

The complaint

Miss G has complained about her mortgage she holds with Landmark Mortgages Limited. Her complaint encompasses the following five areas:

- It is an interest-only mortgage.
- The interest rate loyalty discount.
- The fees and charges added to the account.
- Ground rent and service charge payments.
- Auto-capitalisation.

What happened

I won't detail the full background to this complaint as it is extensive, going back many years. There has been a lot of contact between the parties over the years and legal action was taken leading to an order for possession in February 2022, which culminated in this complaint that was referred to our service.

Miss G took out the mortgage in 2001 and then took some further borrowing in 2005. The mortgage and further borrowing were taken out with a different lender and were later transferred to Landmark. Any reference to Landmark in this decision should be taken to mean any previous lender where appropriate.

There have been arrears on the accounts over the years, with legal action being taken.

Miss G has made complaints, with final response letters being issued on 27 April 2016, 20 February 2018, 20 October 2019 and 20 January 2020. Each letter explained that Miss G had six months from the date of it to refer the complaint to us. If she didn't do so, and there were no exceptional circumstances, Landmark said that it wouldn't consent to us looking at the complaint.

Miss G originally contacted our service on 6 October 2022, and on 12 October 2022 we asked Miss G for a copy of the final response letter(s).

We heard nothing further until 4 June 2024 when we received a letter from Miss G saying she'd replied to us on 17 October 2022 and we hadn't responded.

As Miss G hadn't provided a final response letter(s) covering all her complaint points we referred the matter to Landmark and it said it would look into things. Landmark issued a further final response letter on 4 July 2024. Again, it explained that Miss G had six months from the date of it to refer the complaint to us. If she didn't do so, and there were no exceptional circumstances, Landmark said that it wouldn't consent to us looking at the complaint.

We wrote to Miss G on 13 October 2024, enclosing a further copy of Landmark's complaint response letter, and said that if Miss G remained unhappy with the outcome she should let us know. We received Miss G's response to that letter on 21 January 2025.

Our investigator explained which parts of the complaint he thought we could look at, and he didn't uphold the complaints about those.

Miss G didn't agree with the investigator and asked for the complaint to be reviewed by an Ombudsman, so it was passed to me to decide.

What I've decided – and why

I issued a provisional decision in January 2026. In that I set out why I could only consider part of the complaint. Nothing anyone has said since then has altered my view on that. I'm satisfied these are the only parts of this complaint that I can consider:

- It is an interest-only mortgage.
- Auto-capitalisation.
- The service charges and/or ground rent paid by Landmark in 2020.
- The fees and charges added to the account from 4 July 2024 until 6 March 2025.

My provisional decision also set out my thoughts on those points, with the findings saying:

“It is an interest-only mortgage

Miss G complained that her interest only mortgage was mis-sold. She's said Landmark didn't:

- *make it clear that she was only paying the interest each month,*
- *make her aware that she would need to repay the capital at the end of the term,*
- *show examples of the difference in monthly payments between a repayment mortgage and an interest-only mortgage,*
- *explain that she could have switched to a repayment mortgage if she couldn't repay the capital,*
- *ask her to explain how she would repay the capital on the mortgage,*
- *explain the risks of an interest-only mortgage to her as she couldn't afford to save up the money to repay the capital when she took out the mortgage, and*
- *provide her with options about repaying the capital.*

The advice to take out the mortgage was given by an independent mortgage broker, so if Miss G feels her mortgage was mis-sold, or the options weren't explained to her, then that would be the business that she'd need to raise a complaint about. Landmark wasn't responsible for checking the advice given was suitable. All Landmark had to do was explain the contract Miss G had applied for and was entering into, it didn't have to separately check that she understood the risks of it or that it was suitable for her needs; that was the job of Miss G's broker.

Having looked at the documents, I'm satisfied Landmark made Miss G aware that she was taking out an interest only mortgage and she needed a way to repay it at the end of the term.

The mortgage offer from 2001 said:

“This loan is arranged on an Interest Only Basis with the capital repayments suspended. This loan is to be repaid in full at, or before, the end of the Term indicated in this Offer of Loan.

Where it is your intention to repay this loan by using an Investment product (such as an endowment policy or Individual Savings Account) then it is your responsibility to ensure that the Investment Product is maintained. You need to ensure that the proceeds of the Investment Product will provide sufficient funds to repay this loan at the end of the Term. You should monitor the performance of the Investment Product throughout the Term. We make no comment and provide no guarantees as to the suitability or performance of any Investment Product used – that is a matter for you and your financial adviser.

Where you do not intend to use an Investment Product to repay this loan then it must be repaid at, or before, the end of the Term either from the proceeds arising from the sale of the property or from any other resources available to you.”

At the time Miss G took out this mortgage a lender needed to think about whether the lending could be repaid, such as whether there was a repayment strategy in place. But that was less restrictive than it is now, and a lender could rely on what it was told. So, for example, if the broker said “endowment” or “sale of property” that was enough unless it was clearly implausible. The information given by the broker on the application form wasn’t clearly implausible and Landmark was allowed to rely on it. It simply didn’t have to do all the things Miss G has complained it didn’t do.

