

## **The complaint**

Ms H's complaint is about a joint mortgage in her and her ex-husband's name that they have with Landmark Mortgages Limited. She wants to convert the mortgage to a repayment basis and extend the term, along with removing her ex-husband from the account, but doesn't feel Landmark is supporting her in this process and has not administered things as it should have.

## **What happened**

Ms H and her ex-husband (Mr H) took out the mortgage in 2000. It was originally with a different lender, but Landmark now owns it and is responsible for its administration.

The divorce settlement ordered by the courts in 2015, required Ms H to make her best endeavour to procure the release of Mr H from the mortgage with Landmark. She was to indemnify him against all liabilities relating to the mortgage. In addition, the court ordered that Mr H should transfer his legal estate and beneficial interest in the property to Ms H within 42 days of the order.

Ms H first contacted Landmark about the mortgage in early 2016. The notes from the time recorded that she wanted to change the repayment basis of the mortgage. As the mortgage was in joint names, Landmark asked to speak to both borrowers. Mr H agreed to the mortgage being converted to a repayment basis at that time and was told to have Ms H call if she wanted to go ahead with the change.

The next contact appears to be about a year later, when Mr H said that he was not willing to allow the change to a repayment basis. Ms H was told this and it was explained that Landmark might be able to make the change without the joint borrower's agreement, but the arrears that were present on the mortgage would have to be cleared and remain that way for twelve months before it would consider making changes. Ms H also confirmed that she was not in a position to complete a transfer of equity at that time as she could not afford Landmark's fee or the solicitors fees that would be involved in the process. Ms H complained about Landmark's decision – it didn't uphold the complaint.

Due to the mortgage remaining in arrears over the following years, Landmark spoke to Mr H on two occasions in 2017 and again in 2018. He told Landmark that he had nothing to do with the property and that it was Ms H's sole concern.

It was not until October 2020 that Ms H contacted Landmark again about making changes to the mortgage. At that time, she again told it that she wanted to extend the term and convert the mortgage to a repayment basis. The notes from the time don't indicate that she wanted to remove the other borrower, but she was asked to provide a copy of the divorce settlement in case he needed to be removed to allow the changes she wanted to make. It was reiterated later that month when Ms H spoke to an adviser that in order to remove Mr H from the mortgage without his consent, she would need to provide Landmark with the paperwork relating to the divorce settlement.

Ms H next contacted Landmark in February 2021, asking that it remove Mr H from the mortgage. She was again asked for a copy of the divorce settlement and said that she would provide a copy. She was told to make an appointment with a mortgage adviser once she'd provided it. Ms H didn't provide a copy of the divorce settlement at that time.

Ms H made an appointment to discuss changing the mortgage in September 2021. Her request for a transfer of equity, term extension and change to repayment was escalated to Landmark's underwriters. This was because to make these changes without Mr H's agreement would have to be done as a policy exception. Landmark asked Ms H to increase her monthly payments for three months to demonstrate that she could afford the mortgage if the changes were made. She needed to pay £420.24 per month. If she managed to do so, Landmark said it would consider the request again.

Ms H paid slightly more than she was required to in October and November 2021, but in December 2021, she paid slightly less than required. She asked Landmark to reconsider her request in January 2022. Landmark asked for more information regarding an additional "spousal" income she'd told it about and it was confirmed that an application had been made to the Court to have the necessary paperwork signed to remove Mr H from the mortgage and property title. Landmark didn't agree to make the changes Ms H wanted and a complaint was raised in June 2022 about the decision. Landmark didn't uphold the complaint when it responded in July 2022.

Around the same time Landmark received notification of a charging order in Ms H's name against the property title. This charging order had been made by the County Court in favour of a utility company.

In August 2022 the application for changes continued to be pursued by Ms H and Landmark produced an illustration for the mortgage if it were converted to a repayment basis and the term was extended. Landmark sent this and the application form to allow the removal of Mr H from the mortgage to her on 18 August 2022. She had 90 days to complete and return the documentation. The documents were reissued in October and November 2022 at Ms H's request.

Landmark wrote to Ms H on 21 September 2022 to remind her about the deadline for completion of the application process. When the documentation was not received back by the deadline, it wrote to her again on 17 November 2022 to tell her that the application process had been cancelled.

