

complaint

This complaint is about a mortgage Mr and Mrs F took out with Yorkshire Building Society (YBS) in 2008, and repaid in 2012 by selling the mortgaged property. They think it was:

- mis-sold at the outset;
- mis-handled whilst they held it; and
- the subject of an unfair and excessive early repayment charge (ERC) when they repaid it.

background

By way of a provisional decision dated 4 September 2017, I set out, with reasons, the basis on which I intended to determine this complaint. The content of that decision is attached below, and forms part of this final decision. Both parties have responded.

YBS accepted my provisional conclusions without further comment. Mr and Mrs F initially responded with a series of emails, each making a number of different points. They were then given some further documentation and more time to make their final submission.

We've now received Mr and Mrs F's final submission, and I summarise the main thrust of their arguments below:

- They borrowed the additional £100,000 to be debt-free.
- There were significant errors in YBS' assessment of their income, most notably its inclusion of a £5,000 bonus for Mr F that he never received. They had an income deficit of £458 (their initial statement of a deficit of £335 didn't include an insurance premium) which the consolidation loan made worse. This cost them an extra £6,000 in the first year and £9,000 after they'd taken out the loan with Blemain.
- I was wrong to say they'd not provided full details of the monthly cost of the unsecured lending before YBS agreed the consolidation loan. It wouldn't have done so if they hadn't. Repaying their existing unsecured debts was a condition of granting the consolidation loan, and YBS told them its affordability assessment was based on that happening.
- If YBS hadn't consolidated the unsecured debt, their existing creditors would have been limited to obtaining county court judgements (CCJs) with reduced payment agreements or, at best, getting charging orders.
- It wasn't true to say that they were under renewed pressure when they took out the Blemain loan and that their financial situation worsened after Mr F's accident. They were in trouble, with more going out than coming in as soon as they took on the extra debt.
- The further advance was taken out over fifteen years, to make it affordable (which it wasn't in any event) but if they'd sold the house to pay off the interest-only main mortgage after eight and a half years, they'd still have paid the ERC on the consolidation loan.
- The fifteen-year term would have ended after they'd reached the state pension age that applied at the time the loan was granted. YBS couldn't know the pension age would go

up in 2011, so how would it have expected them to pay the mortgage on just a state pension?

- YBS agreed the ported mortgage on the basis of their credit score and they have no issue with that, but the consolidation loan, which trebled the monthly payment, wasn't properly assessed for affordability. The adjudicator thought that, and they don't understand why I think differently.

The extended deadline for Mr and Mrs F to respond to my provisional decision was 14 February 2018. However, they've replied before then, and have confirmed that what they've sent is their final response. I've taken that to mean they've said all they wish to say. In that context, it seems sensible, and fair to all parties, that I progress the case without any further delay.

my findings

Before I deal with the case itself, I'll begin by addressing an observation from Mr and Mrs F that they think I rushed my initial assessment of the case. I assure them that's not so. It's true that I prioritised their case over others; my doing that was part of our response to the complaint they'd made about the service we'd provided to them up until then.

My senior colleague confirmed that would happen in a telephone conversation with Mr and Mrs F. I spent a great deal of time reviewing everything they and YBS had sent, and I've done the same with the further material they've sent in following the provisional decision.

A provisional decision from me on the merits of the complaint - rather than further consideration by the new adjudicator - shouldn't necessarily have come as a surprise to Mr and Mrs F, as that's what I told them would happen next when I issued my jurisdiction decision confirming what parts of the complaint we could look at.

I understand why Mr and Mrs F would be concerned that the Independent Assessor, in her response to their complaint about how we handled the case, reported the case file as being in a poor state. I happen to agree with that view, but I assure Mr and Mrs F it didn't prevent me from considering everything the file contained. That includes all of the (many contradictory) emails that flowed between the first adjudicator and the parties during the course of the investigation.

There's more material on the file now, and I've fully considered that too, even though, as before, I may not have expressly mentioned every individual point. I do stress that this isn't an indication of a lack of attention to detail. My remit, even in a case as complex as this, is to take an overview and decide what's fair "in the round".

