

The complaint

Mr and Mrs W complain about fees that Southern Pacific Mortgage Limited (SPML) has added to their mortgage. They say they have been overcharged.

What happened

Mr and Mrs W took out their mortgage in 2004, through a broker. They borrowed £124,000 plus fees, on a capital and interest repayment basis over a term of 25 years. The interest rate was fixed at 7.49% until September 2005, and was then set to track the London Interbank Offered Rate (LIBOR) plus a margin for the rest of the term.

Mr and Mrs W have struggled to make their mortgage payments at times over the years and, in November 2020, they complained to SPML that they had paid too much in fees and charges.

SPML looked at the six-year period before Mr and Mrs W complained. It identified six arrears management fees which needed to be refunded, on the basis that Mr and Mrs W had made their full monthly mortgage payments in the relevant months. It refunded £375 to the mortgage.

Our Investigators explained that they must apply relevant time limits, and this meant they could only look into the fees and charges applied to the mortgage since 18 November 2014 – six years before Mr and Mrs W complained.

An Investigator went on to consider that period of time, and noted that SPML had already refunded a number of fees. But she recommended that interest be added to the refund. She also said SPML should refund an arrears fee it had charged unfairly in September 2019, and add interest to that refund as well.

Mr and Mrs W accepted that conclusion, but SPML did not. It said it was justified in charging a fee in September 2019, because Mr and Mrs W hadn't made a full payment to the mortgage in that month. It asked for an Ombudsman to make a decision.

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.

First of all, I agree with the conclusions the Investigators reached about the period of time I can consider – that is, from 18 November 2014 onwards. I've looked carefully at the fees applied to Mr and Mrs W's mortgage during the period I can consider.

Mortgage lenders are generally entitled to pass on to borrowers any costs they incur in managing a mortgage, including those resulting from a borrower falling into arrears. SPML set out its entitlement to do that in the mortgage terms it provided to Mr and Mrs W when they took out their mortgage, and in its tariff of charges which has been updated over the years. The fees Mr and Mrs W have been charged reflect those set out in the various tariffs.

However, lenders must also treat their customers fairly. Here, SPML had already refunded a number of fees to Mr and Mrs W before we became involved. Our Investigator identified a £30 arrears fee applied in September 2019 which she thought should also be refunded.

SPML pointed out that Mr and Mrs W didn't meet the full contractual monthly mortgage payment for that month. It says that justifies it having applied the fee. I disagree. At the time, for around a year Mr and Mrs W had consistently been making more than the contractual monthly payment to their mortgage every month. It was only in August 2019 that they paid £400 instead of the £800 they had been paying, against a contractual payment of just under £780.

I've looked carefully at the records SPML has provided of its contact with Mr and Mrs W at around that time. Having done so, I find nothing to indicate that SPML carried out any additional work in connection with the payment shortfall for that particular month to justify charging a fee. So I think it's difficult to see what additional costs it incurred in managing Mr and Mrs W's mortgage as a result of the payment shortfall that month. In the circumstances, I share the Investigator's view that SPML should fairly refund the resulting fee. It should backdate the refund in order that interest on the fee is also refunded or, if the mortgage has since been repaid, add simple interest at 8% to the refund as set out below.

SPML has charged some other fees in connection with Mr and Mrs W's mortgage arrears that it hasn't since refunded. Those, however, were applied in months when no payment was made to the mortgage, no payment arrangement was in place, and SPML was in contact with or trying to contact Mr and Mrs W about the situation. I don't therefore consider that it should fairly refund those fees.

In terms of the refunds SPML has already applied to Mr and Mrs W's mortgage, I note it has paid interest on some, but not all, of the refunds. It says it hasn't paid interest on those because they were made as a gesture of goodwill. But, as our Investigator pointed out, Mr and Mrs W had paid more than their contractual monthly mortgage payment in the months when those fees were applied – and the arrears fees in question shouldn't have been charged in the first place. I find that interest should fairly be applied to those refunds as well.

Putting things right

To settle this complaint, Southern Pacific Mortgage Limited should:

- 1) Refund the £30 arrears fee applied in September 2019
- 2) If the mortgage is still in place, backdate the refund to the date the fee was applied in such a way that no interest is charged on the fee and reduce the mortgage balance accordingly
- 3) If the mortgage has been repaid, pay Mr and Mrs W interest at the mortgage rate compounded from the date the fee was applied to the date the mortgage was redeemed. This represents the financial loss incurred in repaying too high a mortgage balance. SPML should then pay interest at an annual rate of 8% simple on the total of the fee plus mortgage interest from the date the mortgage was repaid to the date of settlement. This represents compensation for being out of pocket on the additional sums paid to redeem the mortgage
- 4) Re-work or pay interest as set out at 2) or 3) above (as applicable) on the fee refunds it made as set out in its 16 January 2021 final response letter.

If SPML deducts income tax from the 8% interest element of my award (if 3) above applies), it should tell Mr and Mrs W how much it has taken off and give them a tax deduction certificate if they ask for one, so that they can reclaim the tax from HM Revenue & Customs

if appropriate.

My final decision

My final decision is that Southern Pacific Mortgage Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 22 February 2023.

Janet Millington
Ombudsman