Having carefully considered everything I can’t reasonably find that Landmark acted incorrectly when it set up this mortgage that Miss G applied for, and I’m satisfied it made it clear Miss G was borrowing on an interest-only basis and that she’d need to find a way to repay the mortgage at the end of the term. Based on the lending standards of the time I’m not persuaded that Landmark did anything wrong in granting this interest-only mortgage which made the whole relationship from then on unfair. So although Landmark had a responsibility to mitigate or remove any ongoing unfairness in the relationship, I don’t think that, in the particular circumstances of this complaint, there was any ongoing unfairness for it to remove. For that reason, I can’t uphold this part of Miss G’s complaint.

Auto-capitalisation

Miss G has said that Landmark failed to contact her in regard to automatic capitalisation, and it automatically collected the arrears over the remaining term of the mortgage, whilst also treating the arrears as immediately payable.

Miss G’s mortgage balance is higher now than it was when the mortgage was taken out. But that isn’t because Landmark (or any previous lender) has wrongly capitalised arrears, or wrongly included arrears in the monthly payment. I’ve looked at what Miss G has said about that, and I’ve also considered the regulator’s guidance on auto-capitalisation. And I’m satisfied that this is not what has happened to Miss G’s mortgage.

Where payments are missed, it’s reasonable that a lender charges an arrears fee where it has to do additional work in connection with the missed payment – such as trying to get in touch with its customer and understand why the payment was missed and whether the customer can make it up. Landmark has also paid ground rent and/or service charges on Miss G’s behalf and added them to the mortgage balance.

With an interest only mortgage like this one, Landmark charges interest and adds it to the mortgage balance. Miss G is then asked to pay the monthly payment, which is the amount of interest charged. And so if she makes the payment, the balance stays the same. But

where Miss G doesn't make a payment, the interest for the month is added to the balance and then there is no payment to reduce it back down again. This means the balance goes up.

The next month, the balance is higher and so more interest is charged as the interest is charged on that new, higher, balance. At the same time, the missed payment is recorded as arrears, since Miss G has an ongoing obligation to make those payments even if they are late. Even if Miss G later clears the arrears in full the balance would still be higher because of the extra interest charged in the meantime. This means that when Miss G hasn't been making payments, or hasn't made them in full, her balance has increased because of the unpaid interest and because of extra interest charged on the higher balance.

This is not the same as automatic capitalisation of arrears. Miss G's arrears weren't capitalised and remained outstanding. But because of the arrears, the mortgage balance had also gone up while the arrears remained outstanding. Landmark requires Miss G to pay interest on the increased balance as part of the ongoing monthly payment – including the additional interest charged – and separately to repay the arrears (the past missed payments).

The monthly payment was not increased to recover the arrears – which is what capitalisation means. It was increased to reflect the fact that more interest was being charged now the balance was higher. This is not therefore against the regulator's guidance, and does not amount to automatic capitalisation. Miss G's arrears have not been capitalised.

It's worth noting that in any case the guidance only applies to repayment mortgages rather than interest only mortgages. With repayment mortgages, the borrower repays part of the capital as well as interest each month. When a payment is missed – when arrears arise – then not only does the interest charged go unpaid (and attract more interest), so does the capital. These missed capital payments can then be caught up in one of two ways. Either the borrower pays the missed capital repayments separately (repaying the arrears), or the mortgage is re-scheduled so that the remaining capital is repaid over the term as part of future monthly payments (capitalisation of arrears).

While interest only mortgage arrears can be capitalised too, the regulator's remediation guidance was aimed at situations where lenders increased the monthly payments on capital repayment mortgages to ensure the capital was paid back in full over the remaining term. That's another reason why it doesn't apply to Miss G's mortgage, which is held on interest only terms.

I'm therefore satisfied that Landmark has acted fairly here. It has not capitalised Miss G's arrears; it always has treated missed payments as arrears and continues to do so, it does not include them in the contractual monthly payment, and it expects Miss G to make up the arrears separately if she can in addition to the contractual monthly payment. Where it has adjusted the monthly payment, it has done so to reflect changes in the interest rate, and to reflect the fact that missed payments (plus the increase in balance due to the fees and charges that have been added) result in more interest being incurred and therefore needing to be paid each month. It has not done so to collect past missed payments.

Having carefully considered everything I don't find that auto-capitalisation has taken place on Miss G's mortgage. For that reason, I can't uphold this part of Miss G's complaint.

The service charges and/or ground rent paid by Landmark in 2020

On 16 January 2020, a solicitor acting on behalf of the property's management company wrote to Landmark to say a County Court Judgement (which it had already provided a copy of) that had been obtained against Miss G in respect of outstanding service charges and/or ground rent remained unpaid. It said the matter couldn't be held in abeyance any longer, and it was taking instructions in respect of commencing forfeiture proceedings unless payment was made by return of post. Forfeiture means that the freeholder cancels the lease and takes the property back. As Landmark's security is held over the lease, not the freehold, it would therefore lose its security if that happened.