Mr and Mrs F, in their new submission, often refer back to observations and comments the original adjudicator made and say they've been disadvantaged by my having disagreed with what he said. But I remind them that the primary reason the case is now with me is because *they* weren't happy with the first adjudicator's handling of the case or the conclusions he reached.

A review by an ombudsman is completely independent from anything that has preceded it, and that's what I have provided. When I reached very different conclusions from those that had gone before, I set out my conclusions in a provisional decision first, specifically to ensure Mr and Mrs F weren't put at a disadvantage. It allowed them the opportunity, backed

up by the additional time the Independent Assessor said they should have, to argue their case afresh, with new material.

Amongst the new material are copies of decisions reached by fellow ombudsmen in other cases, involving mortgages sold in 2006 and 2007 respectively. They point to these as evidence that the regulations in force at the relevant times also applied in 2008. Mr and Mrs F are right; up to a point.

The regulations were broadly the same between 2006 and 2008, but every single complaint is considered on its individual circumstances. They're all different, even if that's not always readily apparent from the information we're able to include in the published decision. So even where seemingly similar cases are assessed by reference to the same set of regulations, it doesn't follow that the same outcome should, or will, be reached.

Mr and Mrs F mention that YBS lent them a further advance of £10,000 on their original mortgage in November 2007, before it was ported to the new property in 2008. That may be so, but they haven't mentioned this before now. We can't really look at something unless a business has been allowed to look at it and respond first.

What I would say here is that Mr and Mrs F have said they have no issue with the lending decision to port the mortgage from one property to another. As the debt that was ported included the £10,000 they've just mentioned, it seems reasonable and logical to conclude they don't actually have an issue with the November 2007 further advance either. But if Mr and Mrs F do want to pursue it, we can arrange for a new and separate complaint to be set up and passed to YBS to consider, solely and specifically about that transaction.

Turning to the underlying complaint about YBS, 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'm afraid I'm going to disappoint Mr and Mrs F, because I haven't changed my mind on the outcome of the complaint. But I will address their further comments.

I made the point in the provisional decision that inconsistencies and/or anomalies can be found in what both sides have said. I've noted there appear to be shortcomings in the documentation from the time. On that point, Mr and Mrs F took offence at my suggestion that they didn't provide details of how much their unsecured debt was costing them at the time. But I can only consider the evidence both sides send us and, at the time I said that, both sides had told us they'd sent us all they had and wanted us to consider.

The extra material Mr and Mrs F have sent us includes an email they sent YBS in April 2008, with full details of all their unsecured debts and the monthly cost of servicing them. That being the case, I can understand why Mr and Mrs F were upset by what I said, and I apologise unreservedly. I'll return to the content of the email shortly.

I've thought also about what Mr and Mrs F say about YBS' assessment of their income. They ask why YBS would have included a £5,000 bonus that Mr F never received. It's a pertinent question, and one that I suspect can't be answered satisfactorily at a distance of almost ten years, when no one's likely to remember who mentioned the figure or in what context they did so.

But income's not the most important factor when assessing the affordability of a consolidation loan; because for the most part the debt already exists in a form that the

consumer can no longer afford to service. The aim is to make that debt more affordable. So ultimately, it's outgoings - before and after - that matter the most.

My attention is drawn to Mr and Mrs F saying that they borrowed the £100,000 consolidation loan to be debt-free. It's not possible to become debt-free by borrowing. I'm fully aware that the mortgage payment was substantially bigger after the consolidation loan than before. But the point I made in the provisional decision is that the consolidation loan was meant to eliminate monthly outgoings on unsecured debt payments likely to have been far greater than the increase in the mortgage payment. *That's* where the affordability of the consolidation loan was meant to come from. I explore that next.

YBS said recently that it estimated the reduction in Mr and Mrs F's monthly outgoings from consolidating just the credit card element of their unsecured debt at "*approximately £600 at least*". The April 2008 email shows the position Mr and Mrs F reported to YBS to support the application for the consolidation loan. It states that their unsecured credit (credit card *and* loans) was in fact costing them in the region of £2,300 per month. That being so, replacing all of them with a consolidation loan costing less than £900 per month, should reasonably have improved Mr and Mrs F's monthly cash-flow by about £1,400. If it didn't, I can't fairly hold YBS responsible.

