

## **The complaint**

This complaint is about a mortgage Ms H used to hold with Landmark Mortgages Limited (LML). There are several broad strands to the complaint; which I will detail in the next section.

## **What happened**

The basic background to this complaint is well known to both parties so I won't repeat all of the details here. Our decisions are published, and it's important that I don't include any information that might result in Ms H being identified.

Instead I'll give a summary of the key events leading up to the complaint, rounding the figures, and then focus on my decision and the reasons for it. No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me.

The mortgage started in late 2005, replacing one that been taken out in 2003. The original lender was a business I'll refer to as N. It was a non-advised sale; that is, one where no recommendation was made about the suitability of the mortgage for the borrowers' circumstances.

The mortgage was an interest-only loan of around £372,000 (including fees) repayable in ten years. It was a joint mortgage; the second borrower sadly died soon after this complaint was brought to us; under our rules, eligibility to complain now vests solely in Ms H.

The mortgage offer from 2005 specified that the interest rate chargeable would be the lower of Bank of England Base Rate (BEBR) plus 2.49% or N's standard variable rate (SVR) from time to time. That rate would apply for nine years and ten months, thereafter reverting to SVR, less a loyalty discount of 0.25%.

The offer further specified that:

- the 0.25% loyalty discount would apply for the rest of the life of the mortgage, provided that payments were up to date; and
- would be applied after the mortgage had been in place for seven years, provided that the mortgage payments were up to date and the mortgage itself was not subject to a Special Rate period, or an early repayment charge (ERC).

The offer gives, as an example of a "Special Rate period", where the borrower has the benefit of a fixed or discounted rate.

The 2003 mortgage had contained a similar clause but as that mortgage didn't run for seven years, there was never an opportunity to the loyalty clause to come into effect on that mortgage.

Subsequently, N became a closed lender, and over time, its mortgage book was transferred to other lenders. In the case of Ms H's mortgage, that was LML.

Between 2009 and 2016, BEBR was stable at 0.5%, so the actual rate charged on Ms H's mortgage was stable at 2.99% up to the end of the product in 2015. At that point, interest began being charged at SVR (that is, LML's SVR) which was 4.79%; that rate applied until the mortgage was redeemed in August 2016.

In 2017, Ms H made a complaint to LML; there were two broad topics, the reporting of adverse information on her credit file, and a request for a refund of historic arrears charges because she had overpaid the mortgage since 2012. LML issued a final response on 13 December 2017, saying, in summary:

- arrears had been reported between December 2015 and July 2016; this was correct because the payments hadn't been made;
- the account had been in arrears prior to 2012; these were gradually repaid between 2012 and 2014, and the account was mainly up to date until December 2015. Arrears fees had been applied fairly and no refund was due.

That letter gave Ms H six month's referral rights to this service, but it seems the complaint wasn't brought to us.

Shortly before that final response was issued, in November 2017, LML had written to Ms H to notify her of an arrears fee which had been applied incorrectly. It had calculated that redress of £195.23 was due, to be shared equally between the joint borrowers. A similar event happened in May 2019, when LML identified that £16.63 was due to correct another error.

Then, in February 2020, LML identified that the loyalty discount rate of 0.25% specified in the mortgage offer hadn't been applied when it should have been. LML calculated redress for this oversight as £1,058.27, to be shared equally between the joint borrowers. LML's remediation offer letter required a signed acceptance which it apparently never received.

In 2024, Ms H made a complaint to LM; there were four broad elements to it, as summarised below:

- LML hadn't paid all of the various remediation payments it had told her it was required to make;
- a loyalty discount of 0.25% off the interest rate wasn't applied at the right time;
- the reporting of adverse information about the mortgage payment history to Ms H's credit file prevented her getting another mortgage; and
- the variable interest rate applied from October 2015 until redemption in 2016 was excessively high.

LML's final response set out, as I summarised above, which remediation payments – including that relating to the loyalty discount – had and had not been paid (and why). It reiterated that the complaint about credit file entries had been dealt with previously and wouldn't be revisited. On the fairness of the SVR charged after October 2015, LML said that this had been raised in 2021 via a claims management company. LML had rejected the complaint; it had then been referred to this service but later withdrawn from us in April 2023.

Ms H brought the complaint to us in July 2024 and one of the investigators looked into it. He issued his preliminary assessment of the complaint on 20 October 2024. He started by

explaining why he thought there were parts of the complaint that our rules didn't allow us to look into.

For the most part, he considered the complaint time-barred under our rules. Most of it related to events that had taken place more than six years before the complaint started and, in his view, more than three years after Ms H knew, or ought reasonably to have known, there was cause for complaint. He said we wouldn't consider the issue about the fairness of the SVR charged between October 2015 and redemption, as that had already been raised with us by a claims management company acting on Ms H's behalf in 2021, and then withdrawn in 2023.

All that left for the investigator to consider was Ms H being unhappy that LML wouldn't provide breakdowns of the remediation calculations. He didn't consider it unreasonable that LML hadn't provided specific calculations. Noting that Ms H had provided her own, in particular relating to the loyalty discount (on which LML had declined to comment) he said it wasn't our role to audit her calculations and decide if the redress figure Ms L had produced (over £11,000) was more accurate than LML's figure of £1,058.27.

