

## **The complaint**

Mr B has complained about his mortgage he holds with Landmark Mortgages Limited.

The mortgage was held jointly with Mr B's ex-wife, but this complaint was brought by just Mr B. I understand Mr B's ex-wife died late last year whilst the complaint has been with us.

## **What happened**

Mr B held this mortgage jointly with his ex-wife. They divorced many years ago and I understand Mr B lives in the property with his second wife and child. The mortgage account has been in and out of arrears for a number of years.

A complaint was logged on 16 February 2021 following receipt of a letter from Mr B, with a final response letter being issued by Landmark on 31 March 2021.

The final response letter summarised the complaint as:

1. You feel you were mis-sold the mortgage, as although you could afford the monthly payments to begin with, it should have been clear that due to your age you would not be able to maintain these into retirement.
2. We have refused to remove your ex-wife from the mortgage, despite your divorce and her incapacity. You feel this would leave your wife and family vulnerable in the case of your death.
3. You feel the interest rate you are paying is too high and should be lower, given the reduction in the Bank of England Base Rate. Due to this, you feel you are a mortgage prisoner as you have been unable to remortgage to a cheaper rate.

Landmark said it had dealt with a complaint about the sale of the mortgage in 2020 and as part of that, in August 2020, our service had asked Landmark to deal with a complaint about the other points as they hadn't formed part of the original 2020 complaint. It said it had overlooked that and apologised for not dealing with the complaint points sooner. It said it wouldn't look at the first point again as it had been looked at as part of the 2020 complaint, and it didn't uphold the other two points.

It said an appointment had been booked to discuss removing Mr B's ex-wife from the mortgage, but he then cancelled the appointment. It explained it would need Mr B to speak to one of its advisers to make a formal application if he wanted to remove his ex-wife from the mortgage. It said Mr B was on a discounted variable rate and it had varied that in line with its terms and conditions, and Mr B didn't meet the criteria to be considered a mortgage prisoner due to the arrears on his mortgage.

The letter closed with an explanation that Mr B had six months from the date of the letter to refer the complaint to us. If he didn't do so, and there were no exceptional circumstances, Landmark said that it wouldn't consent to us looking at the complaint.

Mr B raised a further complaint in July 2024 which Landmark responded to on 20 September 2024. It summarised that complaint as:

- You're unhappy we've made legal threats in relation to the arrears.
- You've asked for time to sell the property and asked that we propose some form of long term solution that suits your circumstances.
- You're unhappy with the interest rate being charged to your mortgage. This has made it difficult to maintain the mortgage payments.
- You're unhappy we won't allow the other account holder to be removed from the mortgage.
- You're unhappy you haven't received acknowledgement of your complaint or a response.

It didn't uphold the complaint. The letter closed with an explanation that Mr B had six months from the date of the letter to refer the complaint to us. If he didn't do so, and there were no exceptional circumstances, Landmark said that it wouldn't consent to us looking at the complaint.

A final response letter was also issued on 5 September 2024 which related to a complaint summarised as 'I understand your complaint is about your monthly payment increasing despite your interest rate going down.' The response letter said the monthly payment is calculated using the balance and interest rate of the loan, it doesn't include the arrears amount (albeit it does include fees, such as arrears fees, and additional interest charged on the fees and arrears). It said that although the interest rate went down, the balance had increased (due to the fees and additional interest) which meant the monthly payments had increased.

The letter closed with an explanation that Mr B had six months from the date of the letter to refer the complaint to us. If he didn't do so, and there were no exceptional circumstances, Landmark said that it wouldn't consent to us looking at the complaint.

The complaint was referred to the Financial Ombudsman Service on 18 October 2024.

Our Investigator said we couldn't consider the matters answered in the March 2021 final response letter as Mr B hadn't referred that complaint to us in time. But that we could consider the two September 2024 final response letters. She said that meant we could look at the following complaint points:

- Any requests Mr B had made to remove his ex-wife from the mortgage from 21 March 2021 onwards.
- How Landmark has handled the mortgage from 21 March 2021 onwards.
- Mr B's payments having increased despite the interest rate coming down.
- Landmark has capitalised Mr B's arrears and he has only recently discovered this. However, our Investigator explained that if arrears capitalisation wasn't the reason for payments going up, we can't look at this here and it would need to be raised separately.

Mr B didn't agree. He said he didn't recall submitting any complaint to Landmark in 2021 about those issues. Our Investigator sent a copy of the March 2021 final response letter to

Mr B and he said that given the complexity and ongoing impact of the issues on his family he felt an Ombudsman's direct review would be the most appropriate way to ensure the full scope of his concerns were addressed.

