

The complaint

This complaint is about a mortgage and unsecured loan Miss P took out in 2006. It was originally taken out with Northern Rock (later NRAM) on the advice and recommendation of a broker firm I'll call "M". The mortgage and loan are currently held by Landmark Mortgages Limited. Miss P has now sold her property but even after borrowing money from family, she's been left with a shortfall that's she currently trying to repay under an arrangement with Landmark.

Miss P is unhappy with how Landmark has managed the arrangement and with the information it has recorded on her credit file. She's also unhappy that the mortgage was transferred to Landmark in the first place (she says it paid NRAM less than the value of the debt) and that it is about to be transferred again to a different lender. More generally, Miss P believes the mortgage and unsecured loan were mis-sold at the outset

What happened

By way of a provisional decision dated 8 July 2020, I explained why I wasn't minded to uphold Miss P's complaint. Below is an extract from my provisional decision setting out my findings on the key issues of the complaint.

"Sale of the mortgage and loan"

Neither Landmark nor NRAM was responsible of the sale of the mortgage and loan; the advice and recommendation to take them out was given by the broker M. Had M still been trading, then subject to it meeting the requirements of our rules, we may have been able to consider a separate complaint against M about the sale. However, as I understand it, M is no longer authorised by the regulator to conduct business, which is highly suggestive that it is no longer trading.

When someone believes they have a legitimate claim against a defunct business, the appropriate body to take that claim to is the FSCS. So I'm satisfied Landmark did the right thing in referring Miss P to the FSCS and providing her with its contact details. I appreciate Miss P felt aggrieved at not being given M's contact details in the September final response, but I don't think that will have prejudiced her in any way. Landmark gave Miss P the information she needed to start a claim about the sale of the mortgage.

Transfer of the debt between lenders

It is a standard term in all mortgage contracts that the lender has the right to transfer the debt to another lender. I can't say if that was drawn to Miss P's attention at the start (it would have been down to the broker M or her conveyancing solicitor to do so) but it's normal practice, perfectly regular and not the slightest bit illegal or criminal, as Miss P has alleged.

Miss P believes very strongly that Landmark acquired her debt for less than she actually owes. That may or may not be true, but for reasons I'll set out next, the point is moot. When a mortgage debt is transferred, the new lender (in this case, Landmark) doesn't buy each debt individually. What generally happens is that it buys a "book" of several thousand mortgages all at once in a single transaction.

The terms of the transfer are commercially sensitive and confidential between buyer and seller; not least because they have no bearing on the underlying debt owed by an individual borrower and their liability under the contract. All that changes is the identity of the creditor to which the debt is owed.

The other point to make is that when a new lender acquires a mortgage book in the way I've described, it's not just taking on the debts themselves; it's also taking on the risk that the debts might not be repaid in full. That transfer of risk will have been factored into the terms of the transfer of debt to Landmark.

All I'd say further on the general point of the transfer of a debt to a new lender is that the broad principles I've outlined above would also apply in the event Landmark was to consider transferring mortgage and loan debts it currently holds to another lender, as Miss P has suggested might happen.

The shortfall agreement

I've no doubt the continuing existence of the shortfall debt is very unwelcome for Miss P; in that context, I'm not unsympathetic. Nonetheless, it is a genuine and valid debt, and there's no basis under which I could fairly say it should have been written off and her liability for it waived. So there had to be some form of mutually-agreed payment arrangement between Miss P and Landmark (or any new creditor in the event a further transfer took place) such as the one that was put in place in 2019. Without that, Landmark (or a successor creditor) could have considered legal action.

Such arrangements have to take account of a person's individual circumstances; lenders are subject to strict regulation that requires them to assess the affordability of a proposal. Such assessments are for lenders' judgement, and we won't typically second-guess or otherwise interfere with how they exercise that judgement.

Of course, it's reasonable to expect that once an agreement has been reached, the lender should administer it correctly. It's common ground that Landmark omitted to record the details of the discussion it had with Miss P in July 2019. It's always regrettable when mistakes happen, but in this case Landmark's done the right thing by admitting the oversight, apologising and, as I understand it, offering Miss P £50 for the inconvenience.

In my view, that's a reasonable response, and I don't consider any further remedial action is necessary. What is necessary, in my view, is for Miss P (if she hasn't already) to re-engage in a new dialogue with Landmark to try and agree a fresh arrangement without recrimination over what has gone before. Otherwise, the potential for legal action remains.

Credit file reporting

Lenders are required to report the status of their customers' accounts to credit reference agencies accurately and fairly. Where there's been an error, we'll consider whether it has been detrimental to the individual's over credit profile. In Miss P's case, neither the mortgage nor the unsecured loan have been repaid in full. So it's reasonable and fair that Landmark would report both as being "partially settled" rather than "settled".

I've looked at Miss P's credit file and it shows that Landmark recorded the mortgage as "partially settled" and the loan as "settled". In the latter case, that was an error, but one that was beneficial rather than detrimental to Miss P. That being the case, there's no reason for me to order Landmark to change anything.

Other matters

In his informal view of the complaint, the investigator referenced a phone conversation with Miss P in which she said requests for the mortgage to be switched from interest-only to capital repayment had been refused on affordability grounds. This wasn't something that was covered in either of Landmark's final responses, but for completeness, I'll simply say that this too was something that, like the shortfall payment arrangement, will have involved Landmark having to exercise its judgement and assess affordability. As I said earlier, that's not something we'll generally interfere with."

Neither party has made any further material arguments in response to the provisional decision.

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.

In the absence of any further substantive argument, I've no reason to depart from my provisional conclusions, so I don't.

My final decision

My final decision is that I don't intend to uphold this complaint or make any award against Landmark mortgages Limited. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 25 August 2020.

Jeff Parrington

Ombudsman