Ms H spoke to Landmark again at the beginning of January 2023 and told it that she had not been able to return the documentation in time as she didn't have all the details required. She also said that she had not been aware that her ex-husband had to sign the forms to enable him to be removed from the mortgage. Ms H said that the case to have the paperwork signed by the courts on his behalf had not happened yet, so she would call back at a later date to make another appointment. This delay was designed to reduce the risk of the application process expiring before the court could sign the application to remove Mr H from the mortgage.

Ms H contacted Landmark again in May 2023 to discuss changing the mortgage again. Landmark again asked that Ms H evidence the additional spousal income as it had concerns about the affordability of the mortgage. It also asked Ms H to evidence that she could afford the higher monthly payments that would be needed if the mortgage was changed to a repayment basis. It asked her to make higher payments for three months at a level equivalent to the amount she would need to pay, if Landmark agreed to the changes she wanted. Ms H was not happy about this, but she made the payments required for the three months. However, no evidence of the additional income stream was provided.

Further discussions were had between Ms H and Landmark in September 2023 about the changes Ms H wanted to make to the mortgage. The application was referred back to underwriting to be considered. It appears that Landmark was minded to agree to the changes at this point, but only once Mr H was removed from the mortgage and property title, which required the court action Ms H had told it she had instigated to complete. The forms Ms H needed to complete were sent to her in October 2023 and when Ms H told it she had not received them, they were sent again in November and December 2023. Landmark reminded Ms H of the deadline of 19 January 2024 for the paperwork to be returned in November and December 2023. The application was cancelled when the documentation was not returned by the deadline.

In the meantime, Ms H continued in most months to pay more each month than was necessary under the interest-only mortgage, but less than she had been told she would need to pay if the mortgage was converted to a repayment basis over an extended term.

In January 2024 Ms C's solicitors informed Landmark that the process to have the Court sign documents on behalf of Mr H had not begun, but it had been in contact with him and he was not co-operating with the process.

On 2 January 2024 Landmark responded to a complaint about delays in Ms H being sent the documentation to remove Mr H from the mortgage. It confirmed that it had sent the forms three times and it was not responsible if something went wrong after they had left its offices. It confirmed that it was important that any application was made based on up-to-date information about a borrower's circumstances, and as such, it would not extend the deadline on the application, and Ms H would need to speak to one of its advisers again for a new application to be started.

Shortly thereafter Ms H's solicitors provided Landmark with a copy of the court order setting out the financial arrangements associated with the divorce, including the intended transfer of the property to Ms H's sole name. It asked Landmark to confirm how the application could proceed. It doesn't appear that Landmark responded to this query.

On 23 February 2024 Landmark responded to a complaint from Ms H about not having been given enough time to send in the information required to have Mr H removed from the mortgage and the application being cancelled. Landmark confirmed it had made Ms H aware of the deadline and reminded her of it twice before the application expired. It again confirmed that applications could not be reopened or deadlines extended as it needed to make its decisions based on up-to-date information about a borrower's circumstances. The complaint was rejected.

There were further discussions about Ms H's proposals for the mortgage in March 2024, but the underwriters at that time didn't agree to remove Mr H from the mortgage or to complete the alterations Ms H wanted to the term and repayment basis. Ms H complained about the decision.

Landmark responded to the complaint on 11 April 2024. It explained that while it had previously implied it would remove Mr H from the mortgage, the underwriters had more recently decided that this might not be the best thing for Ms H, as it could place her in a worse position. No detail of why it had come to that conclusion was given. Landmark said that once Ms H had provided evidence that her divorce was fully finalised she could go back to it and it would reconsider its decision. Furthermore, it said that when the term ended, it would work with Ms H to ensure her best interests were kept in mind. Landmark also suggested that Ms H could help herself by making monthly payments of the amount that would be needed if the mortgage were extended and converted to a repayment basis, as this

would support any further application. Landmark didn't agree that it acted incorrectly by declining Ms H's requests to change the mortgage.

Ms H was not satisfied with Landmark's response and she asked us to consider her complaint. One of our Investigators did so, but he didn't recommend the complaint be upheld as he didn't think Landmark had acted unreasonably in relation to Ms H's requests.

