some similarities, I'm satisfied the complaint Mr A is bringing now is a different one. I do think, however, that the outcome of the previous complaint is important for context.

It seems that Mr A has faced several challenges during the time he has held this mortgage, which have led to and worsened his financial difficulties. I'm sorry to hear of the difficulties he has faced. But, as has been previously explained to Mr A, this Service doesn't have the power to decide whether a mortgage is void, invalid or

unenforceable – this is something that a court would need to decide. Because of this, I won't be commenting on this any further. I can and will, however, decide what's fair and reasonable in all the circumstances.

Here, I can see Mr A borrowed money from YBS to purchase his home in 2015, so he has received the benefit of the funds YBS lent to him. I've seen the mortgage agreement which outlines the terms of the borrowing. I have also seen a copy of the signed mortgage deed which is referred to in the mortgage offer in section "1. About this offer document" where it says, "You are not bound by the terms of this offer document until you sign the mortgage deed and the loan monies are released". I note our Investigator has shared a copy of the mortgage deed with Mr A for his records and that Mr A was already in possession of his mortgage offer document.

Ultimately, I'm satisfied Mr A borrowed money from YBS. And so, it's fair and reasonable for YBS to expect repayment of that money, in accordance with the terms and conditions of the mortgage contract.

This brings me to Mr A's concerns about the calculation of his CMP. I know Mr A would like us to provide a forensic review of his mortgage account including the interest applied. But that isn't a service we can provide and so it isn't something I will be doing here.

However, I have considered the history of changes to the CMP on Mr A's account. Mr A's mortgage has been in arrears since 2016 which means the mortgage balance has been higher than it should be for almost a decade. And the higher the balance is, the more interest is charged.

The effect of this over time – where the arrears and additional interest aren't cleared – is that the mortgage balance doesn't reduce as quickly as it should. And because the term of the mortgage continues to reduce while the mortgage balance isn't reducing at the pace it should be, it ultimately leads to there being less time to repay a higher amount. That, in turn, means the monthly amount required to repay the mortgage is higher than it otherwise would have been, if the mortgage payments had been made in full and on time.

YBS has explained that it recalculates the CMP on Mr A's mortgage annually every March, considering the balance, term remaining and interest rate at that time. This is in line with the mortgage agreement. Although YBS hasn't automatically included the arrears when calculating the CMP – in line with mortgage regulation – it has included the additional interest that's been charged on Mr A's mortgage because of the balance being higher than it should be. This is so that the balance (minus arrears) will be repaid by the end of the agreed mortgage term, so long as the CMP is maintained following the recalculation. I think that's fair.

YBS will also recalculate the CMP where Mr A asks it to – for example, following an interest rate reduction. This is set out in the interest rate change letters and annual statements it has sent to Mr A. I note YBS also recalculated Mr A's CMP in 2020 following him taking a coronavirus payment deferral. It sent a letter to Mr A about that in 2020 including information on what he could do if he couldn't afford the increased CMP. I'm satisfied that was in line with the regulator's guidance at the time.

I understand why Mr A questions how the reduction in his CMP could be so small following the interest rate reducing in August 2024. But I'm satisfied the CMP calculation at that time correctly considered the outstanding balance including additional interest, the interest rate, and the remaining term. As I've explained above,

where a mortgage isn't on track – as is the case here – it can lead to the monthly payment required being higher than expected. Because the arrears had continued since the last re-calculation, more additional interest had been added in the meantime. So this re-calculation was based on a higher balance than would have been expected at this time but for the continuing arrears. The combination of a higher than expected balance and less time remaining on the term meant the CMP reduced by less than it would have done had there been no arrears.

Having carefully considered what's happened on Mr A's mortgage over the years, I haven't seen anything that leads me to conclude YBS has calculated his CMP incorrectly over the years. And I'm not persuaded YBS's actions have led to the capital balance, arrears balance, or the interest applied being higher than they should be either.

I've next considered Mr A's concerns that the interest rates applied to the mortgage don't align with the agreed terms and conditions. In doing so, while I'm restricted to considering if YBS has acted fairly since September 2018, I have taken into account the background of Mr A's mortgage for context. After the initial fixed interest rate ended in 2017, I can see his mortgage reverted to YBS's standard variable rate ('SVR'). Since then, the SVR has changed several times and YBS has provided evidence to show it wrote to Mr A each time to notify him of the change. I've seen a sample of those letters.

