

The complaint

Mr and Mrs J complain that Landmark Mortgages Limited (Landmark) has declined their request to extend the term of their mortgage. They say there are several issues with their mortgage which affect the fairness of this decision.

What happened

Mr and Mrs J have an existing an interest only mortgage with Landmark. This has three sub-accounts to it; the initial mortgage was taken out in 2003, a product switch and additional lending in 2005, and a further secured loan taken out in 2007. The term of the product taken out in 2005 ends on 1 November 2023, with the loan from 2007 due to end in March 2027.

In March 2020 Mr and Mrs J asked Landmark for an extension to the term of their mortgage. They asked for a minimum of 10 years but ideally 15-18 years. Mr J primarily dealt with the mortgage adviser who undertook an information gathering exercise and an affordability assessment.

Mr J explained that he hadn't been working for a couple of years but that he'd started working again as an independent financial adviser (IFA) in January 2020. This meant that he couldn't provide the evidence requested in relation to his more recent income, but he did have earnings from before he stopped working in 2018 to support his projections of his future earnings. Mr J also explained the context behind their other assets and debts.

In July 2020, Landmark declined Mr and Mrs J's request to extend the term of their mortgage on an interest only basis. It said this was because based on its affordability assessment - it didn't think this supported Mr and Mrs J being able to afford the monthly payments. Landmark acknowledged their circumstances and said it would review the matter again once Mr J could provide two years of trading to demonstrate his income.

Mr and Mrs J complained about the following:

1. That they had been mis-sold an interest only mortgage with a high-risk repayment strategy when they should have been advised to take out a repayment mortgage.
2. There were inaccuracies in the initial mortgage documentation – and in June 2020 Mrs J couldn't pass security because the mortgage had her forename down incorrectly.
3. Landmark declined Mr and Mrs J's request to extend their mortgage on an interest only basis. They think they should have been allowed an extension until they were eligible for equity release. This has caused a great deal of stress and impacted Mr J's mental health as he's worried about losing their family home.
4. Landmark shouldn't have asked extensive questions if it would never have offered any products or extensions. Mr and Mrs J think it has breached the General Data Protection Regulations (GDPR) and that it only wanted to gather information on their assets for its own purposes.

5. Mr and Mrs J say the interest rate Landmark has been applying to their mortgage is unfair – they think it's higher than other lenders and equivalent to subprime mortgage lenders.

Landmark didn't uphold the majority of the complaint points. It accepted Mrs J's forename had been recorded incorrectly on the original mortgage paperwork and apologised for this. However, it said that:

- It wasn't involved in the sale of the property or mortgages and the 2005 product switch was non-advised.
- It wouldn't extend the mortgage as the affordability assessment didn't support the payments being affordable, including on an interest only basis.
- The information it asked for was relevant to its assessment of Mr and Mrs J's request and so it hasn't breached GDPR.
- The interest rate had been applied in line with the mortgage agreement and was comparable with other mortgage providers. There is not an applicable early repayment charge if Mr and Mrs J wish to re-mortgage.

When Mr and Mrs J brought their complaint to our service, Landmark confirmed it didn't consent to our service looking at some elements of their complaint on the grounds that they had been brought too late. This included:

- The sale of the mortgage and suitability of an interest only mortgage (rather than a repayment mortgage).
- Inaccuracies in the original paperwork.
- Interest rate changes that took place more than six years before Mr and Mrs J complained to Landmark.

The investigator agreed we couldn't consider these events as they had taken place more than six years before the complaint was raised with Landmark. And Mr and Mrs J were aware or ought to have been aware they had an interest only mortgage, of any inaccuracies on the original paperwork, and the interest rate being applied to their mortgage. There were no exceptional circumstances preventing Mr and Mrs J from raising a complaint in time. Mr and Mrs J appear to accept our service doesn't have jurisdiction in the above matters.

Over the course of the complaint, the investigator also concluded:

- They didn't think there had been any significant impact or distress caused to Mr and Mrs J as a result of Mrs J failing to pass security in June 2020. Landmark apologised and updated its records quickly and so they didn't think an award was appropriate.
- Landmark informed Mr and Mrs J in 2015 that it didn't offer new products. Mr and Mrs J were notified of interest rate changes on their account and the changes were made fairly and in line with their agreement.
- It was reasonable for Landmark to expect repayment. Landmark had gathered information to assess Mr and Mrs J's request for an extension and it was reasonable for it to decline this request based on affordability in the circumstances.
- Mr and Mrs J didn't agree, in summary they said:

- Landmark shouldn't have gathered information from them if it would never have agreed to a term extension and this amounts to a breach of GDPR.
- Interest rates were high considering the status of the lending and original mortgage.
- They have been continuously self-employed for twenty years.