Overall, I'm satisfied YBS did conduct an affordability assessment before granting the consolidation loan. I don't think it was flawless, but everything I've seen tells me that taking the £100,000 consolidation loan and using it to repay existing unsecured creditors should have made a very substantial improvement in Mr and Mrs F's finances. That's even taking account the life assurance premium that Mr and Mrs F believe I've disregarded. To be clear, I hadn't disregarded it; I'd simply not mentioned it.

Mr and Mrs F clearly believed they'd benefit from the consolidation (otherwise why would they have been pressing for it from the outset?) and YBS believed it, based on the information that I'm now satisfied it had available. I don't think either party was wrong to think that; and that's why I can't fairly conclude that YBS acted irresponsibly when it agreed to lend.

As far as the fifteen-year term is concerned, it's true that it overran the term on the main mortgage by several years. If there had never been any problems, and Mr and Mrs F had been able to manage their mortgage through to when the main account fell due, then there could have been an issue. The stated repayment vehicle for the main mortgage was the sale of the house. Selling the house would have meant repaying everything; i.e. the consolidation loan as well as the main advance.

As Mr and Mrs F point out, repaying the consolidation loan then would have activated the ERC clause. If any of that had happened, Mr and Mrs F would have a case for complaining that they'd been unfairly forced to incur the ERC in those circumstances. But none of that did happen. We can't consider and award compensation for something what *might* have happened but didn't.

The second point Mr and Mrs F make about the fifteen-year term is that it ran past what was, at the time, their state pension ages. But state pension age is not the same as anticipated retirement age. Selling or arranging a mortgage with a term that runs beyond state pension age is not automatically wrong. It's often possible for people to continue to work after they reach state pension age.

The point of sale records don't tell me whether Mr and Mrs F's retirement plans, including when they anticipated stopping working, were specifically discussed. But I'm as sure as I can be that when they took it out, Mr and Mrs F knew how old they'd be when the consolidation loan ended. So it's reasonable to conclude, on balance, that Mr and Mrs F knew they'd need to continue working after reaching state pension age, in order to repay the consolidation loan.

AS they agreed to take out the consolidation loan over the fifteen-year term, that suggests they were prepared to do that. I've not seen anything in what Mr and Mrs F have sent us to suggest that working beyond state pension age might have been an unrealistic prospect for them *at the time*. That all changed, of course, when Mr F suffered his industrial injury, but neither they nor YBS could have foreseen that happening in 2008.

Mr and Mrs F have disagreed with my view that they had come under renewed financial pressure by the time they took out the second charge loan with Blemain. That's a conclusion I came to after reading them saying they borrowed that money to help them manage their cash flow. I can't think of a clearer indication of financial pressure than using borrowed money to meet regular outgoings. I've looked hard at what Mr and Mrs F have said about *when* they again began to find it hard to manage financially. I don't think there's anything there that's inconsistent with what I said in the provisional decision.

That brings me to Mr and Mrs F's argument about their existing unsecured creditors having limited options for recovery of the money they'd borrowed. It's important here to remember that most of the money YBS lent on the consolidation loan didn't create new debt that didn't already exist. That's partly why, as I said earlier, income is less influential than outgoings in assessing the affordability of a consolidation loan. It replaced an aggregate debt equal to (or maybe even more than) the main mortgage balance, that numerous other individual creditors had previously made available - separately - to Mr and Mrs F.

My first observation is I've seen nothing that would have me think Mr and Mrs F believe those creditors acted irresponsibly in the lending decisions they made. My second observation is that I'm not persuaded how much Mr and Mrs F have reflected on their own actions in accumulating the debt to begin with.

I don't intend that comment unkindly. But it's very apparent from what *they've* sent me that Mr and Mrs F's problems began long before YBS provided the mortgage for them to move house. The consolidation loan that followed should have made things better by taking around £1,400 out of their monthly outflow.

Of course, when making their lending decisions, the unsecured creditors will have known what recovery options were open to them. Typically, a CCJ would at best result in a reduced payment arrangement for a limited period. This might be followed by a commercial decision to write off much of the outstanding balance as unrecoverable. A charging order would increase the possibility of full recovery, but only if there were enough equity after priority charges had been settled. Also, a charging order provides no say about when the equity might be realised.