There isn't anything within mortgage regulation that says YBS must provide its customers with a detailed explanation of why the SVR is changing each time it changes it. So, I'm not persuaded YBS has acted unfairly by not giving Mr A the detailed explanation he may have hoped for.

YBS has, however, shared detailed information with us about the cost of funding its mortgage lending business. I'm satisfied it's appropriate to receive that information in confidence, as permitted by our rules, subject to providing a summary of it.

In summary, changes to YBS's SVR are linked to its cost of borrowing which often increases or decreases around the same time as – but not directly linked to – changes to the Bank of England Base Rate ('BoEBR'). But, due to the way its mortgages are funded, including by retail deposits, it is not always possible to pass on full reductions in the BoEBR – although I can see it's done so on most occasions. And I can see that when the BoEBR has gone up, YBS hasn't always increased the SVR by as much.

Ultimately, I'm satisfied the SVR changes were allowed for within the terms and conditions of Mr A's mortgage, which say among other things:

“2 Interest and Reasons for Variation of Interest Rates

2.4 We may at any time reduce the Interest Rate on the Loan without notice to you.

2.5 Subject to the terms of any particular Loan we can increase the Interest Rate at any time where we reasonably believe that the increase is needed for any one or more of the following reasons (which may relate to circumstances existing at the time or those which we reasonably expect to apply in the near future):

2.5.1 to take account of, in a proportionate manner, any changes in

the costs reasonably incurred by us in managing our mortgage business and in particular providing and administering our mortgage accounts;

...

2.5.3 to take account of, in a proportionate manner, changes to the cost of money which we have to borrow from time to time in order to finance our lending;

2.5.4 to take account of, in a proportionate manner, changes in the Bank of England base rate..."

So, while I appreciate the more significant increases to the SVR in particular – between 2022 and 2024 – would have been unwelcome for Mr A, I don't consider YBS has acted unfairly. I'm satisfied it has administered the interest rate in line with the mortgage contract and accompanying terms and conditions. It's taken account of changes in the Bank of England base rate. Where it hasn't been able to pass on changes in base rate in full, that's because of the costs of managing its mortgage business. And I haven't seen anything to suggest YBS has miscalculated or misapplied interest during the period I can consider.

I note that Mr A feels YBS should cease enforcement action against his property. His reasons for this relate to his concerns that a copy of the loan agreement can't be produced and that it isn't valid or enforceable, and that YBS may have been overcharging him by miscalculating his CMP and overcharging interest. As I've already explained, I won't be commenting on the validity or enforceability of the agreement. And I'm not persuaded YBS has overcharged Mr A. I have concluded that YBS is entitled to expect repayment of the money it lent to him in line with the mortgage contract. The remaining question for me to consider is: has YBS treated Mr A fairly and reasonably in taking, or telling Mr A it intends to take, litigation action?

YBS obtained a suspended possession order ('SPO') in 2022 which set out that Mr A was required to pay his CMP plus an additional £50 per month towards the arrears, to avoid further action being taken. I haven't seen any reason to suggest YBS acted unfairly or unreasonably in taking litigation action at that time, leading up to the court order. Several monthly payments had been missed, the arrears balance was almost £10,000, and YBS hadn't been able to come to an agreement with Mr A about how the mortgage would be brought back on track.

I can see Mr A met the terms of the SPO each month up to and including July 2024. In August, September and October 2024, however, he was paying around £30 each month which was over £1,700 less than he was required to under the SPO.

YBS wrote to Mr A in October 2024 explaining that he'd failed to maintain the terms of the SPO and that his arrears balance was over £11,300. It asked Mr A to call to discuss the matter and said that if Mr A didn't pay the amount that he'd defaulted under the SPO plan – around £3,406 – by 17 October 2024, then it may rely on the court order and seek an eviction date.

