Dear Nicky,

Thank you for your letter of 29 April with regards to mortgage prisoners, and the role of the Financial Ombudsman Service. As ‘mortgage prisoner’ isn’t a regulatory term with a set definition, it may be helpful if I start by distinguishing between the three different groups of consumers that the Financial Conduct Authority (FCA) identified in its Mortgages Market Study as being unable to switch to a more affordable mortgage, despite being up to date with their mortgage payments. These three groups provide a useful framework for considering the complaints that we have received and, most importantly, where we are able to put things right in instances when a consumer has not been treated fairly.

The first is a group of consumers who are with regulated lenders that are still active and carrying out new mortgage business, but are unable to switch to a more affordable mortgage despite being up to date with their mortgage payments. We received complaints from consumers in this situation following the Mortgage Market Review (MMR) in 2014 that made wide-ranging changes to the mortgage market, in particular tightening the requirements for lending. Following the MMR, we began to see complaints from consumers who wished to make changes to their mortgage, but couldn’t as they didn’t meet new affordability requirements. There are provisions in the rules which mean that, in certain circumstances, lenders need not apply the stricter tests. However, we have seen complaints where these transitional arrangements were not being applied. While we always take into account the individual circumstances of a complaint, we have upheld complaints like this, and we published an edition of ombudsman news in 2015 which contained a case study which might be helpful. And we have shared similar insight with...
stakeholders a number of times since then. In addition, in 2018 most major lenders made a voluntary commitment to say they would actively contact borrowers to invite them to apply for new rates, and this is something we take into account as representing good industry practice, where relevant, when we look at complaints.

The second group identified by the FCA are consumers that cannot switch to a more affordable mortgage despite being up to date with their mortgage payments, who are with authorised firms that are no longer actively lending. In instances such as this, the options in securing a fair outcome are more limited as the firm is not carrying out new mortgage business. Recently one of our ombudsman made a decision in a case such as this, where a couple took out a mortgage on a fixed interest rate that had reverted to the standard variable rate. The decision, included as an annex below, said that in the circumstances the closed book lender should arrange for the consumers involved to receive mortgage advice that would provide them with more information about what their potential options were with other mortgage lenders.

The third group identified by the FCA is those consumers whose mortgages are now owned by firms that are not authorised to lend and who might benefit from switching but may be unable to do so. These unregulated companies do not fall into the compulsory jurisdiction of the Financial Ombudsman Service and so we cannot look at complaints about them. However, these firms are required to appoint a regulated entity to administer the mortgage and we can look at complaints against the regulated entity. The administrator is generally responsible for payment collection, customer service and arrears management – but not the terms and conditions, including the setting of interest rates.

More broadly, we would expect fair treatment if there is financial difficulty in circumstances where the consumer is paying significantly more in interest than customers of active lenders. And as with all complaints about financial difficulties we expect the lender to treat the borrower fairly and work with the borrower to find a way to repay the mortgage, treating repossession as a last resort.

In terms of the way that complaints are categorised, we do not have a ‘mortgage prisoner’ category within our data, and in our experience, cases like these can involve a number of other issues as well. For example, a customer of an inactive lender may complain about problems porting their mortgage to another property, about treatment in financial difficulties, or about problems paying back the capital at the end of an interest only term. They may not ascribe any of these problems to being a mortgage prisoner. And complaints about changes to interest rates, or access to particular products, can also come from customers who are, and who are not, mortgage prisoners.

So it is not possible to provide a figure for mortgage prisoner complaints, however over the last six financial years we have received between c.9,000 – 12,500 complaints each year in total about mortgages across a wide range of issues (see table below, which includes uphold rates for mortgage complaints) and mortgage prisoner cases make up a small proportion of those.
We estimate that we have received c.1000 complaints a year over this period from customers of inactive lenders and upheld approximately 30% of these complaints – although it is important to note that these will not all be mortgage prisoner complaints as they will include all types of complaints made by a consumer of one of those firms about their mortgage, for instance routine matters of administration. We also estimate that we have received c.100-200 complaints a year about mortgage administration by those companies that administer mortgages on behalf of unregulated entities.