But unsecured lenders still lend in the reasonable expectation that they'll be repaid in full, and Mr and Mrs F's creditors *were* repaid in full. I don't think it's unreasonable that Mr and Mrs F ended up paying back all of the money they'd borrowed - and presumably enjoyed the benefit of. It's certainly not a reason for finding that YBS treated them unfairly in consolidating their unsecured debts into their mortgage.

my final decision

My final decision, for all of the reasons set out above and in my provisional decision, is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 2 March 2018.

Jeff Parrington
ombudsman

CONTENT OF PROVISIONAL DECISION

complaint

This complaint is about a mortgage Mr and Mrs F took out with Yorkshire Building Society (YBS) in 2008, and repaid in 2012 by selling the mortgaged property. They think it was mis-sold at the outset, mis-handled whilst they held it, and the subject of an unfair and excessive early repayment charge (ERC) when they repaid it.

background

In 2008, Mr and Mrs F inherited a one-third share in their parents' house. They bought the remaining two-thirds by "porting" their existing mortgage of about £87,500 with YBS. The mortgage was on an interest-only basis. The mortgage offer was issued in April 2008.

At the time of the port, Mr and Mrs F were interested in borrowing more. The main mortgage completed first, and then in May 2008, YBS lent them a further advance of about £100,000 (initially on a capital repayment basis but apparently switched to interest-only later) which was used to consolidate a range of existing unsecured consumer credit debts that Mr and Mrs F had outstanding. In October 2009, Mr and Mrs F took out another loan, for £24,000, with a business called "B". The loan from B was secured by a second charge over their mortgaged property.

In 2010, Mr F had an accident at work. He and Mrs F claimed on their mortgage payment protection insurance (MPPI), and the policy paid out for twelve months. Mr F wasn't able to return to work and he and Mrs F continued to struggle financially. With arrears building on the mortgage, YBS added fees and charges to the mortgage account to cover the cost of managing the arrears.

Eventually, in late 2012, facing the prospect of possession, Mr and Mrs F sold the house. When they did that, YBS applied an ERC of just over £6,000. In all, Mr and Mrs F paid over £200,000 to clear the mortgage. Mr and Mrs F complained about the ERC almost immediately. YBS provided a final response in January 2013 saying the ERC had been fairly charged. The response also covered some other matters, including a visit from a field agent, the adding of £306 of arrears-related charges and a refund of the MPPI premiums that had been charged after the policy finished paying out in 2011.

There matters rested until July 2015, when Mr and Mrs F complained again. They raised the ERC again, but also focussed on the suitability of the mortgage that had been sold to them. In particular, they thought the further advance had been granted without a proper assessment of their ability to afford it. YBS issued a second final response, the main points of which I summarise below:

- The initial mortgage sale in 2008 was a direct port of a mortgage they already held on a different property with no change of terms. This meant Mr and Mrs F avoided an ERC of over £2,000. The further advance for consolidation was assessed for affordability, and actually reduced Mr and Mrs F's monthly outgoings.
- On both occasions, YBS has assessed Mr and Mrs F's attitude to risk, completed the relevant fact-find and, in the case of the further advance, warned Mr and Mrs F that consolidating unsecured debts to make them more manageable might make them more expensive to repay in the long-term. It also told them the consolidated debt would be secured on their home.
- It had already dealt with the ERC in the 2013 final response.
- The mortgage had been over £8,300 in arrears when YBS started possession proceedings. Even if the MPPI refund had been taken off the arrears balance rather than the general balance, the arrears were still serious enough for litigation to have happened.

my provisional findings

I trust Mr and Mrs F won't take it as a discourtesy that I've condensed their complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Our rules allow me to do that. 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.

I have looked at the case previously, when deciding how much of the complaint we were able to consider under our rules. That's why much of the above narrative will look familiar to Mr and Mrs F and to YBS. My decision on that was that we had jurisdiction to consider all parts of the complaint other than the levying of the ERC when the mortgage was paid off in 2012.

