

## **The complaint**

Ms J complains that Landmark Mortgages Limited is pursuing her for a shortfall on a joint mortgage she held with her former husband, and is reporting the conduct of the mortgage to her credit file.

## **What happened**

Ms J and her former husband, who I'll call Mr J, took out a joint mortgage with Landmark's predecessor. They subsequently divorced, and the court dealing with the financial separation issued a court order in 2014. The court said:

- Mr J had undertaken to use his best endeavours to secure Mrs J's release from the mortgage and to indemnify Mrs J against any liability arising from the mortgage.
- Mrs J should transfer her interest in the property to Mr J, subject to the mortgage.

In 2015 Mr J applied to take the mortgage over in his sole name, but the application was refused. So the mortgage continued in joint names.

Following the court order, Ms J no longer made any payments to the mortgage. At first, Mr J did so. But the mortgage began to fall into arrears from early 2016, though the arrears were sporadic at this time.

In late 2016 Mr J made a further application to take the mortgage into his sole name. But again this did not go ahead and the mortgage continued in joint names.

In 2020, Mr J applied for a coronavirus payment deferral. When the deferral expired, he did not resume making payments and the mortgage fell back into arrears. Landmark was in contact with Ms J, who explained that she should have been removed from the mortgage in 2015 and was not liable for the payments. Landmark was unable to contact Mr J – letters were returned undelivered and he did not respond to calls or text messages.

In 2021, Landmark sent a field agent to the property, who reported that it was unoccupied. It was unable to trace Mr J. So Landmark issued legal proceedings in early 2022. A possession order was granted in April 2022 and the property was repossessed in November 2022 following the issue of a warrant.

Landmark subsequently marketed the property. It proved difficult to sell, but a sale was finally agreed and completed in September 2023. However, there was a shortfall balance following the sale of around £70,000. Landmark contacted Ms J to discuss the shortfall and try to agree a repayment arrangement, and Ms J complained.

Our investigator didn't think Landmark had acted unfairly, so Ms J asked for her complaint to be reviewed by an ombudsman. She said that Landmark should look to recover the shortfall from Mr J, not her, because the court said that he should be liable for the mortgage. Chasing her meant that Landmark was ignoring the court order. Landmark wasn't acting fairly in pursuing her or reporting the mortgage to her credit file as if it was her debt.

## **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'm sorry to hear of Ms J's situation and I appreciate why she's concerned and upset about it. But I'm afraid I agree that Landmark hasn't acted unfairly.

Mr J made two applications to transfer the mortgage into his sole name, in 2015 and 2016. It seems that the first application was approved by Landmark, but it didn't go ahead – Landmark told Mr J he would need to instruct solicitors who were on Landmark's panel to proceed, and nothing happened after that. The second application in 2016 was refused because by then Mr J wasn't living in the property and Landmark was concerned that the mortgage wouldn't be affordable for him on his own given the recent arrears.

As a result, no successful application to convert the mortgage from joint names to Mr J's sole name ever completed. The mortgage remained in joint names throughout.

When the mortgage was originally taken out, it was done so jointly – Ms J was a willing participant who wanted to take the mortgage out and agreed to be bound by it. A mortgage is a very long term commitment, and circumstances later changed – the relationship broke down, Ms J and Mr J divorced and it was agreed that Mr J would take the property and mortgage over.

However, that was only an agreement between Ms J and Mr J. While it was contained in a consent order, Landmark wasn't party to the agreement and the court could not order Landmark to agree to, or implement, the change. All it could do was require Mr J to make an application.

Landmark's predecessor agreed to the mortgage on the basis that there were two borrowers, with combined resources, to repay the mortgage. Changing that to a sole mortgage changes the nature of the agreement and the risk to Landmark that it might not recover what it lent. So it's reasonable for Landmark to consider an application and to refuse the application if it's not prepared to accept any increased risk – though it seems it was prepared to go ahead in 2015 but Mr J didn't progress matters by instructing a solicitor on Landmark's panel.

The effect of that was that Ms J remained party to the mortgage, as she had agreed to be when it was first taken out. It's not correct that the court order released her from liability under the mortgage agreement.

The court order did provide for an indemnity – meaning that Ms J can pursue Mr J for any consequences of her remaining on the mortgage. But that's a matter between the two of them.

The only ways for Ms J to be released from the mortgage were for Mr J to make a successful application to take it over in his sole name, or for it to be repaid by re-financing or sale of the property. In the absence of a successful application from Mr J or his agreement to the sale of the property to repay, Ms J's remedy was to go back to court, either to enforce the indemnity in the court order or to obtain an order for sale.

I understand why Ms J was reluctant to go down that road. But having reviewed the history of the mortgage, I can see she was in regular contact with Landmark over the years and was aware throughout that the mortgage remained in her name. So this isn't a case where she was led to believe that she was no longer party to the mortgage or that her ongoing liability

came as a surprise after no contact from the lender, depriving her of the chance to resolve things in another way.

When no payments were made after the 2020 payment deferral, the mortgage went into serious arrears. Landmark kept Ms J up to date with the position of the mortgage, but she was unable or unwilling to make the payments herself, nor did she go back to court to enforce the court order against Mr J.

As she agreed when the mortgage was originally taken out, Ms J is jointly and severally liable for the mortgage – which means both she and Mr J are liable for the whole debt and Landmark can pursue either or both of them for it. At the moment, only Ms J is in touch with Landmark and so it is seeking payment from her – as it is entitled to do. I appreciate this seems unfair to Ms J but that is what she agreed to when the mortgage was taken out and I can see Landmark has made several attempts to trace Mr J to try to recover payment from him too.

Taking all that into account, I'm afraid I don't think Landmark is acting unfairly in asking Ms J to repay the outstanding balance. And for the same reasons, I don't think it's unfair that it has reported the conduct of the mortgage, including the arrears, repossession and shortfall sale, to her credit file. This is Ms J's mortgage, and the reporting accurately reflects what happened. But it's open to Ms J to contact the credit reference agencies to ask for a notice of correction to be added to her credit file if she wishes to do so. A notice of correction wouldn't change the content of the credit file, but it would allow Ms J to provide context to what it says that future lenders may be able to take into account.

### **My final decision**

For all those reasons, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 7 February 2025.

Simon Pugh  
**Ombudsman**