

The complaint

Mr H complains that Landmark Mortgages Limited didn't treat him fairly when he wanted to sell his property for less than the outstanding mortgage balance.

What happened

Mr H took out the mortgage in 2006. He borrowed £58,500 (plus fees) on an interest only basis over a 35-year term. The property purchase price was £65,000. As part of the mortgage, he borrowed a further £11,500 on an unsecured personal loan.

Mr H has said that he moved out of the property in 2015 following his divorce and moved into rented accommodation. He's said he didn't rent out the property for personal reasons and so it was uninhabited from that point.

In 2022 Mr H decided to sell the property as his employment situation had changed so he no longer had the income he needed to support two properties.

He said he did some market research and decided to sell the property privately to keep his costs down. He told us he advertised the property via an advert in the window for offers around £65,000 as that reflected the price of similar properties on the market, however he felt he was unlikely to meet that price due to the renovations that were needed.

Mr H has said in the four weeks it has been on the market he'd received offers of £40,000, £45,000 and £50,000 – and he'd accepted the highest of those, which was a cash buyer. Landmark sent Mr H a short sale pack, as the £50,000 sale price agreed was less than the outstanding mortgage balance.

There was contact between the parties over the next couple of months until Mr H told Landmark the buyer had pulled out due to the time it had taken.

Whilst this had been going on there were issues with the direct debit payment when Mr H wanted to change his payment date from the 1st of the month to the end of the month, this led to a payment being collected when it shouldn't have been, and a payment not being collected towards the unsecured loan.

Mr H has raised more than one complaint with Landmark, and our investigator dealt with them under two broad categories:

- Landmark's handling of the change of payment date
- Landmark's handling of the shortfall sale process

Our Investigator said Landmark is entitled to decide whether to consent to the sale. He said it hadn't received all the information it had asked for and it wasn't in a position to make an assessment until it had that information. In respect of the direct debit issue our Investigator felt Landmark's offer of £100 compensation was enough. Our Investigator also said Landmark's offer of £75 for the issuing of an incorrect letter was fair. Overall, he didn't think Landmark needed to do anything further.

Mr H didn't agree, and so the complaint 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.

I trust Mr H won't take it as a discourtesy that I've condensed his complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the 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.

The short sale

Landmark has a charge on Mr H's property, which is security for the mortgage debt. Mr H can't sell the property unless Landmark releases its charge. Usually, it would release the charge when the mortgage is repaid in full.

Mr H says he's in negative equity – he says the property is worth less than the outstanding mortgage balance. He asked Landmark for consent to sell the property for £50,000 when the outstanding mortgage balance was just under £60,000. Mr H said he'd advertised the property privately by way of an advert in the window.

Landmark said it needed a valuation report and it instructed a suitably qualified surveyor – a member of the Royal Institution of Chartered Surveyors. The surveyor gave the property a value of £55,000 based on the surveyor inspecting the property and looking at comparable sale figures in the area.

Despite this Landmark was still willing to consider Mr H's request to sell the property for £50,000, albeit Landmark asked Mr H to explore whether he could achieve a higher sales price. It's not in the interests of either party for the shortfall debt to be larger than necessary. Landmark instructed a suitably qualified surveyor to value the property. I can't see that it was unreasonable for it to ask Mr H to explore the possibility of a higher sale price.

Mr H feels he should receive a copy of the valuation report because he was charged for it, but the valuation was carried out for Landmark's purposes so it could assess Mr H's application to sell the property for less than the outstanding mortgage balance. It wasn't instructed for Mr H's purposes. That's not unusual in the mortgage industry, and it was fair for Landmark to require Mr H to cover any costs it incurred in assessing his application to sell the property for less than the outstanding mortgage balance.

I understand Mr H feels Landmark delayed matters and caused his sale to fall through. But I don't agree. The main bulk of the delay was due to Mr H not providing details of his chosen solicitor and their estimated costs.

I've listened to the calls and having done so I'm satisfied Landmark didn't tell Mr H that he shouldn't find a solicitor until after the application had been approved. The short sale pack asked for Mr H to provide details of his solicitor and the costs of that. Whilst Landmark recommended Mr H didn't incur any legal costs before the application was agreed, he wouldn't have incurred costs if he'd just found a solicitor and obtained a quotation from them. He didn't need to go as far as instructing them to commence work.