Here, I've looked at the merits of the issues Mr and Mrs F have raised, other than the levying of the ERC. In doing so, I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I begin with the allegation that the mortgage and further advance weren't properly risk-assessed for affordability. The mortgage and the further advance on it may have happened within a short period of each other, but they were separate sales and, more significantly, separate lending decisions. So it's right that I consider each one individually, starting with the mortgage

the initial mortgage sale

The starting point here is the point-of-sale documents, and the business' contact notes from the time. The latter show that discussions about the new mortgage began in February 2008 when YBS recorded, on 12 February, that *"Custs have seen a property and have put in an offer on it at £330K, this has been accepted."* and, as Mr and Mrs F's intended strategy for repaying an interest-only mortgage *"sale of property or inheritance from Mr F's late father"*.

It's now accepted that the property Mr and Mrs F had made an offer on was their parents' property, and the inheritance in question was the one-third share they'd already acquired in it. I don't need to concern myself with how that confusion arose, because I'm satisfied it was soon clarified. I note that on the application form for the mortgage, the repayment strategy was initially written as *"inheritance"*, but amended on 7 March 2008 to show *"sale of property"*.

The mortgage itself was, in essence, a "roll-over" of the mortgage Mr and Mrs F already had on their previous property. It was for just under £87,500, on interest-only with a running time of eight years and six months. Two different interest-rate products were ported to the new mortgage; a tracker rate of 2.10% below YBS' standard variable rate running to 29 March 2009, and a fixed rate of 6.39% running to 28 February 2010.

It's clear from the contact notes that YBS knew Mr and Mrs F had substantial other debts; it also knew that Mr and Mrs F would, if possible, want to consolidate those debts at some stage. But it seems to me that with the proposed mortgage presenting no material change to what Mr and Mrs F already had, the lending decision was made easier for YBS to approve.

That's not to say I think YBS was complacent or negligent in considering Mr and Mrs F's circumstances. Aside from the contact notes from the time revealing an extensive discussion, I've seen a letter the business sent them on 27 March 2008 – before the mortgage offer was issued – setting out an assessment of their demands and needs in respect of life and home insurances. I can't say if all (or even any) of the recommendations in that letter were taken up; it's sufficient for me that such an assessment was made.

Overall, I'm satisfied that YBS considered the mortgage application to an acceptable standard. The lending decision and recommendation were reasonable, not least because they didn't change anything for Mr and Mrs F, in terms of risk or exposure.

the further advance

I've mentioned already that the possibility of borrowing more on the mortgage to consolidate consumer debt was already part of the conversation when the mortgage was being arranged. That was picked up almost as soon as the mortgage was completed.

Mr and Mrs F have pointed out that YBS' lending policy at the time ruled out applications for further borrowing in the first six months after a mortgage has started. YBS has said it waived that restriction for them because the new mortgage had been a like-for-like replacement for the mortgage Mr and Mrs F had before. It was up to YBS to exercise its discretion on how strictly it applied the six-month restriction, and I don't see any reason to interfere with the judgement it made here.

Mr and Mrs F signed the application form for the further advance on 29 April 2008, but before then, they'd had an email "conversation" with YBS' advisor to establish the full extent of the unsecured debt. On 23 April 2008, Mr F emailed with information showing that he owed over £52,000 on loans and credit cards, and Mrs F owed more than £33,500.

YBS replied asking for a breakdown of the monthly amounts and anticipated end dates of the existing commitments. I've not seen that there was a reply, so I can't be certain how much those debts were costing Mr and Mrs F a month (I'll come back to that later) or how long it would have taken to clear them. But I've seen a letter YBS sent Mr and Mrs F on 29 April 2008, the day they applied for the further advance.

That letter recommended Mr and Mrs F go ahead with consolidation, and told them that if they did, they'd pay just over £742 per month, and an estimated total payment of almost £135,000. The letter also contained the following narrative:

"The overall long term cost of repaying the debt/s that you are consolidating into your additional loan may be significantly higher than the cost of repaying these under your current arrangements. As the debt will be secured against your home, it is important you ensure you can afford to make your monthly repayments."