In a follow up call with our Investigator Mr B said he didn't recall receiving the March 2021 final response letter and it hadn't been included in the data subject access request information pack he received from Landmark. Further to that Mr B said he received a letter from Landmark which stated it had trouble sending correspondence to his address, and he enclosed a copy of a letter dated 26 May 2022.

Our Investigator wasn't persuaded to change her view and so the case was passed to me to decide how much of this complaint we have the power to consider.

I issued a decision about our jurisdiction in January 2025 in which I said:

'We can't consider the complaint that Landmark responded to in its letter of 31 March 2021.

We can however consider what has happened since then which as our Investigator set out is:

- Any requests Mr B had made to remove his ex-wife from the mortgage from 21 March 2021 onwards.
- How Landmark has handled the mortgage from 21 March 2021 onwards.
- Mr B's payments have increased despite the interest rate coming down.
- Landmark has capitalised Mr B's arrears and he has only recently discovered this. However, as our Investigator explained, if arrears capitalisation wasn't the reason for payments going up, we can't look at this here and it would need to be raised separately.'

Our Investigator looked at those points and didn't uphold the complaint. She said:

- The only record she could find of Mr B requesting to remove his ex-wife from the mortgage after 21 March 2021 was in 2024, and she didn't think Landmark had acted inappropriately in not making the change at that time.
- Landmark had discussed payment arrangements with Mr B, and it had also allowed time for Mr B to approach some estate agents to discuss marketing the property for sale. As there were then legal issues with a potential sale further time was given to resolve that. As the situation was worsening it wasn't unreasonable for Landmark to consider progressing with recovery action.
- The interest rate charged on Mr B's sub-accounts are in line with the contracts he entered into, and she didn't think Landmark had managed its variable rate unfairly. She said Mr B's payments had increased because of the arrears on the account, meaning the mortgage balance is higher which led to additional interest being charged.
- Landmark hadn't capitalised Mr B's arrears. The higher payments were to cover the additional interest due, they weren't repaying any aspect of the actual arrears.

Mr B didn't agree and so the case has been passed to me to decide.

## **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.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome. I can confirm that throughout my review and this decision I've taken account of Mr B's health conditions and vulnerability and thought about what he's said about fair treatment in respect of that.

Mr B, and his representative, has continued to correspond about the decision I reached about our jurisdiction to consider this complaint. There has to be some finality in our process and it wouldn't be appropriate for us to continue to correspond about the same matters once an Ombudsman has issued a decision on them.

Having reviewed my decision I can't see that I've erred in my understanding of our rules, or in how I have applied them. For that reason, this decision won't be answering Mr B's points that relate to things I've already found we can't consider, such as the fact Mr B's ex-wife wasn't removed from the mortgage up to and including March 2021 (and the consequences of that), and the interest rate Mr B was charged for that same period.

I'll also only be considering what happened up to when the final response letter was issued in September 2024. Anything that has happened since then, or that didn't form part of that complaint, aren't something I have the power to consider here.

Mr B has said his letter of 27 August 2024 hasn't been addressed. But that's not the case. I've reviewed that letter in full, but much of it relates to points I've found we can't consider, such as the fact Mr B's ex-wife wasn't removed from the mortgage over the years, and the consequences that flowed from that. So it's not a matter that we've ignored his letter, instead it's simply that we don't have the power to answer much of the content of that letter as it doesn't fall within our jurisdiction to do so.

In April 2024 the Court of Protection made an order under the Mental Capacity Act 2005. That said in December 2023 the person who had been appointed as the deputy for Mr B's ex-wife ("the deputy") had applied for authority to sell the property. It said the property was registered in the joint names of Mr B and his ex-wife, but no trustee had been appointed in place of Mr B's ex-wife as would be necessary to effect sale of the property. It went on to say that Mr B had claimed his ex-wife had agreed to assign her ownership in the property to him, but that her deputy didn't accept the claim, and that would need to be resolved in court if the parties were unable to resolve it themselves.

I've considered any requests to remove Mr B's ex-wife from the mortgage after March 2021, which is the period I can consider. In October 2023 it seems Landmark discussed the process with him due to the fact his ex-wife had a power of attorney in place and Mr B had said he wasn't getting a response from the deputy. Mr B agreed to provide the details of the deputy, along with some other information. I can't disclose to Mr B any contact Landmark had with the deputy as the deputy (acting on behalf of Mr B's ex-wife) wasn't party to this complaint, but I am aware there was contact and Landmark was engaging with them. It seems there was no formal application made at that time for Mr B's ex-wife to be removed from the mortgage.

