complaint

Mr and Mrs N complained because Landmark Mortgages Limited stopped the sale of their property going through. Landmark later possessed and then sold the property for a lower amount.

This meant that the shortfall on their mortgage, which Mr and Mrs N still owe, is higher than it would have been if their sale had gone ahead.

Background

In April 2017, Mr N became seriously ill, and was hospitalised. He was self-employed, and couldn't work. Mrs N was registered disabled and also had a number of health problems. Mr and Mrs N's family helped as much as they could, but Mr and Mrs N couldn't keep up their mortgage payments.

Mr and Mrs N spoke to Landmark's hardship team. They realised they wouldn't be able to keep up the mortgage, so they put their property up for sale. They had an offer for £164,000. Mr and Mrs N spoke to Landmark again, because they owed the lender more than this. They said that Landmark told them they could apply for Landmark to cover their estate agent and solicitor's fees. Mr and Mrs N accepted the offer in March 2018.

But Landmark wrote to Mr and Mrs N on 11 May, refusing to allow the sale to go through. It had asked for a number of documents including bank statements, and it said that the reason for refusing to let the sale go through was that it thought the bank statements showed that Mr and Mrs N hadn't been prioritising their mortgage payments.

Mr N wrote to Landmark on 15 May, asking for the decision to be reviewed. He explained that his bank statements were confusing, because many of his clients prepaid, meaning that this advance-payment money had to be refunded when he was hospitalized and couldn't provide the services. Mr N had also needed a lease car for his work, which he had to stop. Relatives had managed to buy and insure a small replacement car for Mr and Mrs N – and that money too had gone through the bank accounts and led to a misleading impression.

Mr N's letter also set out that, with the benefits which Mr and Mrs N would be getting, they hoped to be able to pay £50 a month to the lender. So they asked Landmark to review its decision to refuse permission to sell their property, so it didn't increase their personal debt.

Landmark refused. A director from Mr and Mrs N's estate agent phoned Landmark, setting out her experience and saying that she felt £164,000 was the best price obtainable. But Landmark said she had no authority to discuss the account, and refused to deal with her.

Landmark obtained a possession order on 18 June. It sold the property for £155,000 and wrote to Mr and Mrs N on 22 October to say the shortfall which they owed was £22,048.80.

Mr and Mrs N complained. In its final response, Landmark said that when selling a property in possession, it didn't ''*have the luxury of time.''* It said that while a property was waiting to be sold, interest, fees, and the cost of managing the property, were all building up. It said it had taken advice from qualified surveyors and in fact the estate agent had suggested an asking price lower than had been achieved.

Mr and Mrs N contacted this service.

The adjudicator upheld Mr and Mrs N's complaint. He said Landmark should have allowed the offer, which Mr and Mrs N had received, to go ahead. This would have left a much smaller shortfall for them to pay. He said there was no obvious reason why Landmark had declined the sale – especially considering Mr and Mrs N's difficult circumstances. He said that Landmark should recalculate and reduce the shortfall figure, based on the amount owed when the property was actually sold, with the amount which had been owed at the time when Landmark refused to allow the £164,000 sale to proceed. And it should pay Mr and Mrs N £500 for the distress and inconvenience the possession and sale had caused them.

Landmark refused. It said it had allowed a number of payment concessions before going to possession. And in regard to the refusal to accept the sale for £164,000, Landmark said that Mr and Mrs N's bank statements showed around £18,000 through the account, but they'd only made one mortgage payment. Mr and Mrs N had also said they were going to be paying rent of £475 a month – but if they'd paid this towards their mortgage there wouldn't have been a shortfall. It also said that if they were able to pay this amount of rent, they hadn't needed the payment concessions Landmark had given them. And there was no guarantee the £164,000 sale would have gone through.

my provisional findings

I issued a provisional decision on this complaint. Before doing so, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

The key issue in this complaint is whether or not Landmark acted fairly and reasonably when it declined to allow the £164,000 sale to go ahead in May 2018. I considered that it didn't. Landmark's financial priority was to recover the money which it had lent Mr and Mrs N, or as much of that money as possible. I could see no reason why letting Mr and Mrs N go ahead with this sale would have been incompatible with this aim. For example, there was no evidence that Landmark had had professional advice that it might get more than £164,000 from any sale in possession. And on the contrary, it had just the opposite evidence from a director of Mr and Mrs N's estate agent, who told Landmark on 22 May that she'd worked locally for 16 years and that another property in the same street had been put on the market for significantly less. I appreciated that the Landmark couldn't give information to this individual, for data protection reasons. And that estate agent would have been in line for commission, so she wasn't an unbiased source of information. But there was nothing to show that Landmark took its own soundings about whether or not this warning, based on local knowledge, was likely to be correct, before taking the decision to refuse.

