

## The complaint

The executors of Mr M's estate have complained about a lifetime mortgage he and the late Mrs M took out in 2006, which was later owned by Landmark Mortgages Limited. The executors believe the mortgage was mis-sold and they are unhappy about how Landmark dealt with the mortgage and communications with the executors following Mr M's death, which they consider has meant the debt has increased when it should not have and they have incurred other costs. In addition, the executors have questioned why the monthly payments that had been made to Mr M were stopped when he died, as they believe they should have continued until the mortgage debt was repaid.

## What happened

Mr and Mrs M took the mortgage with the original lender in 2006. It provided them with an initial lump sum of just over £20,000 and a monthly income of £736 for the lifetime of the mortgage.

The mortgage terms and conditions detailed that the total debt owed was due to be paid to the lender on the death of the borrower. It also confirmed that *'Interest will be debited to the account set up under the mortgage and will accrue until the Total Debt has been repaid in full'*.

The mortgage offer stated that the *'amount of the Monthly Cash Release is fixed for the lifetime of this mortgage...'* and *'Once the monthly cash release is set, it cannot be stopped or suspended unless the mortgage is redeemed.'*

Mrs M died in early 2022 and Mr M in July 2022. The relatives who were subsequently appointed as the executors of Mr M's estate informed Landmark of Mr M's death at the end of July 2022. They asked Landmark questions about the mortgage and what then needed to happen. However, Landmark informed them that until it received the death certificate, it was unable to provide the information needed for Grant of Probate (GoP) to be obtained. Landmark said that it would obtain a copy of the death certificate, but also gave the relatives the option to send in the death certificate themselves to speed the process up. Furthermore, Landmark explained that GoP would be needed before any further details of the mortgage could be provided. The relatives complained.

While Landmark had confirmed that it was unable to provide the mortgage balance until the death certificate was received, it did so on 5 September 2022. This allowed GoP to be applied for.

Landmark responded to the complaint in its letter of 6 October 2022. It initially apologised for having mis-spelt the relatives' surname and for some grammatical errors contained in its letter of 16 August 2022. However, it said that it provided some basic information regarding the mortgage to assist with obtaining GoP, but without that document, it was limited in the information it could provide. It was also confirmed that Landmark didn't have the facilities for customers to visit its offices, which was why it had denied their request to do so.

The GoP, confirming the executors, was issued on 25 October 2022. By this point a complaint had already been raised with the Financial Ombudsman Service about both the sale of the mortgage and how Landmark had behaved since being informed of Mr M's death.

Landmark didn't consider the complaint about the mis-selling of the mortgage fell within our jurisdiction. One of my Ombudsman colleagues considered our jurisdiction to consider the different aspects of the complaint. They concluded the mis-sale part of the complaint didn't fall within our jurisdiction and so we could not consider its merits. As such, we would only consider the element of the complaint relating to the service Landmark had provided from August 2022.

Following this, one of our Investigators considered that part of the complaint. He didn't recommend it be upheld.

The executors did not accept the Investigator's conclusions and asked that the complaint be referred to an Ombudsman. They raised a new point in that they said they considered the valuation that had been completed had been irrelevant. They highlighted that they considered the support they received was inadequate. This is because the Regulator requires firms to put their customers' needs first, but Landmark's process did not do that. They reiterated that they had not needed GoP and had been forced into applying for it by Landmark, with the associated costs.

Our investigator was not persuaded to change his conclusions and the complaint was referred for consideration by an Ombudsman.

### **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.

We review our jurisdiction to consider a complaint at each stage of our process. Having done so, I agree with my Ombudsman colleague's conclusion that the complaint about the mortgage having allegedly been mis-sold does not fall within our jurisdiction. I would also confirm that this service can only consider complaints where the responsible financial business has had the opportunity to respond. As such, if the executors now have concerns about the fact that Landmark had a valuation completed on the property following Mr M's death, they should raise it with Landmark in the first instance.

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

The executors have commented that the Regulator requires a financial business to support its customers when they are in need and that is the case. However, in this case the executors when speaking to Landmark initially could not have been considered a customer. They were relatives of a customer, but at that time Landmark had not received confirmation of Mr M's death in the form of a death certificate, nor had it had confirmation that his relatives had the right to represent his estate. A lender has a responsibility to only release information to those authorised to receive it, and that authorisation - in the form of the GoP - didn't exist until late October 2022. As such, I can't find that Landmark acted inappropriately in not providing information to the executors until it was firstly satisfied that Mr M had passed away, and secondly until the individual contacting it had evidenced that he was the legal representative of the estate.

I note that the executors have said that there was no value in the estate and as such GoP was not needed. This means they consider they were put to expense and time that was not

necessary. They are correct that in cases of an estate with little value to it, GoP is not always needed. However, I note the GoP provided to this service detailed a net estate value of well over £40,000, which would not have fallen to be described as a small estate. So it would appear the executors would always have had to apply for GoP in order to settle the estate, whether they sold the property or Landmark did after repossession.

In relation to the matter of interest being charged on the outstanding debt following Mr M's death, the mortgage terms and conditions provide for this. Furthermore, it is normal within financial services for a debt to attract interest until it is repaid. I can't find that Landmark acted inappropriately in continuing to charge interest on the mortgage balance until it was repaid.

As for the matter of the monthly income the mortgage arrangement had provided to Mr M, it was not unreasonable for this to be stopped upon his death. The executors have correctly highlighted that the mortgage offer says that this can't be stopped unless the mortgage was redeemed. The offer also stated that it was payable for the lifetime of the mortgage. As has previously been pointed out, the mortgage contract ended when Mr M died and the total debt became payable. It would have been inappropriate for further income payments to be made when there was no longer a contract that required that to happen. In addition, as our Investigator pointed out, it would not have advantaged Mr M's estate if payments had continued. The estate may have had additional funds in Mr M's bank account (assuming the providers had allowed the payments to be received), but the mortgage debt would have gone up by the amount of the payments and additional interest would have been charged.

I can understand that the executors found the process with Landmark frustrating, but that doesn't mean that it did anything wrong. In refusing to provide information before it had received confirmation of Mr M's death and then GoP, it was protecting his privacy, as it was required to do. The fact that other businesses may have taken a different approach does not mean that Landmark did anything wrong.

### **My final decision**

My decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask the estate of Mr M to accept or reject my decision before 30 November 2023.

Derry Baxter

**Ombudsman**