<table>
<thead>
<tr>
<th>Year</th>
<th>Mortgage complaints (total)</th>
<th>Uphold rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013-14</td>
<td>12,606</td>
<td>30</td>
</tr>
<tr>
<td>2014-15</td>
<td>12,297</td>
<td>33</td>
</tr>
<tr>
<td>2015-16</td>
<td>11,288</td>
<td>38</td>
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<tr>
<td>2016-17</td>
<td>10,428</td>
<td>31</td>
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<tr>
<td>2017-18</td>
<td>8,917</td>
<td>23</td>
</tr>
<tr>
<td>2018-19</td>
<td>10,086</td>
<td>26</td>
</tr>
</tbody>
</table>

Cases that we receive on the issues above, such as closed book lenders, the Mortgage Market Review and complaints about the way a lender has treated a borrower during a period of financial difficulty, are identified and then overseen by our mortgage specialists, and casework is carried out by those members of our staff who focus on this area. More generally, complaints about mortgages are subject to the same quality assurance principles and approach as all of our casework at the Financial Ombudsman Service. We have recently, as previously discussed, published a document on our website which brings together all of our work on quality assurance including our work in training and developing our people.

When assessing complaints, the ombudsman will take into account the relevant law, regulators’ rules and guidance, industry codes of practice and good industry practice. The proposals contained within the FCA’s consultation paper 19/14: Mortgage customers: proposed changes to responsible lending rules and guidance would amend its responsible lending rules and guidance so that mortgage lenders can choose to undertake a modified affordability assessment where a consumer is up to date with their payments, doesn’t want to borrow more, and is looking to switch to a new deal on their current property. It also contains information requirements for inactive lenders and administrators, requiring them to review their customer books to identify relevant consumers and write to them highlighting this rule change and directing them to relevant sources of information.
If the FCA introduces these rules following consultation, then where relevant the ombudsman will take them into account when deciding what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of a case. And as with the regulators’ rules and guidance, what develops into good industry practice will also be considered by the ombudsman making a decision on what is fair and reasonable in the circumstances of a case. We note that the FCA has said that there also needs to be a willingness from industry to offer re-mortgaging opportunities to these customers once the regulatory barriers are removed (participation will be a commercial decision for individual firms), and that it will be working with firms on options.

It is clear that some of the consumers involved in these cases find themselves in very difficult circumstances, sometimes as a result of changes in their circumstances, or changes in the market and wider lending environment in the years since their mortgages were taken out. We recognise that alleviating this is a complex problem which results from issues such as changing attitudes to mortgage lending and risk following the financial crisis. We have recently been approached by the UK Mortgage Prisoners group and will be arranging to meet with them to discuss their experience. If there is any further information that I can provide to the Committee then please let me know as I would be happy to do so.

Yours sincerely

Caroline Wayman

chief ombudsman and chief executive
annex A – closed book lender decision

complaint

Mr and Mrs E complain that Landmark Mortgages Limited won’t agree to reduce the interest rate on their mortgage.

background

Mr and Mrs E have an interest only mortgage. It was originally taken out many years ago with the former Northern Rock. When Northern Rock collapsed, their mortgage was moved to the government-owned vehicle which took it over, and has since been sold on to Landmark.

When their fixed interest rate expired around a decade ago, Mr and Mrs E’s mortgage reverted to the lender’s standard variable rate (SVR), and that’s what Mr and Mrs E have been paying ever since.

Mr and Mrs E complain about their mortgage rate. They say it’s not fair that Landmark won’t reduce their interest rate – either by reducing the SVR or giving them a new lower fixed rate. They say that if they were with other lenders they could be paying around 2% rather than the roughly 5% Landmark is charging them. If their rate was lower, they would be able to make overpayments to reduce their balance – but as it is, they face getting to the end of their term in a few years’ time without being able to pay it off. They want Landmark to reduce their interest rate or extend the term.