The investigator explained that what was needed was an audit of the mortgage by a third party who was independent and suitably-qualified; for example an accountant.. Ms H asked for the case to be reviewed by an ombudsman, pointing out that she is an accountant.

### **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers.

In doing that, we don't replicate the work of the courts. Whilst statutory, our scheme is intended to provide swift outcomes to disputes between business and the customers, with a minimum of formality. We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

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

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us, rather than the parties to the dispute, to decide what evidence we need to reach a fair outcome. It's also for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture.

Regarding the evidence in this specific case, there's a lot of it. That said, there also a degree of duplication and repetition. I've taken all of that into account. Having done so, here are my findings on what I consider to be the main elements of the complaint.

We revisit jurisdiction at every stage of our case-handling process. I've looked at what our investigator said, and what our rules say. Having done so, I've reached the following conclusions.

- The complaint about reporting arrears on Ms H's credit file has been referred to this service more than six months (indeed almost seven years) after LML issued a final response dealing with the issue. I'm not persuaded any exceptional circumstances prevented that from happening. This element of the complaint is therefore time-barred under our rules.
- The complaint about the application of the loyalty discount has been raised more than six years after the mortgage was repaid and, in my view, more than three years after Ms H knew, or could reasonably have known, she had grounds to complain. All of her annual statements told her what rate she was being charged, and the mortgage offer set out details of when and in what conditions, the discount would apply. On this latter document, the three-year "clock" didn't just begin when Ms H retrieved the offer from storage in her attic. It was in her possession the whole time. I'm not persuaded any exceptional circumstances prevented this complaint from being started in time. This element of the complaint is therefore time-barred under our rules.
- As far as the fairness or otherwise of the SVR charged after October 2015 is concerned, this was referred to us in 2021 and withdrawn in 2023 when Ms H's claims management company decided not to pursue it any further.

If we were to look at complaints where consumers hadn't pursued them for substantial periods (in this case over a year) there'd be no finality for businesses. It would also be impossible for us to provide an effective informal dispute resolution service, as complaints could run on and on without us or businesses knowing when the consumer would come back to us. There has to be finality to our process and both we and LML thought that point had been reached in 2023 when the complaint was withdrawn. LML was entitled to proceed on the basis that the complaint had been withdrawn when it was. In the circumstances, although I acknowledge Ms H feels very strongly about this, I'm satisfied it's not appropriate to reconsider her previous complaint about the SVR.

All I can decide, and I do so next, is whether the remediations LML has offered and/or paid to Ms H for various errors it identified between 2017 and 2020 have been wrongly calculated. To be clear, it's not for LML to show they are right; it's for Ms H to persuade me, on the balance of probabilities, that they are wrong.

It's my understanding that the redress payment from 2017 was paid out at the time, that from 2019 was paid out in 2024, and that from 2020 wasn't paid out at all, because LML never received an acceptance of the settlement offer. Given subsequent events, that doesn't seem unfair or unreasonable.

The investigator rightly explained that it is not our role to audit mortgage accounts. In the same way, we don't audit consumers' own calculations of how they believe mortgage accounts should have operated. It is open to Ms H to arrange for the mortgage account to be audited by a suitably qualified and independent party to look into all of the remediations that have been carried out.

The audit could then be used as the basis for a new complaint to LML, underpinned by the evidence of the finished audit. That would give the bank the opportunity to consider and respond to it.

Ms H would have to meet the cost of the audit, albeit if errors were found that were to her detriment, she could reasonably expect LML to reimburse any reasonable cost of the audit as well as taking any corrective action the audit revealed to be necessary. And if that wasn't resolved to her satisfaction, Ms H would still have the opportunity to refer that complaint to us.

Ms H asks why, given her professional expertise, her own calculations should not be given more weight than would normally apply. Without going into the workings in detail (it's not in my remit to do so) it seems to me that a couple of issues stand out, just from a cursory glance.

Ms H's calculations start from November 2010, at which point the mortgage had been running only five years. The clause in the mortgage offer states that the discount only begins to apply after seven years, which would have been towards the end of 2012. I can only speculate on whether Ms H mistakenly used the start date of the 2003 mortgage (which only ran for two years) as her starting point.

That aside, the clause in the mortgage offer also requires the mortgage be up to date for the discount to apply. According to LML's evidence, the arrears that built up over 2011 and 2012 were repaid between 2012 and 2014. If that is the case, then the earliest point at which the loyalty discount could be applied would be the month in 2014 when the last of the arrears were cleared.

All things considered, I can't give Ms H's calculations the weight she thinks they should be given, and in the wider context, the available evidence doesn't persuade me of the likelihood that LML's remediations are wrong.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Ms H feels. That's a natural, subjective reaction, and entirely understandable in the circumstances. Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively. That's what I've done.

### **My final decision**

My final decision is that I don't uphold this complaint or make any order or 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 discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 8 April 2025.

Jeff Parrington

**Ombudsman**