

## **complaint**

Mr and Mrs P complain about the actions of their mortgage lender, Leeds Building Society (LBS). They're unhappy that LBS recalculated their monthly mortgage repayment, and included an additional sum to repay previous arrears, fees and costs without them agreeing to this.

Mr and Mrs P have now been told by LBS they can choose to pay this additional balance at the end of the mortgage term. They're unhappy they weren't given the choice to defer these costs before. Instead Mr and Mrs P say they've struggled to meet these additional amounts every month and this has made their financial difficulties worse.

Mr P has managed the complaint throughout. He asks that LBS refund all the additional amounts he's paid alongside his contractual monthly repayments over the years.

## **background**

Mr and Mrs P took out a mortgage with LBS in 2007. They borrowed £180,000 over 35 years on a capital repayment basis.

In 2009 the mortgage fell into arrears and LBS granted Mr and Mrs P an interest only concession as a way of helping them in their financial difficulties. Over the years Mr and Mrs P have fallen into arrears a number of times. LBS has agreed to capitalise arrears on a number of occasions too. Mr and Mrs P capitalised arrears of around £8,000 in 2011, £3,500 in 2012, £2,000 in 2014 and more recently £6,500 in 2018.

In 2018 Mr P queried an amount of around £60 he was paying each month called 'excess debt'. Mr P says he spoke to a number of people at LBS to try and find out what this extra payment or fee was. He was eventually told that this was an extra amount he was paying for previous arrears, fees and costs that had been incurred on the mortgage. LBS said it had calculated how much extra Mr and Mrs P would need to pay each month to have settled this amount in full by the end of the mortgage term. And its system had added this monthly figure to their repayments each month.

In April 2018 Mr P was given the choice to repay this 'excess debt' as a lump sum at the end of the mortgage term instead of through extra monthly repayments. He asked to defer this to the end of the mortgage and complained about why he hadn't been given this choice before.

LBS gave its final response on 14 June 2018. It said its policy wasn't to offer all its customers the choice of whether to defer this excess debt. It thought it was in most customers' best interests to pay this amount over the mortgage term rather than leave a lump sum to be paid at the expiry of the mortgage. But, it accepted that it had spoken to Mr P many times about his arrears and financial difficulties. It thought it should have offered this as an option before. LBS offered Mr P £150 as a goodwill gesture.

Mr P was unhappy with LBS' response and brought his complaint to us. Our investigator looked into the complaint and thought it should be upheld. He thought LBS should do more to put things right. He thought LBS should refund half of the additional payments Mr and Mrs P had been making for excess debt (going back to 2012). He also thought LBS should pay the £150 it had offered before as a goodwill gesture. LBS disagreed with our investigator's findings. LBS asked for an ombudsman to review the case again and reach a final decision on the matter.

## **my provisional findings**

I issued a provisional decision, dated 13 June 2019. I thought the complaint should be upheld but I thought something different needed to happen to put things right.

I said:

“It’s encouraging to see that LBS have accepted the reasons why this complaint has been upheld by our investigator. LBS’s concerns seem to be about what needs to happen now to put things right.

I’m in broad agreement with our investigator about why this complaint should be upheld. I can see the point LBS makes about it thinking that it is in most of its customers’ best interests to not have remaining loan balances outstanding at the end of the mortgage term. However, I’m also mindful that Mr and Mrs P are 12 years into a mortgage with an agreed term of 35 years. They’ve experienced financial difficulties and they’re struggling to meet their monthly repayments. They’ve spoken to LBS about this on a number of occasions and have taken various different steps to try to stay up to date with their mortgage payments.

LBS accepts that it had a number of opportunities to talk to Mr and Mrs P about the option to defer repayment of the ‘excess debt’ to the end of the loan term. If it had, I’m persuaded that Mr P would have chosen to defer this amount to expiry of the mortgage so he could keep his monthly payments lower.

### *what do I think needs to happen next?*

Where we decide that a business has made a mistake or should have done something differently, we typically look to put consumers back in the position they would’ve been in, but for the mistake. In this case, I think LBS should have given Mr and Mrs P the option to defer payment of the ‘excess debt’ to the end of the mortgage term. Instead, based on the evidence presented to me by LBS, Mr and Mrs P have paid additional amounts each month of between £22.70 and £64.62 from 2012 to 2018.

To put things right, I think LBS should rework Mr and Mrs P’s mortgage as if these additional amounts hadn’t been paid by them each month. Instead LBS should treat the excess debt as if it had been deferred for repayment at the end of the term. I’d like LBS to show Mr and Mrs P what this means in terms of i) the payment back to them now and ii) what ‘excess debt’ would then become due at the end of the term. It should be made clear to Mr and Mrs P and this service what the impact of this reworking would be to the mortgage account (in terms of interest that they’d pay, their credit rating and any other implications). I’d like Mr and Mrs P to be able to make an informed decision about whether they’d like these extra payments they have already made to repay a debt to be unwound.