Our investigator didn’t think Landmark was acting unfairly, so Mr and Mrs E asked for an ombudsman to review their complaint. I issued a provisional decision setting out my thoughts, in which I said:

I’ll start by saying that I have considerable sympathy with the predicament Mr and Mrs E find themselves in.

The lending environment when they took their mortgage out was very different. Now, it’s much harder to get an interest only mortgage. Since they took the mortgage out, Mr E has become unwell and had to give up work – and as a result their mortgage is being paid, in part, by government benefits. Mr and Mrs E have no means of paying back the mortgage at the end of the term. For all those reasons, they’re not able to move their mortgage to another lender and consider themselves trapped, first with the government-owned lender and then with Landmark. That means that, in reality, they’ve got no choice but to pay Landmark’s SVR – whereas if they were with another lender they might be able to access lower fixed or tracker rate products.

This complaint is about Landmark – not the government-owned lender that owned the mortgage before it was sold to Landmark. When Landmark took over the mortgage it was on that lender’s SVR, and in practice the same rate continues to be
applied. The government-owned lender was prevented from offering interest rate products by the terms of its government bailout because of legal restrictions on government bodies competing against the market. That doesn’t apply to Landmark, which is a private company, so there’s no legal or government policy bar to Landmark offering new interest rate products as there was with the government-owned lender.

Landmark said in its final response to Mr and Mrs E’s complaint that it’s not able to offer new interest rate products because of restrictions on its regulatory permissions. When I questioned that it accepted that this isn’t in fact the case – it could offer new interest rate products. But it’s chosen not to do so. It says that it’s not an active lender, and isn’t trying to attract new customers through offering low rates. It says it’s taken a commercial decision in the interests of the financial management of its business to maintain all its customers on the SVR once their previous interest rate products expire. To that extent, it’s not treating Mr and Mrs E any differently to any of its other customers.

Landmark is a closed lender in that it’s not taking on new business, but it’s still regulated by the Financial Conduct Authority and has to follow its rules. But there’s nothing in the FCA’s rules that says a lender has to offer new interest rates to its customers once their old ones expire. The rules say that a lender has to treat its customers fairly taking account of their best interests; it has to communicate with them in a clear, fair and not misleading way; it has to notify them of changes to their monthly payments; and it mustn’t take advantage of customers who can’t move their mortgages elsewhere by treating them differently to other customers with similar characteristics.

In this case, Landmark has notified Mr and Mrs E of changes to their payments from time to time. It isn’t treating them differently to others of its customers – all customers must stay on the SVR once their products expire, just like Mr and Mrs E. So I don’t think Landmark is in breach of any of the regulator’s rules in not offering them a new rate.

I don’t think Landmark is acting in breach of the terms of the mortgage agreement either. Mr and Mrs E’s mortgage offer sets out that they would pay a fixed rate until December 2008, and thereafter the SVR. Nothing in the mortgage offer or the mortgage terms say that Mr and Mrs E would be entitled to another fixed interest rate after that one expires.

I’m aware, of course, from my knowledge of the mortgage market that it’s common for borrowers to take a fixed or tracker rate product – and then, at or shortly before its expiry, take another rate rather than revert to the SVR. Sometimes that’s with their existing lender, sometimes it’s with another lender. But as I say, there’s nothing in Mr and Mrs E’s mortgage agreement that says they’re entitled to a new rate – and that’s also true of most other lenders’ mortgage agreements too.

I’ve set out that there’s nothing in the regulator’s rules, and nothing in the mortgage contract, that requires Landmark to offer new interest rates. Nor is it under any other legal obligation to do so.

That’s not the end of the matter though – my role is to decide what’s fair and reasonable in all the circumstances. I do that by taking into account the law,
regulator’s rules and guidance, and good industry practice – but ultimately I’m not
constrained by them if I think fairness requires me to do something else.