Ms H didn't accept the Investigator's conclusions. She said that she had complied with everything that Landmark had asked of her and she believed she had more than evidenced the affordability of the mortgage if it was changed to a repayment basis and the term extended. However, she considered that Landmark had gone back on its proposals and this had left her in a worse position financially as it has left her making payments that are higher than she would have to pay if the changes to the mortgage had been applied. Ms H also made us aware that her ex-husband had taken borrowing which he had secured on the mortgaged property and had ceased to make payments on that borrowing. Ms H considered this was Landmark's fault as it had refused to remove him from the mortgage when it should have in line with the court order from 2015.

While the Investigator commented further in response to Ms H's rejection of his conclusions, he wasn't persuaded to change them. As such, it was decided the complaint should be referred to an Ombudsman for consideration.

### **What I've decided – and why**

Ms H has made numerous complaints about Landmark's decisions and actions in relation to her requests to change the mortgage. She did not refer the earlier complaints to this Service within the applicable time limits and so this decision will only consider the complaints addressed in the January, February and April 2024 complaint responses.

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

In the first instance, I will comment on the matter of Ms H not receiving application forms sent to her and the period an application is valid for.

While Ms H is unhappy that she didn't receive the documentation that Landmark sent her in relation to her requests to change the mortgage, I am satisfied from the information provided that the documentation was sent to Ms H when Landmark said it would send it. It then sent further copies when Ms H made it aware that she had not received the previous copies. In light of this, I can't find that Landmark delayed the applications and caused the process to expire before Ms H was able to move the matter forward.

As for Landmark requiring applications to move forward within 90 days of it assessing a borrower's situation and providing advice, I don't consider this is inappropriate. A lender is required to lend responsibly and that means ensuring that whatever it has agreed to do is affordable and the right thing for the individual. It is not unreasonable for Landmark to consider that if nothing has happened after nearly three months it should check that what was being applied for is still suitable.

There are two separate applications involved in this case – the removal of Mr H from the mortgage as a borrower and the extension of the mortgage term/change to a repayment basis. In order for either to be completed, Landmark either had to have the consent of Mr H, as the joint borrower, or it needed to have evidence that Mr H was no longer involved with the mortgage and it was appropriate in the circumstances to complete either or both of the applications without his consent. I will comment on the removal of Mr H from the mortgage

first, as if that were to have happened, the need for his consent to any further applications would fall aside.

I would firstly confirm that to remove a borrower from a mortgage would normally require both borrowers' consent and the removal of the second borrower from the property title as well. This could have a material effect on both borrowers' finances, which is why there is the need for consent from both. Even where there is consent from both parties, we would not expect a lender to make the requested alterations unless there was evidence that the remaining party could maintain the mortgage on their own. This would usually be evidenced from an assessment of their income and expenditure, and evidence that they had been able to maintain the mortgage payments, in full and on time, on their own for a period.

However, there will be situations where it is appropriate for a lender to remove a borrower from a mortgage without their consent. The requirement for the lender to be satisfied the remaining borrower could afford the mortgage on their own would still need to be fulfilled. One situation where it might be appropriate is where a court has awarded the property to one of the borrowers in a financial settlement and the second borrower is not co-operating with the process of removing them from the mortgage. I would at this stage confirm that such an order would not mean that the lender had to remove one of the borrowers from the mortgage. This is because it is an order setting out what the two parties need to do, and does not bind any third parties to take any of the actions set out.

In order for the lender to consider taking action to remove one of the borrowers without consent on this basis, the lender would require sight of the financial order issued by the court. Landmark explained several times that it would need a copy of the order in order to consider setting aside its normal policy on this matter – it asked for a copy of the court order, but this doesn't appear to have been provided until January 2024. I am satisfied that Landmark was not in a position to consider removing Mr H from the mortgage without his consent until that point. As such, I can't find that Landmark was wrong not to remove Mr H from the mortgage prior to February 2024.

However, once the Court order was provided, Landmark should have considered whether it was appropriate to remove Mr H from the mortgage without consent. It appears from its final response in April 2024 that it did this. It said in that response that it doesn't believe removing the other borrower would be to Ms H's advantage.