As payment wasn't made by Miss G, Landmark made the payment to protect its security and wrote to Miss G to confirm that was the action it had taken.

Miss G's responsibility to pay the ground rent and service charges is set out in her mortgage terms and conditions, as is the right for Landmark to make payment and add that debt to the mortgage balance if it feels its security may be at risk.

The mortgage conditions say:

1.2 In these conditions:

"mortgage debt" means:

(a) all of the money you owe us from time to time under any offer, including any unpaid interest, costs and fees;

2.4 You also agree to pay us any costs we incur and any fees we charge and any interest on them as set out in condition 13

4.1 You agree to do the following:

(d) you must pay in full and on time all rates, taxes, charges and outgoings which are the responsibility of the owner or occupier of the property;

4.2 You also agree to do the following if you hold the property or any part of it under a lease:

(a) you must pay the rents and comply with your obligations under the lease and (if we ask) you must show us receipts for the rent and other payments you must make under the lease;

11.1 You appoint us [...] to be your attorney with power to do the following things in your name and on your behalf:

(c) to do anything which you agree to do under the mortgage or these conditions;

13.1 In these conditions, "costs" means all costs and expenses which we incur to any other person in connection with the mortgage or with any other security we hold for the mortgage debt. Our costs include (but are not limited to) all costs and expenses which we incur:

(e) in protecting or preserving our security.

13.5 [...] you agree to pay our reasonable costs within 7 days of our asking you for payment. You agree to pay our reasonable costs in full unless you can show that we acted unreasonably in incurring them.

13.7 We may charge you interest on costs and fees as follows:

(b) if you do not pay our costs or fees when they are due under conditions 13.5 or 13.6, we may charge interest on those costs and fees from the date on which we first asked you for payment of them.

It's reasonable for Landmark to pay ground rent and/or service charges on Miss G's behalf and add it to the mortgage balance. Where Miss G doesn't pay the ground rent and/or service charges herself, the freeholder of her property can forfeit her lease – which would mean Miss G loses the property, and Landmark loses its security for the borrowing. To prevent that happening, it can make payment on Miss G's behalf and then recover it from her via the mortgage. There was a CCJ in place, so a court had already decided that Miss G owed this amount. If Miss G didn't agree, she had the chance to raise that in her defence to the court before it made its decision. Because she hadn't paid, it was reasonable for payment to be made by Landmark on her behalf. And once the payment is added to the balance, it's also reasonable for Landmark to charge interest on it until Miss G repays it.

Having carefully considered everything I can't reasonably find that Landmark acted unfairly or unreasonably when it made the payment in 2020 and added that amount to Miss G's mortgage. For that reason, I can't uphold this part of Miss G's complaint.

The fees and charges added to the account from 4 July 2024 until 6 March 2025

For the reasons I've already explained, I can't consider any fees and charges that were added to the account before 4 July 2024 as complaints about those weren't referred to our service in time. That leaves me to consider the period from 4 July 2024 until 6 March 2025, which was when the last final response letter that forms part of this complaint was issued about the fees and charges.

I've reviewed the transaction history for the period 4 July 2024 until 6 March 2025 and I can see that a £40 arrears administration fee was added to Miss G's mortgage each month. I can also see that Miss G didn't make any payments to her mortgage in the period in question, with her last payment being in 2023.

I'm satisfied these fees were reasonable in the circumstances. I say this because they were charged in accordance with the terms and conditions of the mortgage and were based on the account conduct. The account was in arrears with no payments made in the period in question and Landmark was unsuccessful in trying to engage with Miss G to discuss the situation with her.

Having carefully considered everything I can't reasonably find that Landmark acted unreasonably when it added £40 a month arrears administration fees to Miss G's mortgage between 4 July 2024 and 6 March 2025. For that reason I can't uphold this part of Miss G's complaint.

Any other points

Whilst not part of the complaint that I can consider, I simply mention this point for completeness to try to deal with a misunderstanding that has occurred.

It seems Miss G has misunderstood the letter dated 19 August 2019. Whilst Miss G thinks the letter is an admission that Landmark breached the mortgage terms and conditions when it made the ground rent payments, the mention of the breach in the mortgage terms and conditions was referring to the fact Miss G, not Landmark, had breached them by not making the ground rent payments when due (as per the mortgage terms and conditions I set out earlier). I agree it is worded poorly but the sentence in question should be read within the context of the paragraph it is in, which was highlighting that Miss G had not made a payment to her mortgage since May 2019 and the account was at risk of falling into serious arrears, which is also a breach of her mortgage terms and conditions

I understand that this isn't the outcome that Miss G was hoping for, and she will likely be disappointed with my decision. However, for the reasons that I've explained, I won't be requiring Landmark to do anything here."

Neither Miss G nor Landmark made any further submissions in response to my provisional findings.

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

Having done so, and having considered the full file afresh, I see no reason to depart from the findings I reached in my provisional decision.

My final decision

I don't uphold Miss G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 12 March 2026.

Julia Meadows
Ombudsman