So the question I have to answer is whether, taking into account the rules and the
mortgage terms, it’s fair and reasonable in all the circumstances that Landmark has
refused Mr and Mrs E a new interest rate that’s lower than the SVR.

I’ve thought about this carefully. I’ve taken into account everything I’ve set out above.

It’s very unfortunate that, through no fault of their own and through a series of events
evenly out of their control, Mr and Mrs E have ended up with a closed book lender
that doesn’t offer new rates. But Landmark is their lender, and legitimately so. It’s
decided not to offer new interest rates to any customers, including Mr and Mrs E.
Under current law and regulations, that’s a decision Landmark is entitled to take.

I’m mindful that if Landmark were to offer new lower rates to some customers but not
others, that could mean some customers were being treated less favourably than
others with similar characteristics – which in turn could potentially cause unfairness.
But that isn’t currently the case.

Because Landmark (and its predecessor owner of this mortgage) is closed to new
business, it doesn’t offer new interest rate products. However, there’s nothing in Mr
and Mrs E’s mortgage agreement that would prevent or hinder them re-mortgaging
elsewhere – they’re no longer liable for an early repayment charge, for example. As
I’ve said, that’s unlikely to be a practical option in Mr and Mrs E’s case. But the
reason they can’t do that is because of external changes in their circumstances –
changes which aren’t part of their mortgage contract, aren’t within Landmark’s
control, and couldn’t have been foreseen by any party when they took the mortgage
out.

Landmark’s not treating Mr and Mrs E any differently to how it treats its other
customers. Its business model is based on not offering new products – and that’s a
decision about its business it’s entitled to take. Although they’re receiving
government benefits, and understandably they would prefer their payments to be
lower, there’s nothing in what Mr and Mrs E have said or the recent history of their
account that suggests what they’re currently required to pay is unaffordable or that
they’re in financial difficulty. If they were, there are specific requirements around what
Landmark must fairly do – but they don’t arise in this case.

There’s nothing in the contract, the law or the regulator’s rules that requires Landmark
to offer new products. Landmark itself isn’t standing in the way of Mr and Mrs E
moving their mortgage elsewhere. They’re not in arrears. It’s treating them the same
as it treats all its other customers. And I’m also mindful that while Landmark’s SVR is
significantly higher than new interest rate products offered by other lenders, it’s
similar to other lenders’ SVR rates.

Taking the facts of this case into account, and taking into account the law, rules and
my findings about Landmark’s business model and the level of its SVR, I don’t think I
can fairly uphold this complaint.

Finally, Mr and Mrs E are also concerned that, as the end of the mortgage term
approaches in the years to come, they don’t have any means of repaying the capital
and can’t afford to repay it. They’ve said they’d like a term extension and reduced payments to allow them to overpay. But because this is an interest only mortgage, not a repayment one, the interest payments are the same every month regardless of how long the term is. A term extension won’t make any difference in that respect.

However, I can understand why they’re worried about this. If they don’t have any other means of repaying their mortgage, they might end up in a situation where the only option open to them is to sell their property.

The end of the term is around six years away. That means Mr and Mrs E do have some time to explore the various options open to them – and I’d urge them to use the time to do just that.

I know from my knowledge of the mortgage market and from my experience of other cases that other lenders with closed books, or who have withdrawn from sections of the market, have made arrangements for their borrowers to consult mortgage advisers to see whether they can move elsewhere to a lender that would offer new interest rates. The government backed lender Mr and Mrs E were formerly with does this – but so do other banks who have closed, or closed part of, their books.

I asked Landmark whether it would be willing to arrange for Mr and Mrs E to receive mortgage advice – at no cost to them – as other lenders do. It said it was not. It said it could refer them to a debt advice charity or the Money Advice Service. It said it would be able to give advice itself on options with Landmark. It said it had different strategic aims to the government-backed lender. It can suggest customers seek independent advice – but not arrange for them to do so itself.