I don't think it was unfair for YBS to tell Mr A about its intentions. Mr A wasn't meeting the terms of the SPO, and the arrears position was growing. I can see YBS tried to discuss the matter with Mr A but he indicated that he wouldn't make the full payments while he was waiting for an answer regarding the issues he'd raised. But even if the CMP was incorrect – and to be clear, I do not consider it was – Mr A would have

known that payments totalling around £30 each month would be insufficient. This was less than even the additional payment of £50 required under the SPO to clear the arrears. He has told this Service that he's been reserving the disputed instalment amounts until clarity is provided and that he isn't refusing to pay. Ultimately it was Mr A's decision to do that, and his mortgage has fallen further into arrears as a result. That isn't something I can fairly hold YBS responsible for.

Overall, I don't consider YBS acted unfairly in telling Mr A it would take further action due to the position of his mortgage account. The position was getting worse with only very small payments being made, and it was unable to reach an agreement with Mr A on how things would be brought back on track. I'm uncertain on what the position of Mr A's mortgage is now, but I hope that he and YBS can come to an agreement to bring the account up to date – if they haven't already. Mr A will need to engage meaningfully with YBS if that's something he wants to explore. If an agreement can't be reached and things aren't brought back on track, it's likely YBS will continue to take action and that may ultimately result in it taking possession of the mortgaged property."

I invited Mr A and YBS to let me have any further comments or evidence they wanted me to consider before I make my final decision.

YBS agreed with my decision and didn't have anything further to add.

Mr A didn't agree with my decision and raised several points. He has re-iterated many of the arguments he had made previously including concerns about the validity and enforceability of the mortgage agreement, the calculation of his CMP and interest, reference to several rules and regulations being breached and that YBS shouldn't continue enforcement action because of his dispute about these matters. Additionally, Mr A has referred to past decisions made by this Service and has made several requests on how I should amend my decision and require YBS to share information with him.

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.

While I appreciate Mr A feels strongly about his complaint, I have already made it clear that this Service doesn't have the power to decide whether a mortgage is void, invalid or unenforceable. And that it is something that a court would need to decide. I have also already set out within my provisional decision that it's fair and reasonable for YBS to expect repayment of the money Mr A borrowed, in accordance with the terms and conditions of the mortgage contract. My conclusion regarding this hasn't changed.

Mr A has several expectations and requests in terms of the information that should be provided by YBS and shared with him. I've considered what he's said and I'm satisfied I don't require further evidence to be provided by the parties before I can reach my final decision. So, while I appreciate it'll come as a disappointment to Mr A, I see no fair reason to suspend my final decision as Mr A has requested. It may be helpful to explain that as we are an independent and impartial service, it is not for either party to direct the Ombudsman on how they should conduct their investigation.

I'm sorry to disappoint Mr A but we will not be sharing the detailed information regarding YBS's cost of funding its mortgage business with him as he has requested. That commercially sensitive information was, as I have already explained, received in confidence. That's permitted by our rules subject to me providing a summary of it, which I have done.

And I remain satisfied that YBS has acted fairly in how it has administered Mr A's interest rate.

Mr A has referred to specific sections of the Financial Conduct Authority's (FCA) Principles ('PRIN') and a particular part of MCOB. Mr A feels that these rules and regulations have been breached and that I have ignored that. As I set out in my provisional decision, I have taken into account the relevant rules, law and good industry practice when reaching my decision. It is not the role of this Service to make a finding on whether rules or regulations have been breached – that would be a matter for the FCA. Our role is to decide if the firm complained of has acted fairly and reasonably taking into account the relevant rules, law and good industry practice. And, having done that, I remain satisfied that YBS has acted fairly and reasonably in all the circumstances of this case.

While Mr A may have found reference to previous decisions by our Service which upheld matters that he considers are similar, we are required to investigate each case based on its individual merits. That's what I have done here, and I have set out detailed reasoning to explain why I have reached this outcome in this individual case.

Ultimately, I have considered again the conclusions I reached in my provisional decision and, while I appreciate Mr A will be disappointed, I see no reason to depart from them. I am satisfied YBS has administered Mr A's mortgage account fairly during the period I can consider. It appears that Mr A's mortgage may still be in arrears so I would encourage him to engage meaningfully with YBS about how he intends to bring things back on track. YBS should give fair and reasonable consideration to any proposals Mr A makes but, if an agreement can't be reached it may result in YBS taking possession of the mortgaged property.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 September 2025.

Keith Barnes
Ombudsman