A request was made in September 2024, which it was stated would be so Mr B could sell the property as he was unable to do so due to the deputy refusing to allow it.

At that time the mortgage was in substantial arrears and Mr B had told Landmark he couldn't afford the monthly payment unless interest rates came down. Landmark was also aware that the Court of Protection was involved due to a dispute over whether or not Mr B's ex-wife had agreed to assign her ownership in the property to Mr B and, I assume, whether she had capacity to do so at the time in question. With that in mind, it wasn't at all unreasonable of Landmark to not be willing to remove Mr B's ex-wife at that time, not least as there was an active legal dispute about ownership of the property. Any actions by Landmark at that time to change the names on the mortgage would have been entirely inappropriate until the legal dispute was resolved.

I understand Mr B is confused that Landmark removed his ex-wife from the mortgage account after she died at the end of last year as he thinks that shows Landmark could have done it sooner, but just chose not to. Whilst I can't comment on that removal specifically as it happened after the period I'm able to consider, I can reassure him that, in general, it is entirely normal with a joint mortgage for that to happen. Most lenders, upon notification of the death of one of the parties, will remove the name of the borrower who has died, leaving the mortgage to continue in the sole name of the remaining borrower. That's an entirely different matter to removing a joint borrower when both are alive, and it has no bearing on the complaint that Landmark should have removed Mr B's ex-wife at some earlier point in time.

All that said, it seems Mr B may be conflating the removal of his ex-wife from the mortgage with the ownership of the property. Even if Landmark had agreed to remove her from the mortgage, that wouldn't automatically have removed her ownership of the property at the Land Registry. They are two separate processes, albeit they are often done at the same time. For the title of the property to have been amended to remove Mr B's ex-wife's interest in it, Mr B would have needed the agreement of the deputy and bearing in mind the order we have on file from the Court of Protection, I can't see that would have been granted as that is entirely what the heart of that dispute seems to be.

Mr B has said Landmark has stopped him selling or remortgaging the property, or adapting it for his needs. But that's not the case. There are no barriers from Landmark for any of those things. Whilst Landmark can't lend any further money or offer Mr B a new interest rate product because it is a closed-book lender, it hasn't put a barrier in the way of him selling or refinancing the property (either fully, or by raising a second charge against it).

The only barrier to Mr B selling or refinancing the property was the need for his ex-wife's (and later her deputy's) agreement. If they'd agreed to a sale, Landmark wouldn't have stopped that. The same as if Mr B had arranged to refinance it. It isn't unusual for a property to be refinanced when a couple separate, with the mortgage in joint names simply replaced with a new mortgage with a new lender in the sole name. The change in names didn't need to happen with Landmark first, it could have been done as one transaction as part of a remortgage to a new, active, lender.

It seems there were barriers to Mr B refinancing or selling, but none of those came from Landmark so I can't hold it liable for Mr B being unable to sell or refinance when he wanted to.

I understand Mr B is unhappy with the interest rate he's been charged. Mr B's mortgage has three sub-accounts and those have been charged based on the Standard Variable Rate ("SVR") for many years. One sub-account is charged at the SVR, and the other two are charged slightly below SVR, with discounts of 0.25% and 0.35% respectively.

As I explained in my decision about our jurisdiction, I've no power to look at what happened before March 2021 because Mr B didn't refer the earlier complaint to us in time. If Mr B

wanted us to look at a complaint about the interest rate he was charged before March 2021 then he would have needed to have referred that earlier complaint to us within the six months allowed under our rules. Since March 2021 (up until September 2024) the interest rate Mr B has been charged on his three sub-accounts, compared to the Bank of England base rate ("BoEBR"), has been as follows:

<b>Date</b>	<b>Account *804</b>	<b>Account *902</b>	<b>Account *700</b>	<b>BoEBR</b>
March 2021	4.04%	4.39%	4.14%	0.10%
1 January 2022	4.04%	4.39%	4.14%	0.25%
1 March 2022	4.29%	4.64%	4.39%	0.50%
1 May 2022	4.54%	4.89%	4.64%	0.75%
1 June 2022	4.79%	5.14%	4.89%	1.00%
1 August 2022	5.04%	5.39%	5.14%	1.25%
1 September 2022	5.54%	5.89%	5.64%	1.75%
1 November 2022	6.04%	6.39%	6.14%	2.25%
1 December 2022	6.79%	7.14%	6.89%	3.00%
1 February 2023	7.29%	7.64%	7.39%	3.50%
1 March 2023	7.79%	8.14%	7.89%	4.00%
1 May 2023	8.04%	8.39%	8.14%	4.25%
1 June 2023	8.29%	8.64%	8.39%	4.50%
1 August 2023	8.79%	9.14%	8.89%	5.00%
1 September 2023	9.04%	9.39%	9.14%	5.25%
1 September 2024	8.79%	9.14%	8.89%	5.00%