I don’t think this goes far enough. I think that where a lender has closed its book and is not offering new interest rate products to its customers, there’s no obligation on it to do so. But at the same time it has to act fairly, taking into account the best interests of its customers.

There’s a balance to be struck here. It is, generally speaking, in the best interests of borrowers to access lower interest rates. But where a lender’s business model is closed, for the reasons I’ve given I don’t think it would be right for me to require it to change that.

Other lenders in a similar position – having closed their book, either in full or to certain types of customer – have made arrangements to refer their customers to independent mortgage brokers to help them move their mortgage away to another lender if possible to do so. I think that represents good industry practice, which is one of the factors I have to take into account in deciding what’s fair and reasonable in the circumstances of this case.

I don’t think a referral to a debt advice charity, or the Money Advice Service, is adequate in the context of the good practice offered by other lenders. Those bodies can give advice on Mr and Mrs E’s wider finances, and advise them about the sorts of alternatives that may be open to them. But they’re not regulated mortgage advisers, able to offer regulated mortgage advice about specific mortgages Mr and Mrs E may be able to apply for, and not able to assist them with an application.
I think the fair outcome in this case is to recognise that Landmark need not offer Mr and Mrs E a new interest rate. But because it has chosen not to do so, fairness – judged against the good practice of the wider industry – in my view requires it to arrange for them to receive dedicated mortgage advice to assist them to identify and, if possible, apply for a mortgage with another lender that does offer lower interest rates. I’ve said that it might, in practice, prove difficult for Mr and Mrs E to go to another lender. But it’s something I think should fairly be explored.

I therefore intend to require Landmark to make arrangements, should they wish to do so, for Mr and Mrs E to receive independent mortgage advice from a regulated mortgage adviser without charge to them.

If it’s not possible for Mr and Mrs E to move their mortgage elsewhere, they will need to give thought to how the mortgage is to be repaid at the end of the term. They’ve got around six years to do that, and they should take advice on their options. And they’ll need to keep in touch with Landmark and discuss their options, and any proposals they have, with it.

Landmark will also need to take action during that time. The regulator has made it clear that it expects lenders to keep in contact with borrowers of interest only mortgages well before the end of the term, discussing the various options and seeking to agree a way in which the mortgage can be repaid. It should not simply sit back and wait for the end of the term. That may require it to give advice about what options are available if Mr and Mrs E remain with Landmark.

So Mr and Mrs E will need to keep in touch with Landmark and discuss with it how their mortgage is to be repaid. And Landmark will need to pro-actively contact them too. I would expect Landmark to consider what they say and treat any proposals they have fairly. If Mr and Mrs E are unhappy at any point, they’ll be able to complain at that time – but I can’t pre-empt that here.

Landmark accepted my provisional decision, and identified the regulated provider of mortgage advice it would be able to refer Mr and Mrs E to.

Mr and Mrs E didn’t accept my provisional decision. Mr E said my decision didn’t help them and it’s not fair that Landmark doesn’t offer new rates like other lenders do – it shouldn’t have been allowed to buy mortgages off other lenders if it’s not prepared to act like other lenders. They were overpaying the mortgage and it wasn’t fair that they couldn’t access lower rates.

**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’ve taken into account what Mr and Mrs E have said in reply to my provisional decision. I do understand the position they’ve found themselves in, and I appreciate why they wouldn’t have chosen it, and would prefer to be paying less for their mortgage each month. I explained why I couldn’t fairly require Landmark to reduce the rate on their mortgage, and I still think that’s the case. It’s now agreed to help them explore moving their mortgage to another lender – I don’t know whether that will be possible for Mr and Mrs E, but if not
Landmark will need to make sure it treats them fairly in the future, particularly as the end of the term approaches.

**my final decision**

For the reasons I’ve given, my final decision is that I uphold this complaint and direct Landmark Mortgages Limited to make arrangements for Mr and Mrs E to access regulated mortgage advice at no cost to them.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs E to accept or reject my decision before 25 April 2019.