I think that's pretty clear; I'd certainly be slow to conclude YBS didn't take reasonable steps to make sure Mr and Mrs F understood the implications of what I'm satisfied they wanted to do. That's not all, though; consolidation may have been something Mr and Mrs F wanted from the outset, but YBS was also *recommending* they do so.

So even though Mr and Mrs F wanted to consolidate, and YBS took reasonable steps to make them aware of the consequences of doing so, I still have to consider if the recommendation was a suitable one. Mr and Mrs F clearly don't think so now, but without wishing to sound uncharitable, that's a naturally subjective response made in hindsight based on what's happened since.

That's entirely understandable, but what I have to do is make an objective assessment of the lending decision, based on what was known of Mr and Mrs F's circumstances at the time. I also have to make that assessment based on lending policies, the regulatory framework and what was considered normal practice at the time. I can't impose today's standards onto a lending decision made nine years ago.

Notwithstanding that they'd told YBS they owed just under £86,000, Mr and Mrs F actually applied to borrow £100,000. The offer of advance was issued on 10 May 2008; it was on a capital repayment basis, with an intended running time of fifteen years. The interest rate was fixed at 6.44% until 31 May 2018. The offer quoted a monthly payment of around £864, and predicted the total cost of repaying the debt at just over £156,200.

Both of these amounts are higher than those given in the 29 April 2008 letter, but that letter was based on Mr and Mrs F borrowing £85,675, the aggregate total of the debts Mr F listed in his email of 23 April 2008.

Piecing together the reason for the increase isn't straightforward; YBS' handwritten notes from the time suggest Mr and Mrs F's total debts were closer to £92,000. Meanwhile the typed contact notes point to an informed discussion in which Mr and Mrs F confirmed they wanted affordable monthly payments that would clear this part of the mortgage down to zero by term end.

In essence, a decision on the suitability of the recommendation to consolidate turns on how much it was likely to save Mr and Mrs F per month, and whether their need for that saving was strong enough to offset the likely greater lifetime cost of repayment. YBS, in its response to the complaint, has said that it estimates the minimum monthly payments on Mr and Mrs F's credit cards alone would have been more than £1,500; on top of that there'd have been the instalments on their various loans.

Mr and Mrs F say that assessment's been made now, after the event; it should have been done at the time. I take their point, but I go back to something I mentioned earlier; that is, that YBS asked them for, and apparently didn't get, full details of the monthly outgoings on the debts they wanted to consolidate. But regardless of when it was made, YBS' assessment of the likely monthly savings Mr and Mrs F would benefit from seems to me quite plausible. It also points towards Mr and Mrs F's need for the consolidation being quite considerable.

Even with them borrowing more than they strictly needed, the extra lifetime cost of repayment (which I'm satisfied they were in a position to understand) would, in my view, have been outweighed by the significant improvement in their monthly cash-flow that should have come from consolidation.

If that improvement didn't come – and the fact Mr and Mrs F borrowed £24,000 from B apparently to help meet their mortgage payments suggests it didn't – I can't fairly put that at YBS' door. Overall, the recommendation to consolidate wasn't unsuitable and I don't find that the further advance was mis-sold.

subsequent financial difficulties and possession action

Between 2008 and their eventual sale of the house at the end of 2012, Mr and Mrs F came under increasing financial difficulties; what I consider here is how YBS dealt with them. The starting point here is that a lender has a regulatory duty to treat customers who are in financial hardship fairly. Balanced against that is a lender's right to take reasonable steps – including, if necessary, legal action to enforce its security – to recover money it's lent in good faith.

As mentioned above, it's likely Mr and Mrs F were finding themselves under renewed pressure financially in 2009 when they took out the secured loan with B. But I think it's fair to say their position substantially deteriorated following serious injury Mr F suffered the following year. He was unable to work, and as I understand it hasn't worked again since. For the first twelve months, the mortgage payments were covered by an MPPI policy. Thereafter, the mortgage fell into arrears.

During that time, YBS added monthly arrears management fees to the mortgage account. As a starting point, this is something lenders are allowed to do; it's in the mortgage contract, and details of the fees are set out the mortgage tariff – itself, part of the contract. There's more to consider than that; we don't just look to see if a business has the right to do something; we also consider whether it acted fairly when it did it.

