

## **The complaint**

Mr and Mrs T's settlement offer for their outstanding loan debt was rejected in 2015 by Landmark Mortgages Limited trading as NRAM. They complain that Landmark secretly decided it would accept a higher offer, which they could've afforded, but never told them.

## **What happened**

Mr and Mrs T said they'd offered to pay 10% of their outstanding debt to Landmark in 2015, as a full and final settlement. That was rejected, and Landmark continued to receive small regular payments towards this debt, managed for Mr and Mrs T by a debt support charity.

Mr and Mrs T said that in late 2019, they put in a data subject access request ("DSAR") to see all of the information that Landmark held about them. And they said they only found out then that Landmark had put a note on their account in 2015 saying it would accept £15,000 as a settlement figure. But they said Landmark never told them this. So they kept paying their monthly payments, amounting to £6470.92, up to February 2022 when they reviewed the DSAR documents, found this note on their file and paid £15,000 to settle their debt.

Mr and Mrs T said they could have afforded to pay £15,000 back in 2015, because they had more than that in savings then. They'd paid £12,838.72 in total because of this debt since (made up of payments to the debt itself, and payments to lawyers about the debt). They didn't see why they should lose this level of money because of Landmark's failings.

Mr and Mrs T said they'd complained about this to Landmark, but it just said its processes wouldn't have allowed it to make a counter offer. Mr and Mrs T said that if Landmark could have noted this on their file, it could also have sent a letter saying the same thing. And they said the income and expenditure information they had given to Landmark showed they had more than this amount in savings.

Mr and Mrs T said that Landmark had also claimed it could have discussed an offer if they'd answered the calls it was making around that time. Mr and Mrs T said this contradicted what Landmark had said about not making an offer. And they also said Landmark shouldn't have been calling, because Mr T had been in a debt management plan for two years by then. So they said Landmark had no reason to be calling, it was just harassment.

Landmark said its note was an internal message, which only said it would review an offer of £15,000.00, not that it would accept that amount. Landmark said the note just told its agents whether or not to refer any further offer for consideration, if Mr and Mrs T made one.

Landmark said Mr and Mrs T had offered £4,143 in 2015. It said it would usually expect that an offer in full and final settlement would be the most someone could afford. It wouldn't have expected that Mr and Mrs T would have more than three times that amount available.

Landmark said that although it didn't have a process for counter-offers, it did make several calls to Mr and Mrs T after this incident, which were not answered. Landmark said that if Mr or Mrs T had answered the calls, then any settlement could have been discussed more.

When Landmark wrote to our service, it also said it didn't feel it would have been reasonable to pressure Mr and Mrs T to try and accumulate £15,000 at the time, particularly as that amount may not even have been accepted even if it had been offered.

Our investigator didn't think this complaint should be upheld. She said that Landmark wasn't required to go back with an offer or negotiate after Mr and Mrs T made their offer in 2015. She didn't think Landmark would have considered Mr and Mrs T could afford an offer of the size that it would consider.

Mr and Mrs T disagreed. They said they'd been advised that Landmark should have told them the amount it would accept, as it had sent a letter, and noted this on their account. They felt that Landmark had been misleading in its own interest. Mr and Mrs T wanted their complaint to be considered by an ombudsman, so it was passed to me for a final 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.

I've reached the same overall conclusion on this complaint as our investigator.

Before I begin, I'd like to briefly summarise the letters that I understand Landmark received in 2015, with an offer to settle this debt.

Mr T wrote to Landmark on 19 April 2015, offering to settle this debt by paying 10% of the total owed. He said in that letter that he was getting this money from a family member who had offered to help clear some of his debts, and said otherwise he would have no alternative but to file for bankruptcy.

On 24 April, Mr T wrote again, and said his circumstances had changed. He said he'd again made the offer of £4143.70, but he was willing to negotiate on this amount to bring this matter to a conclusion.

So I think there are two key points here. The first is that the notes Landmark placed on its system at the time do not say that Landmark would accept £15,000 in settlement. They simply say that anything below this amount will be rejected without further consideration.

We know Landmark did accept a settlement offer of £15,000 more recently, but Mr and Mrs T had been paying small amounts towards this debt for several years by then. And that means their overall debt was smaller. They said they'd reduced the debt by around £6,000.

So, although Mr and Mrs T appear to have assumed throughout that an offer of £15,000 would have been accepted in 2015, I don't think I can reasonably make the same assumption.

The second key point is the overall context of Mr T's offer in 2015. I can see that Mr T had indicated in his second letter that he was willing to negotiate, so this wasn't a final offer. And his income and expenditure information suggested he had some savings.

However, I also think the background to this is relevant – although Mr T said in his second letter that his circumstances had changed, less than a week before that he told Landmark that he was facing bankruptcy. And he remained in a debt management plan at this time.

So I don't think that Landmark could reasonably have assumed, from the letter that Mr T sent, that he would be able to negotiate up to a figure which it would consider. I don't think Landmark had to make a counter-offer. I do not think it would have been appropriate for Landmark to write to Mr and Mrs T, and simply to say that an offer of £15,000 would have been considered. This was, after all, very substantially more than Mr and Mrs T had suggested, it was almost four times the offer they made. And such an offer might still have been refused.

However, Landmark's notes from the time suggest it tried repeatedly to speak to Mr and Mrs T shortly after this letter was sent. But it didn't manage to speak to them. They had a debt management plan in place with a debt support charity at this time, and they considered that Landmark shouldn't have been ringing them at all.

I do think that it's at least possible that Landmark and Mr and Mrs T could have discussed their offer during this time. And it's then possible that Landmark could have explained that it wouldn't be able to consider an offer unless they were in a position to pay very substantially more. That would have given Mr and Mrs T an opportunity to indicate whether they would be able to do that. I don't think it's Landmark's fault that Mr and Mrs T didn't want to discuss things on the phone at that time.

Mr and Mrs T also said that they involved solicitors in 2019, in an effort to resolve the issue, but Landmark still didn't make this offer. I've explained that I don't think Landmark had to make a counter offer. And I don't think this position changes when Mr and Mrs T involve lawyers.

I know that Mr and Mrs T will be disappointed, but I don't think this complaint should be upheld.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 16 December 2022.

Esther Absalom-Gough

**Ombudsman**