As such, I have considered the information Landmark had available to it at the time it made its decision not to remove the joint borrower from the mortgage after it was provided with the divorce settlement details. As I have explained above, there is more for a lender to consider than just what the court order awards and whether the other party is co-operating. I have looked at the payment history for the mortgage in the years immediately before Landmark considered whether to remove Mr H from the mortgage. I note that Ms H has said that she has overpaid every month for a long period, based on the transaction history Landmark has provided that is not the case. In the two years from February 2022, Ms H had made monthly payments of less than the amount of interest charged on the mortgage on numerous occasions. In other months Ms H paid more than the contractual payment and in some of them significantly more. However, while in aggregate Ms H was paying enough to more than cover the contractual mortgage payments, there was no consistency in the payments being made. From a lender's perspective, this would cause concern about the affordability of the mortgage and, in the circumstances, I can't find that Landmark was wrong not to remove Mr H from the mortgage in April 2024.

I now turn to the matter of Ms H's request to extend the term of the mortgage and change it to a repayment basis. I can understand why Ms H wants to do this, but as a responsible lender, Landmark would have to be satisfied that it was in Ms H's best interests for it to

happen. As this is a material change to the mortgage and because it will involve a higher monthly cost due to the capital element of the payment, as a responsible lender Landmark would need to be satisfied that the mortgage after the changes would be affordable in the long term.

In line with the application about removing Mr H from the mortgage, Landmark would usually require both borrowers' consent for the significant changes to the mortgage Ms H had asked for. Given that Mr H had previously refused consent for this to happen, Landmark was not wrong to be concerned about overriding its policy in this case. I am again satisfied that it was not wrong for Landmark to decline to change the mortgage without Mr H's consent up to January 2024 when it received the court order.

Landmark has confirmed that it was concerned about the affordability of the higher mortgage payments on the mortgage if it is altered. While Ms H has told us that she is currently paying around £900 each month, which is more than would be needed for the extended term repayment mortgage, I must consider the complaint about the decision Landmark made, based on the information it had at the time. I can't make a determination based on things that have happened subsequently.

As Landmark explained to Ms H, it needed to be satisfied that she could afford the higher payments that the changes she had requested would require. It suggested on several occasions that she evidence affordability by making the higher payments that would be necessary if her request was agreed. However, while she would do so for short periods, it was only for a few months at a time and in between the payments were not consistent and at times were lower than the interest-only contractual payments needed. In addition, Landmark asked on several occasions for information about a further income stream Ms H told it about – likely the income she would receive from Mr H's pension – but it doesn't appear that substantive evidence of that income was provided.

In the circumstances I can't find that Landmark's concerns about the affordability of the mortgage were unreasonable. Nor do I consider that it was inappropriate for it to decline to make formal changes to the mortgage.

That said, Landmark suggested that Ms H continue to make higher payments to evidence the affordability of the repayment mortgage, which would support any future application she makes. This is not an inappropriate suggestion. In addition to it improving the likelihood of Landmark agreeing to any future application, it would also reduce the balance of the mortgage, which would improve the options Ms H would have going forward. Landmark has also said that if it is unable to agree a formal term extension before the term of the mortgage ends later this year, it may be open to an arrangement after the term ends to allow Ms H to look at her options and potentially reach the age where her options increased due to eligibility for retirement and lifetime mortgages. This would indicate that Landmark is willing to work with Ms H to find a solution with it or to enable her to find one with another provider.

I have noted Ms H's recent comments that Landmark's refusal to remove Mr H from the mortgage has meant that he has been able to take out a loan secured on the mortgaged property and that he is refusing to make payments on it. As I have found that Landmark was not wrong when it declined to remove Mr H from the mortgage, I can't find that it is responsible for the situation Ms H believes she is in. I would also comment that even if Mr H had been removed from the mortgage, that process would not have removed his name from the property title, which is what would allow him to secure a debt against the property. To remove Mr H from the property title, he would have to either sign the relevant Land Registry documents or Ms H would have to take the action she has mentioned several times and have the court sign the documentation on Mr H's behalf.

**My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms H to accept or reject my decision before 12 February 2025.

Derry Baxter  
**Ombudsman**