This shows that, in the period I can consider, moves in the BoEBR were reflected with changes to the SVR, except for the BoEBR increase of 0.15% that was announced in December 2021 which wasn't passed onto Landmark's customers so benefited Mr B. To be clear, I'm not saying Mr B's mortgage must track BoEBR as it isn't a base rate tracker product, but I use it here to demonstrate that Mr B's interest rate has moved in line with market conditions.

I have considerable sympathy with the predicament Mr B found himself in. The lending environment when he took his mortgage out was very different. Landmark isn't an active lender and isn't trying to attract new customers through offering low rates. All its customers move onto - and remain on - the SVR (or a rate linked to it) once their previous interest rate products expire. To that extent, it isn't treating Mr B any differently from any of its other customers.

Although Landmark is a closed book lender (in that it's not taking on new business) it's still regulated by the Financial Conduct Authority and must follow its rules. But there's nothing in the regulator's rules that says a lender has to offer new interest rates to its customers once their old ones expire. The rules say that a lender has to treat its customers fairly taking account of their best interests; it has to communicate with them in a clear, fair and not misleading way; it has to notify them of changes to their monthly payments; and it mustn't take advantage of customers who can't move their mortgages elsewhere by treating them differently to other customers with similar characteristics.

Landmark would have notified Mr B of changes to his payments from time to time. And it wasn't treating him differently from its other customers – all customers must stay on the SVR (or a rate linked to it) once their products expire, just like Mr B. So, I don't think Landmark was in breach of any of the regulator's rules in not offering him a new rate.

I don't think Landmark was acting in breach of the terms of the mortgage agreement either. Mr B's mortgage offers set out the interest rates he'd be paying. Nothing in the mortgage offers or the mortgage terms say that Mr B would be entitled to any preferential interest rate products once any original ones expired. I'm aware, of course, that it's common for borrowers to take a preferential rate product – and then take another rate rather than revert to the SVR. Sometimes that's with an existing lender; sometimes it's with another lender. But as I say, there's nothing in Mr B's mortgage agreements that says he's entitled to a new rate.

I've set out that there's nothing in the regulator's rules, and nothing in the mortgage contracts, that requires Landmark to offer new interest rates. Nor is it under any other legal obligation to do so. That's not the end of the matter though – my role is to decide what's fair and reasonable in all the circumstances. I do that by considering the law, regulator's rules and guidance, and good industry practice – but ultimately, I'm not constrained by them if I think fairness requires me to do something else. So, the question I must answer is whether, taking into account the rules and the mortgage terms, it's fair and reasonable in all the circumstances that Landmark didn't offer Mr B a new interest rate that's lower than the rates he had that were linked to SVR.

I've thought about this carefully. I've considered everything I've set out above. It's unfortunate that Mr B ended up with a closed book lender that doesn't offer new rates. But Landmark was his lender, and legitimately so. It doesn't offer new interest rates to any customers, including Mr B. Under current law and regulations, that's a position Landmark is entitled to take. I'm mindful that if Landmark was to offer new lower rates to some customers, but not others, that could mean some customers were being treated less favourably than others with similar characteristics – which in turn could potentially cause unfairness. But that wasn't the case.

There was nothing in Mr B's mortgage agreements that would have prevented him remortgaging elsewhere – he was no longer liable for an early repayment charge, for example. But the reason he couldn't do so was because of external changes and factors – changes which weren't part of his mortgage contracts, weren't within Landmark's control, and couldn't have been foreseen by any party when Mr B took the mortgage out.

Landmark wasn't treating Mr B any differently from how it treats its other customers. There's nothing in the contracts, the law or the regulator's rules that required Landmark to offer new products. Landmark itself wasn't standing in the way of Mr B moving his mortgage elsewhere. I'm also mindful that while Landmark's SVR is significantly higher than new interest rate products offered by other lenders, it's not dissimilar to other lenders' SVRs.

Since the start of 2022 interest rates globally have increased significantly, this isn't just limited to Mr B's mortgage, Landmark or even just the UK mortgage market.