Mr H could, at any time, have contacted some legal firms (whether that be solicitors or licensed conveyancers) to ask about their estimated costs for undertaking the conveyancing for the sale of the property. I think most people are aware they can receive quotations for services without committing to proceeding with them.

Landmark sent reminder letters to Mr H on 19 July, 4 August and 11 August saying it needed that information and it couldn't continue with the application until it was provided.

It is unfortunate that Mr H told Landmark on 18 July that he only wanted to communicate by post. As Landmark explained in its letter of 19 July, it doesn't recommend post only for short sale processes due to the delays it can cause in communication, and this situation demonstrates that well. Had Mr H been willing to discuss matters over the phone then I think Landmark could have persuaded him to provide the solicitor's details it required so the application could be progressed. Instead Mr H just responded to the letters saying, erroneously, that he'd been told not to engage a solicitor until the application had been approved.

There is a process that has to be followed with these. Landmark agreed the idea in principle, that is, it said it was willing to consider a short sale application from Mr H. So it could consider that application it needed a valuation to be completed, and all the information it had asked for (including Mr H's intended solicitor's details and estimated costs). Until it received all that it wasn't in a position to approve (or not) his application.

Landmark was clear in its letters that it was *"unable to continue any further forward with the short sale process"* unless it received the solicitor's information it had asked for. As Mr H didn't provide that I can't hold Landmark liable for his potential sale falling through.

Whilst I can see there are times Landmark could have progressed things in a more timely manner, I'm satisfied, for all the reasons given, that wasn't the reason why the sale fell through.

On 30 August, after the short sale had fallen through, Landmark sent a letter to Mr H. That letter was entitled *"urgent contact"* and said *"Please contact us within the next 48 hours on the below telephone number, as there is a matter that needs clarifying."* The remainder of the letter was relevant to accounts in arrears, mentioning arrears administration charges, and reporting to credit reference agencies.

When Mr H contacted Landmark it wanted to discuss the possibility of a voluntary surrender of the property with him. Landmark has accepted that the wording of the letter wasn't appropriate for the situation and offered £75 for that error, and having considered everything I feel that is a fair offer and I wouldn't award any more.

The direct debit

It isn't in dispute that things went wrong with the direct debit. Mr H wanted to move his payment date from the 1st of the month to the end of the month, but when that was done it wasn't suspended for the month in question which led to April's payment being collected twice – once at the beginning of the month, and then again at the end of the month.

On Landmark's recommendation, Mr H made a claim under the direct debit guarantee for the second payment but that led to the unintended consequence of the direct debit being cancelled entirely. When it was set back up it was only set to collect the mortgage payment, rather than also including the loan payment as it should have done.

Landmark has already apologised for the errors, ensured Mr H's credit file hasn't been impacted and offered £100 compensation, so I need to decide if that is enough.

Having considered everything, I agree with our Investigator that Landmark has already done enough on this point. I can understand why Mr H was frustrated, but that offer is in line with what I would have awarded had Landmark not already offered it.

Summary

Mr H borrowed the money and it's reasonable for Landmark to expect him to repay it. Landmark said it was still willing to consider a short sale, but that the process would need to be started again once Mr H had a new buyer. Mr H would need to complete the process correctly, including providing details of his solicitor and their estimated costs, and an updated valuation of his property may be required. A short sale is a concession that Landmark would be agreeing to and it has the right to fully assess any such application, such as looking at whether it thinks a fair price has been achieved.

I'd encourage Mr H to remain in contact with Landmark with the aim of exploring ways for the property to be sold and the debt repaid, if that is still what he wants to do.

Mr H would like a single point of contact but that isn't something I'd order Landmark to provide. I understand Mr H isn't experienced in selling property but, as our Investigator explained, we wouldn't expect Landmark to step into the void that had been created by Mr H choosing to not use the services of an estate agent. I understand Mr H wanted to keep costs to a minimum but he may find the services of an estate agent helpful, both in marketing the property far more widely than just an advert in the window of the property and also in giving him guidance throughout the process. For instance it isn't clear if Mr H already has an Energy Performance Certificate (EPC), but it is a legal requirement to obtain one before a property is sold, even for private sales. To be clear, I'm not giving advice here, and it is Mr H's choice how to proceed. However, if Mr H chooses to continue without an estate agent, he needs to be aware that it isn't the responsibility of Landmark to step into that void.

My final decision

Landmark has already made an offer to pay £175 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that Landmark Mortgages Limited should pay £175 to Mr H (less any amounts already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 September 2023.

Julia Meadows
Ombudsman