Here, however, I don't need to do that. That's because YBS has already reviewed the arrears fees it applied to Mr and Mrs F's mortgage, and made its own decision to refund them all, with interest. It did that in 2014 - i.e. after the mortgage had been paid off - and sent Mr and Mrs F a cheque.

Arrears fees add to the total mortgage balance, but they don't increase the *arrears* balance itself. Similarly, MPPI premiums were added to the total mortgage balance but not to the arrears balance.

When YBS later refunded premiums that had been charged after Mr F's claim had finished, the refund didn't reduce the arrears balance, because the premiums hadn't increased it to begin with.

The relevance of this is that the existence of the arrears fees and/or MPPI premiums won't have had any bearing on YBS' eventual decision to begin possession action. YBS did that because it thought the arrears were serious enough - and the prospect of recovering them by other less drastic means unlikely enough - to justify a legal route. Lenders have to exercise their commercial discretion in such situations, and generally we won't interfere with or otherwise second-guess a lender's judgement.

We'll only do that if we think a lender's exercised its judgement unfairly. Here. I don't find that YBS did that. Arrears had reached more than £8,000, and no payment at all was received after May 2012. In that context, YBS might reasonably have concluded that there was little prospect of Mr and Mrs F being able to get back on track and maintain a payment record to reduce and ultimately repay the arrears. I've no doubt YBS' decision to begin possession action, and the resulting litigation costs that came with that, will have been very unwelcome to Mr and Mrs F, but I can't - and don't - find that it was unfair.

In the end, the legal action didn't result in YBS taking possession. Whilst all this had been going on, Mr and Mrs F had been trying to sell the house themselves. They eventually succeeded in late 2012, but not until after reducing the asking price for the house substantially from its initial level. Mr and Mrs F believe they were forced by YBS to accept less for the house than it was worth.

I understand their strength of feeling on this point, but I'm afraid I can't share it. Ultimately, Mr and Mrs F were in charge of the sale, and the decisions on how much to ask, and eventually to accept, were theirs. I realise they were probably driven to sell by a desire to avoid repossession, but I've already explained why I don't think taking legal action was unfair treatment on YBS' part.

If Mr and Mrs F hadn't sold the house, it's likely YBS would have obtained a possession order and then sold the house itself. Whilst I can't speculate on what price the house might have sold for in possession, it's difficult to conclude that a better outcome would have resulted from that rather than from Mr and Mrs F selling the house themselves.

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 from their submissions the intensity with which Mr and Mrs F have brought the complaint. They see error or wrong-doing in almost everything YBS has done (or not done). That's a natural, subjective reaction, and entirely understandable, given what they've been through in the years since they started this mortgage in 2008.

But look hard enough and it's possible to find inconsistencies and/or anomalies in what both sides have said and done from time to time. Be that as it may, I have to take a different approach. I'm impartial and I have to look at things subjectively, sometimes taking a step back from the fine detail and instead focussing on the broader picture. That's what I've done.

I'm not unsympathetic towards Mr and Mrs F's situation. The pressure to try to keep their home against a backdrop of long-term financial hardship and, in Mr F's case, poor health must have been immense. But after looking at everything both sides have said provided, I'm not persuaded Mr and Mrs F's problems were caused - or made worse by - anything YBS did but shouldn't have done, or anything it should have done and failed to do.

my provisional decision

For the reasons set out above, but subject to the further submissions of both parties by the due date, my provisional decision is that I don't intend to uphold this complaint.

We normally give the parties to a complaint one month to consider a provisional decision and provide further submissions. Here, I'm very much aware that we've delayed dealing with Mr and Mrs F's case

in a timely fashion ourselves. I'm also conscious that in my provisional decision, I'm giving Mr and Mrs F a lot to think about.

In that context, it hardly seems fair not to give them a reasonable interval of time to consider the decision and provide their response. For that reason, I'm happy to give Mr and Mrs F up to two months to respond, if they need it. So I'll issue my final decision after 6 November 2017, or sooner than that if both parties confirm they've said and provided all they wish to. All I'd add is that any further submissions that either party makes should be materially new. There's no need to repeat what's been said already.