I understand Mr B felt Landmark had capitalised his arrears because his monthly payments went up even though his interest rate had reduced, but that's not the case. Lenders don't generally adjust the payments they request each month in line with the balance changing as that would mean a customer would never be sure month to month how much they need to pay. Instead, lenders generally wait until an event occurs, such as an interest rate change or the year end, to review the mortgage in the round and adjust the payments as needed going forward. That's what's happened here. Had Mr B's mortgage run as it should, with all payments made in full and on time, his monthly payment would have decreased when his interest rate went down. Instead, because he'd not made all the payments due, his overall mortgage balance was higher than it should have been. As interest is due on the full balance, that meant even though the interest rate was lower, the payments required were higher, because interest was being charged on a higher mortgage balance than before. That's not the same as capitalising the arrears, as all Mr B was required to do was to cover the interest due on his entire mortgage balance, which is entirely normal and in line with the mortgage contracts.

In February 2023 Mr B told Landmark he was unable to afford the monthly payment, and a concession was agreed for a reduced payment of £1,500 a month for three months. After the three months were up, he asked for a further concessionary period as things hadn't improved. He said he was hoping interest rates would come down, and if they didn't then he would be putting the property on the market.

Landmark's notes from the time indicate it wasn't willing to allow Mr B to continue with that reduced payment arrangement on a longer-term basis as even if interest rates came down, the payment Mr B said he was able to make was less than had been due when interest rates were at their lowest in 2020 by over £300. It also said, in any event, it couldn't use a possible future reduction in interest rates as a valid road to recovery as it was too open ended. It said to be able to decide what options may be possible it needed Mr B to complete an income and expenditure assessment. I understand Mr B wasn't willing to complete that assessment at the time and said he would continue to pay £1,500 a month.

There were further requests for reduced payment arrangements that mostly Landmark turned down. Landmark's notes indicate it felt this was now a long-term situation with January 2023 being the last time a full payment had been made and so it didn't feel short term forbearance measures, such as a reduced payment arrangement, were a feasible option. It did, however, allow Mr B to make no payments for a couple of months whilst he was investigating selling the property.

From the transaction history for the period in question it appears no payments had been made since November 2023, and between February 2023 and November 2023 reduced payments had been made. At the end of September 2024, the arrears stood at just under £70,000.

There were also discussions about whether Mr B would be allowed to sell the house but keep the adjoining land, and he was told if the sale proceeds would be sufficient to redeem the mortgage in full then Landmark's charge would be removed from the property and land, so there would be no barrier there to the title being split.

In the period I can consider I can see that Landmark didn't take any legal action over the arrears, and instead gave Mr B time to try to come up with a solution, whether that be finding a way to clear the arrears and maintain the mortgage or to sell the property. Whilst Landmark may have notified Mr B of the potential for legal action, I can see that no action was taken in the period in question. Landmark has a regulatory duty to keep Mr B informed of the position of his account with regards to the arrears, and it also has a duty in those arrears letters to warn customers of the risk of legal action.



Having considered the payment history since February 2023, and bearing in mind what Mr B told Landmark about his income, expenditure and other circumstances, it seems there were no forbearance options that would have made this affordable for Mr B. His mortgage was already held on an interest only basis and, being interest only, a term extension would have had no impact on the monthly interest charged. Even if Landmark could have offered a new interest rate product, that wouldn't have been at a low enough level that it would have reduced the payment to an amount it seems Mr B would have been able to sustain when looking at the payments he was able to make.

I also don't think there were other measures Landmark could have offered to help him get the mortgage back on track. It wouldn't have been appropriate to capitalise the arrears, since whilst the mortgage wasn't affordable and the arrears were rising, increasing the monthly payment through the addition of the arrears would have made the situation worse. And a long term reduced payment arrangement wouldn't change the amount due, it simply would have meant that an arrangement would also have been reported to Mr B's credit file alongside the arrears reporting. Neither of those options would have helped Mr B get the mortgage back on track.

Mr B has given us an update on what has happened since September 2024 but, as I've explained, that isn't something I can consider here. If Mr B wishes to complain about that he would need to raise that with Landmark directly, and if he was unhappy with its response then he could refer that to us as a new complaint (subject to our usual rules).

I understand this decision will be a disappointment to Mr B and I give him my best wishes for both now and the future. But in terms of the complaint that was brought to us, I can't uphold it however much Mr B may want me to.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 April 2025.

Julia Meadows  
**Ombudsman**