I considered what Landmark gave as its reasons for declining the sale. It said that this was because Mr and Mrs N's bank statements showed they hadn't been prioritising their mortgage payments. I looked at what Mr and Mrs N have said about the reasons that quite a lot of money was going through their account – the fact that clients for the type of Mr N's self-employed business paid in advance, so this wasn't really their money; and that family help with a small car also went through the bank. Mr N had provided details of the clients he had to refund, and I accepted what he said about this. I also accepted Mr and Mrs N's evidence about their unfortunate medical situations, and that the car money had been given by family, who themselves had limited financial resources.

But the key point about the bank statements was that, whatever had gone on in the past, what would have been reasonable was for Landmark to base its decision about the

£164,000 offer on whatever would have been financially best for both the lender and consumer.

I recognised that it was correct that the £164,000 offer might not have gone through. But that's true of any property offer. Looking at what was more likely, I considered it was more likely than not that it would have gone ahead. That was because the potential purchasers already had a cash deposit and a mortgage decision in principle.

So I considered that Landmark did not act fairly towards Mr and Mrs N when it declined to let the £164,000 offer proceed.

I went on to consider compensation. We consider compensation in two parts: financial loss, and compensation for distress and inconvenience.

Looking first at financial loss, I found that Landmark should recalculate the shortfall balance which Mr and Mrs N owe. This calculation should be based on the balance that they owed when the £164,000 sale might reasonably have been expected to go through. Mr N notified Landmark of the offer on 20 March 2018. So I considered a reasonable estimate for a completion date, if it had been allowed to go ahead, might be 30 June 2018. So I considered that Landmark should recalculate the shortfall as at that date, on the basis that £164,000 would have been the sale proceeds.

For clarity, I set out that this meant that none of the possession costs – legal costs, possession admin fees, or other possession charges – incurred after 20 March 2018 should be part of what Mr and Mrs N owed. There would have been no need for a possession hearing or all the costs associated with possession, if Landmark had agreed to let the £164,000 sale go through.

I went on to consider compensation for the distress and inconvenience caused to Mr and Mr N by Landmark's decision to decline the £164,000 sale offer. I found that this upset was considerable. It's a very different proposition to sell one's property, from going through the stressful process of a possession case. And I bore in mind that Mr and Mrs N both had significant health issues at the time, which made this upset particularly traumatic for them. There was frustration that after all their efforts to sell, and despite family doing as much as they possibly could, Landmark just wasn't listening. So I considered that £500 would fairly reflect the distress and inconvenience caused.

responses to my provisional decision

Mr and Mrs N accepted the provisional decision.

Landmark said it partially agreed with my findings. In summary, it said that:

- it was willing to waive half the shortfall amount but not the whole amount;
- it wanted to reach an amicable agreement with Mr and Mrs N for repaying the remaining shortfall debt;
- it was willing to pay £500 compensation for distress and inconvenience;
- it wasn't willing to remove fees, which would remain on the account.

Landmark explained its reasons. It said there was no evidence to confirm the £164,000 sale would have completed, and it thought it was more likely that it wouldn't have done. It believed £164,000 was above market value. It recognised that Mr and Mrs N's buyers had

an offer in principle, but pointed out that offers in principle are made at the start of the process, before knowing the market price of a property. Landmark also said that a cheaper property came onto the market in the same road, so it thought Mr and Mrs N's buyers would have asked for a reduction. And when Landmark itself had, later, marketed the property, the original buyers had been approached but were no longer interested.

Landmark's reason for refusing to waive the fees was that Mr and Mrs N had opted for voluntary surrender of the property rather than possession.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I see no reason to depart from my original conclusions.

I note that Landmark has said the £164,000 offer might not have gone through. All property transactions tend to be uncertain, and it might not have gone through. But it might have done. And that would have been in the interests both of Mr and Mrs N, and Landmark.

I have carefully considered the reasons Landmark put forward for why the sale might not, in practice, actually have gone through to completion at that price. We can't know what would have happened, because Landmark prevented the sale. But I find that none of Landmark's reasons is a convincing reason for refusing to allow the sale to try to go through.

I note that Landmark has told us that what eventually happened was a voluntary surrender rather than a possession. This should mean that the fees charged to the account were lower than they might otherwise have been. But it's not a reason for refusing to waive whatever fees were charged to the account as a result of stopping the sale which Mr and Mrs N had agreed. And Landmark did go ahead and obtain a possession hearing, after refusing to allow the sale to go through. This would have associated costs, which I consider Mr and Mrs N shouldn't have to pay.

my final decision

My final decision is that I uphold this complaint and I order Landmark Mortgages Limited to:

- recalculate the amount of shortfall on Mr and Mrs N's mortgage. This should be based on the balance at 30 June 2018, reduced by a hypothetical sale price of £164,000. For clarity, this balance figure should not include the legal and other costs relating to the possession hearing and voluntary surrender, which were subsequently charged to the account;

- pay Mr and Mrs N £500 compensation for the distress and inconvenience it caused them through its refusal to allow the £164,000 sale offer to proceed, at a time when they were both suffering from ill-health.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 27 February 2020

Belinda Knight
ombudsman