I’d like to make it clear to Mr and Mrs P that I’m not planning to direct LBS to ‘write off’ any part of the excess debt which relates to arrears, fees and costs they’ve incurred. I’m exploring what would have happened if LBS had given them the chance to put off repaying this debt into the future. If Mr and Mrs P would like to understand more about what this might mean for them, I’d suggest that they speak to a debt charity before they agree to unwind additional payments they’ve made from 2012 to 2018 towards a debt that they owe LBS.

LBS offered Mr and Mrs P £150 for not discussing this option with them sooner. I think this compensation doesn't go far enough. I've thought about Mr and Mrs P's situation. They've been under some financial pressure for years now. Mr P's said they've had to borrow money elsewhere to meet the extra payments needed for LBS each month. I appreciate that LBS has taken steps to help them in their financial difficulty such as offering interest only concessions and capitalising arrears. However, deferring this excess debt was another valid option that wasn't explored or discussed with them for years. In recognition of this, and the increasing debt burden that LBS placed upon them over this period of time, I think LBS should pay Mr and Mrs P £500 for the trouble and upset caused by not exploring this option sooner."

### **responses to my provisional decision**

Mr P had no further comments to make having received my provisional decision.

LBS replied to say, in summary, that it thought there was a section in the terms and conditions (2007) which allowed it to apply 'excess debt' in the way that it has. LBS also said Mr and Mrs P didn't make all the 'excess debt' payments it had incorporated into their contractual monthly payments each month. For this reason it would be very difficult for LBS to work out how much it should pay back to Mr and Mrs P to unwind the excess debt.

LBS agreed to pay the increased compensation for trouble and upset caused to Mr and Mrs P that I'd said was appropriate.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've carefully reconsidered this case, taking into account all the further arguments put forward by LBS. Having done so, I still think this complaint should be upheld.

I've looked at the relevant section in the mortgage's terms and conditions that LBS referred me to. And I've thought again about the wider circumstances of this complaint and Mr and Mrs P's specific situation.

LBS has agreed that it had the opportunity to discuss options and plans to repay arrears with Mr and Mrs P. But rather than discuss this with them, it chose to add repayment of outstanding interest and fees to their mortgage payments each month. This may have been permitted within the mortgage terms and conditions, but it doesn't feel fair in this situation. It had the result of making Mr and Mrs P's financial difficulties worse. I genuinely don't think that was LBS' intention, but I'm persuaded that was the result.

I've thought about LBS' comments about how difficult it will be in practice to try to unwind the payments of excess debt over the years that have been paid. LBS has also pointed out that the excess debt wasn't always paid, along with other missed monthly payments. This is shown by the arrears escalating a number of times on this mortgage. Mr and Mrs P have capitalised arrears onto the mortgage balance on a number of separate occasions.

I appreciate that it might be difficult for LBS to rework the mortgage and effectively 'undo' the payments of excess debt made by Mr and Mrs P over the years. But this is at the heart of Mr and Mrs P's complaint and it seems the only way to put things right in this complaint. While this may involve some manual calculations and assumptions, I do consider this is needed to resolve this matter.

I'd like to remind Mr and Mrs P that I am not directing LBS to write off any mortgage debt.

I'm saying that LBS should have spoken with Mr and Mrs P about making plans to repay the arrears and given them the choice to add it to their monthly mortgage payment or pay it at the end of the loan term. I am now giving Mr and Mrs P the choice to either leave the extra payments they've made towards their mortgage as it is, or to have it repaid to them. If the excess debt payments are to be repaid to Mr and Mrs P, it will mean their mortgage balance increases. They will then owe more money to LBS to be repaid at the end of their mortgage term.

### **my final decision**

My final decision is that I uphold this complaint against Leeds Building Society.

To put things right, Mr and Mrs P should be given the choice of whether they'd like to leave their mortgage overpayments towards arrears and interest as they are, or ask LBS to unwind the additional payments they've made to 'excess debt' from 2012 to 2018.

If Mr and Mrs P choose to unwind the overpayments, LBS should rework the mortgage as if these overpayments hadn't happened. The amount of the additional payments should be paid back to Mr and Mrs P plus 8% interest.

Regardless of whether Mr and Mrs P choose to have their mortgage reworked by LBS, Leeds Building Society should pay Mr and Mrs P £500 for the trouble and upset caused to them by its actions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 22 August 2019.

**Emma Peters**  
**ombudsman**