

The complaint

This complaint is about a mortgage Mr V holds with Landmark Mortgages Limited (LML). It's one of several complaints Mr V has raised from time to time. All of them derive generally from LML's treatment of Mr V over arrears and the litigation action LML has taken to recover them. The complaint I'm looking at here started with us in May 2024, whilst we were already looking into another complaint that had begun with us in January 2024. Both cases follow the conclusion of a complaint in May 2023.

The January 2024 case is being looked by a fellow ombudsman; my consideration is confined to the May 2024 complaint, which comprises the following broad subject headings:

- legal costs added to the mortgage balance since 2022 are unfair and unreasonable, because they relate to complaint-handling rather than litigation activity;
- Landmark won't reimburse Mr V's own legal costs for representing himself in the litigation;
- Landmark committed a regulatory breach by restricting Mr V's ability to make payments to the mortgage in order for him to comply with a court order; and
- Landmark has shared his mortgage data with a third party administrator which Mr V believes is a data protection breach.

What happened

The broad circumstances of this complaint are known to all parties. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to both parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mr V being identified.

Instead I'll focus on giving the reasons for my decision. 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. Additionally, I won't be in any way revisiting the case that was concluded in May 2023, or commenting on the January 2024 case that my ombudsman colleague is dealing with. If I mention either in what follows, it will be for context only.

I've noted Mr V has raised a further complaint about further charges LML has debited to the mortgage since this complaint began with us. That's something entirely new from the complaint I'm determining here. We can't investigate complaints 'on the fly' so to speak, with parties adding new points and arguments along the way whilst our investigation is ongoing. Otherwise we risk a complaint becoming a continuously moving target that can never be concluded. I'm also mindful of the over-arching (and statutory) duty that I have to resolve complaints swiftly and with a minimum of formality

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, which includes our jurisdiction.

We revisit jurisdiction at every stage of our case-handling process. When I do that here, I agree with the investigator that LML's right to debit legal costs to the mortgage has already been determined in the final decision from my ombudsman colleague dated 31 May 2023.

I've read with great care everything that Mr V has sent us since then, but have seen nothing that I would regard as material new evidence to justify revisiting what my ombudsman colleague has already decided. For the avoidance of any ambiguity, my consideration of this head of complaint will be confined to the fairness and reasonableness (or otherwise) of the legal costs debited during the period under scrutiny (which is set out below) and not whether LML has the right under the mortgage contract to debit them

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 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.

In a recent email, Mr V has said that I must make further enquiries into the work carried out in respect of the legal costs under scrutiny. He's also asked for more time to make a further submission, arguing that not to do so puts us at risk of a judicial review. I've considered that, but I don't think it is either necessary or fair to allow further time.

I can see Mr V feels strongly about this, but he has already had ample time to argue his case; the investigator first set out her view of this case in June 2024. That aside, I would make the point that it is that it's for us, rather than the parties to the dispute, to decide what evidence we need to reach a fair outcome. That principle is a fundamental component of our impartiality between the parties to a complaint. From my own perspective, I'm satisfied I can reach a fair decision on the basis of what the parties have said and provided.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometimes mean reaching a different outcome from what might prevail in court.

Legal costs debited to the mortgage account are unfair and/or unreasonable.

The sums under scrutiny were debited between June 2022 and April 2024. Any sums debited before June 2022 have already been covered in my ombudsman colleague's decision of 31 May 2023; any after April 2024 would need to be the subject of a separate complaint.

The investigator listed the costs in question, and the activities to which they related, in her view of the complaint; there's no need for me to reproduce that information here. In my view, all of the activities were relevant and proportionate to the ongoing litigation between Mr V and LML, such that there are no grounds for me to find them unfair or unreasonable.

Certainly, there's nothing to persuade me on the balance of probabilities that any of the costs relate to complaint-handling activity carried out by the solicitors on LML's behalf. That being the case, there's no just reason to find that any of the costs in question should be removed from the mortgage balance.

LML should reimburse Mr V his own costs for representing himself in the litigation

There's nothing in the mortgage contract that requires LML to do this. Meanwhile, if any of the orders handed down from the court from time to time had included a ruling to that effect, ensuring LML complied with whatever the court had ordered would be a matter for the court, and not me. If, as Mr V believes, the Civil Procedure Rules allow him to claim his own costs, he's free to make that claim through the court system, although he may wish to seek specialist advice before doing so.

Restricting Mr V's ability to make payments the court had ordered him to pay.

This was an administrative issue; when Mr V tried to make the payment, LML hadn't finished loading all of the details of the court's findings into its systems. It didn't cause Mr V not to pay all he was due to pay by the date he was due to pay it, so it would seem there was no detriment. It just meant he made to pay the money in two tranches, using different payment methods. It was an inconvenience, certainly – for which I consider the £50 LML offered Mr V to be quite sufficient - but in my view, not a regulatory breach.

LML may have breached data protection regulations by having a third party administer the mortgage

Arrangements of this type are quite common in the industry, and are allowed for in the underlying contract between a lender and a borrower. The administrator here, a business I'll refer to as C, is FCA-registered in its own right, and therefore subject to the same regulatory scrutiny as LML itself. It's not clear to me how Mr V has suffered any detriment, financial or otherwise, as a consequence of LML out-sourcing its administration of his mortgage to C. But if Mr V remains of the view that a specific breach of data protection regulation has taken place, that is something he could, if he wishes to, take up with the Information Commissioner's Office.

I make one last observation; in his most recent email Mr V says that a county court cannot overturn a final decision from this service. Again, I'm afraid he is mistaken in his understanding. A final decision from this service is binding on both parties, and enforceable in court if need be, only if the complainant accepts it on or before the date specified at the end of the decision. If Mr V doesn't accept my final decision, or if he does not respond either way by the due date, then the final decision will not be binding on him or LML. Subject to any

time limits or other restrictions a court might impose, Mr V right to pursue the subject matter of this complaint in court won't in any way have been prejudiced by our consideration of it.

My final decision

My final decision is that this complaint should fairly be resolved by Landmark Mortgages Limited paying Mr V £50, if it has not already done so.

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 Mr V to accept or reject my decision before 1 July 2025.

Jeff Parrington

Ombudsman