

## **complaint**

Miss P complains that, after it took over her mortgage account, Landmark Mortgages Limited went back on the agreement she'd reached with the previous lender, N, and called in the mortgage. This meant she had to re-mortgage the property which was stressful and cost her about £4,000.

## **background**

In 2006 Miss P took out an interest-only mortgage with N for a term of ten years. She extended the loan twice so ended up with three mortgage accounts, two of which were interest only. The other was repayment of capital and interest.

Miss P had financial difficulties. She sought help from a debt management agency and, as a result, set up a debt management plan. She knew she wouldn't be able to clear the mortgage at the end of the term in 2016 so, in 2015, she contacted N to discuss her options.

During a call with one of N's advisers, Ms P agreed to an arrangement under which she would make overpayments of £100 a month, in addition to the contractual monthly payment (CMP). This was to continue for a maximum of five years with a review every twelve months.

Before the first review was due, the management of Miss P's mortgage accounts was transferred to Landmark. Landmark wasn't willing to continue with the arrangement that had been agreed with N. Having carried out an assessment of Miss P's income and expenditure, it concluded that she didn't meet its affordability criteria for a fifteen year extension of the terms with conversion to a repayment of capital and interest mortgage. Instead it called in the debt.

Fortunately with the help of family and friends, Miss P was able to re-mortgage the property with another lender.

Landmark said it was made clear to Miss P during the phone call with N that what was being offered was not a formal term extension but an overpayment arrangement subject to a review every twelve months.

Our adjudicator said that, although there was no formal agreement in place, Miss P had been given to understand that, as long as she kept up the overpayments, the arrangement would be maintained for five years. She said Landmark should have attached more weight to the agreement between N and Miss P.

The adjudicator concluded that Miss P hadn't necessarily lost out financially because by re-mortgaging at earlier stage she had the benefit of more time to pay off the mortgage with lower CMPs with her new lender. However it was very stressful when Landmark called in the loan. She recommended that Landmark should pay Miss P £500 for the trouble and upset its insistence that she repay all the money immediately had caused.

Landmark doesn't accept Miss P was caused any unnecessary stress or inconvenience. It says she would have had to re-mortgage anyway and that all it was doing was helping Miss P to face the reality of the situation which was that at the end of the five years, she still wouldn't be able to afford to pay off the capital owing under the mortgage account. Landmark asks, if the reality was Miss P couldn't afford the payment, *'why was it unfair to recall the loan?'* and *'going forward, where would this leave Landmark and the account?'*

The case has now come to me for review.

### **my findings**

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

I have listened to the telephone call between Miss P and N's adviser in 2015. Not only was nothing said that could have alerted Miss P to the possibility that the arrangement could be terminated and the debt called in even if she kept up the overpayments, but I think Miss P demonstrated that she had a clear strategy for getting her finances back on an even keel which N's adviser was entirely supportive of.

In response to a question from the adviser, Miss P explained she was on a three year debt management programme (DMP) with the objective of repairing her credit record over the two years following the completion of the DMP. At the end of that time with a healthy credit file, she would be well-placed to re-mortgage. This was confirmed and acknowledged by the adviser who was supportive and helpful throughout the conversation. Miss P was clearly massively relieved to be offered a constructive way forward which she described as '*brilliant*'.

As the conversation drew to an end the adviser asked Miss P if she was '*comfortable and happy*'. Miss P replied that she was and explained how worried she had been about the possibility of losing her home. The adviser made it clear that five years was the absolute maximum for the '*overpayment arrangement*' to continue. The purpose of the twelve month review would be to see how Miss P was getting on and whether she might be able to increase her payments. At no point was it suggested that, on review, the debt might be called in. I'm satisfied that, by the end of the call, Miss P had the reasonable expectation that, as long as she made an overpayment of £100 each month, she would have five years to rebuild her credit status and, on that basis, find a repayment of capital and interest mortgage with another lender.

Miss P kept to the arrangement and between July 2015 and July 2016 paid £100 every month in addition to the CMP. The fact that there was an agreement, albeit an informal one, which had identified a strategy to enable her to clear the debt within five years, was a matter which I consider it was reasonable to expect Landmark to take into account when it came to review the position in July 2016.

The screen shot notes that Landmark has provided make no reference to the existing arrangement. They indicate that, as soon as it was ascertained that Miss P did not meet the affordability criteria, the next stage was to '*carry on to next action to recover debt*'.

Landmark argues it had a legal right to take immediate action to recover the debt. It says Miss P was fully aware that it could do so, as this was an interest-only mortgage with no prospect of being cleared.

As far as any upset to Miss P is concerned, Landmark's complaint's handler says '*I am failing to see where this has occurred*'. I think it occurred at the point at which Landmark told Miss P that, despite the fact that she had previously been told that, as long as she kept up the overpayments, she would have enough time to rebuild her credit history and so avoid losing her home, the debt was now to be called in in its entirety. I think the fact that being faced with the immediate prospect of possession proceedings was a matter of considerable

anxiety and stress. I consider that upset was exacerbated by Landmark's failure to acknowledge or consider the significance of the existing agreement she'd had with N.

I agree with the adjudicator. Landmark was neither sympathetic nor helpful. It failed to attach any weight to Miss P's compliance with the existing arrangement. This was not a situation where previous attempts to set up an overpayment arrangement had broken down, so that it could fairly be said that the reality of situation was that sooner or later the debt would need to be called in. Miss P had demonstrated that she was able to stick to the agreement reached with N. Landmark's failure to recognise this is disappointing and I have no doubt caused Miss P very significant anxiety and upset.

It follows that I have no hesitation in concluding that the adjudicator's recommendation that Landmark pay Miss P £500 to compensate her for the upset caused by its failure to take into account the arrangement she had previously come to with N, is both fair and reasonable and in line with the awards this service makes in similar circumstances.

### **my final decision**

I uphold the complaint. I require Landmark Mortgages Limited to pay Miss P £500 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 11 July 2017.

Melanie McDonald  
**ombudsman**