Landmark hasn't responded to the investigator's most recent view, and so I have taken it to have accepted the investigators findings.

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'm not upholding this complaint, I'll explain why.

For clarity, I agree with the position that has been shared with both parties to this complaint in relation to our service's jurisdiction (our ability to consider the complaint. I.e. that certain elements of the complaint have been brought too late as set out above. As this isn't in dispute I won't go into further detail.

Mr and Mrs J appear to have raised the issue of Mrs J's forename being incorrectly recorded as an example of one of the numerous issues they have had with Landmark rather than describing any serious impact this incident had on them. As I've said, I'm not considering the initial error (due to the time that's passed) only the call in June 2020 in which Mrs J couldn't pass security. Having listened to the call and considering that Landmark's records were updated quickly, I agree that Landmark has done enough to put matters right once aware of the issue.

Mr and Mrs J's request for a term extension.

- Mr J contacted Landmark in March 2020 to explain that their circumstances had changed, and they wouldn't be able to repay their mortgage at the end of the term. Landmark explained that it couldn't offer new products but that it could provide variations. At this point, whilst Landmark was entitled to expect repayment the end of the term, it was right to consider what changes it could make to help Mr and Mrs J – in particular to consider what would be in Mr and Mrs J's best interests.
- Here, Mr and Mrs J requested a term extension. In the context of Mr and Mrs J's request, it was reasonable for Landmark to gather information from them in relation to their finances to establish both whether they would be able to maintain their payments if an extension was agreed, and whether they had a reasonable plan for repaying the mortgage balance at the end of the extended term.
- Mr and Mrs J say Landmark would never have agreed to extend the term of their mortgage and so it shouldn't have gathered their personal data. However, I don't think that Landmark's decision to decline a term extension in the circumstances means it never would agree to do so. Landmark has confirmed it would consider a term extension where appropriate, as it is expected to, and it provided its reasons based on the information gathered for its decision. If Mr and Mrs J feel Landmark have breached their data protection rights, then the appropriate organisation to raise this with is the Information Commissioners Office (ICO). But in terms of whether it has treated Mr and Mrs J fairly in relation to considering their request for a term extension, I think it has. This is because Landmark was asking for relevant

information to determine whether it would be in Mr and Mrs J's best interests to agree a term extension.

- Several possibilities were discussed with Mr J, including equity release and switching to a repayment mortgage once Mr and Mrs J's circumstances changed. Ultimately Landmark concluded that its affordability assessment didn't show that Mr and Mrs J could afford the payments if it extended the term of the mortgage and so I don't think it was unreasonable to decline the request in the circumstances.
- Landmark agreed to review Mr and Mrs J's request again in two years. I think this was reasonable because at the time Mr and Mrs J had more than three years before any part of their mortgage reached the end of its term. And Mr J had provided information about their circumstances, plans, and expectations which would significantly alter their financial position before then. This included changes to Mr J's income, Mr J's ability to demonstrate an income over a sustained period of time, property they were selling, and other debts they expected to repay. A review at that point would be able to take their updated financial position into account.
- I understand Mr J has described how stressful it is having uncertainty over something as important as their home. But for the reasons explained I don't think Landmark has acted unfairly.

The interest rate applied to Mr and Mrs J's mortgage.

- Mr and Mrs J's mortgage has a variable interest rate which includes a loyalty discount on Landmark's standard variable rate (SVR).
- Mr and Mrs J say that the interest rate that has been applied to their mortgage over the years is unfair and too high. As I've explained above, I can only consider this complaint point in relation to interest rate variations that took place during the six years prior to them raising this issue and not before this, which is what I've done.
- The way the applicable interest rate operates and importantly details such as how, for what reasons, and when, Landmark can change the interest rate are set out in the mortgage offer documents and relevant terms and conditions of the mortgage.
- Our service has also obtained from Landmark – on a confidential basis due to the commercially sensitive nature of it – detailed information and evidence explaining the reasons for each interest rate variation, including its cost of funding. Having considered these, I'm satisfied that the changes have been made fairly and in line with the mortgage terms and conditions.
- I note that Mr and Mrs J were correctly notified of each interest rate variation at the time and there isn't an applicable early repayment charge (ERC) on the mortgage.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr J to accept or reject my decision before 30 August 2023.

Stephanie Mitchell
Ombudsman