

## **The complaint**

Miss P applied to remortgage through a brokerage, HL Partnership Limited (“HL”). But no mortgage application was ever made for her. She complains that what HL offered won’t cover the costs she’s incurred because of this, or compensate for the impact on her.

## **What happened**

Miss P has raised two complaints about a broker working for HL. This case deals with the complaint about what happened in 2022, when Miss P wanted the broker to make a remortgage application for her.

Mr P, a family member, represents Miss P. He told us Miss P has mental health issues, so he brought this complaint to our service, and it appears that Mr P also managed the mortgage application for Miss P throughout.

Mr P told us Miss P’s previous fixed interest rate period on her mortgage ended unexpectedly at the end of March. Mr P asked HL’s broker to make a mortgage application for Miss P, and he understood this had been done in early April. By then, she was paying the standard variable rate, which he told us meant an increase to around 4%, from around 1% while she was on the fixed interest rate deal. Because Miss P’s monthly payments had increased, Mr P lent her a sizeable amount of money, to pay off most of her mortgage until a new fixed interest rate deal could be secured.

The application took some time, and HL’s broker then told Mr P the application was turned down, and he was ceasing all his mortgage brokerage work.

When Mr P complained, HL apologised, and said no application had ever been made for Miss P. HL was sorry that its former broker had let Miss P down. It said that he had been experiencing extremely difficult issues in his personal life at this time, and ought not to have been taking on work.

HL said it wanted to put things back the way they’d have been if the broker had handled things properly. It understood Miss P couldn’t now get the interest rate she had applied for in early April. So it would cover the additional interest that Miss P would pay on what it could see she had intended to borrow in April, as against what she would pay on this lending now.

HL initially said this was £120,000, but then amended its calculations to be based on intended lending of £140,000 when Mr P offered some evidence that he’d been expecting the borrowing to be that sum. It wouldn’t cover the interest on £160,000 of borrowing. It said what it would pay added up to £7,979.40 over five years.

HL also offered £894 in arrangement fees, and an additional six weeks of the extra interest charged while Miss P remained on her old lender’s standard variable rate (“SVR”) at £83. And it offered £100 in compensation. So it said it had offered a total of £9,056.40.

But it's worked this out on £140,000 of borrowing, which Mr P says isn't enough. Mr P told us that Miss P wanted to borrow £160,000.

Mr P also said his loan to Miss P, to pay off some of her mortgage, was interest bearing. He said she should have been able to pay this back at the start of May, from her remortgage, but what HL's broker did, delayed that. He wanted HL to cover this interest too.

Mr P said that HL had only offered £100 in compensation. He said that £1,000 would be more appropriate, given the impact all this had on Miss P.

Our investigator thought this complaint should be upheld, but only in part. She explained that although Mr P spent a considerable time working on this mortgage application for Miss P, our service can only consider the impact of what HL had done on its customer, Miss P.

Our investigator said that there's no dispute Miss P was incorrectly told her re-mortgage application had been forwarded to the lender for assessment, so what she had to consider was if HL had resolved the complaint fairly and reasonably.

Our investigator thought it was reasonable for HL to cover the additional interest that Miss P paid between 5 April (when Mr P understood her application to have been submitted) to 23 May 2022, when a new re-mortgage application was submitted.

Our investigator said it was difficult to determine what the requested mortgage loan amount had been, on 5 April. The parties disagreed on that. Mr P had been able to evidence a request for £140,000 and HL had amended its offer to be based on this amount. Our investigator thought that was fair. She said other amounts were discussed, but that was for illustration purposes. And it also appears from the limited correspondence provided by both parties that Miss P wasn't looking to take out a large loan. So our investigator wouldn't ask HL to reassess its compensation based on an intended loan of £160,000.

Our investigator said she understood that Mr P told us Miss P would also have to pay interest on the loan from him. But she said that HL can't be asked to cover this. She hadn't seen any evidence that interest payments were made by Miss P, and we can't consider any loss to Mr P here.

Our investigator did think that HL should increase the amount it offered in compensation. She said Miss P had told us that discovering her application hadn't been forwarded to the lender triggered panic attacks. This happened at a time when rates were increasing and, as Miss P put it, "*changing on a daily basis*".

Mr P said £1,000 would be an adequate reflection of the stress and anxiety caused. But our investigator said the aim was to compensate Miss P, not punish HL. She said whilst she had no doubt this had been a very difficult time for Miss P, £1,000 was more than she thought would fairly put right the impact here. She said that given Miss P's application was only progressed in late March, it's reasonable to assume Miss P must have realised her existing mortgage would revert to the lender's SVR before she got an offer, which is why Mr P made a capital repayment, significantly reducing the mortgage balance. And she said we weren't able to take account of any financial loss, distress or inconvenience experienced by Mr P.

Our investigator thought HL should pay an extra £200 in compensation for this complaint.

Mr P, on Miss P's behalf, strongly disagreed. He sent detailed further representations, which both reiterate and expand upon the arguments set out above. Mr P wanted this complaint to be considered by an ombudsman, so it was passed to me for a final 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.

I've reached the same overall conclusion on this complaint as our investigator.

Mr P told us that Miss P's previous fixed interest rate period on her mortgage ended unexpectedly at the end of March. I can see messages which suggest that Mr P discussed a remortgage with the broker at the start of February. I can see some potential mortgage illustrations were provided in February, and there are messages suggesting the broker chased this up in February and then again in late March. However a full application doesn't appear to have been pursued until the end of March.

Mr P had understood this application was submitted on 5 April. We now know it wasn't – no application was ever sent to the lender or loaded onto HL's system.

HL has accepted responsibility for the fact that no application was made. It says this was due to mental health problems that the broker was experiencing at the time. It has offered the following in compensation –

- Additional interest Miss P would have to pay over the next five years – based on £140,000 of borrowing - £7,979.40
- Arrangement fees - £894 in arrangement fees
- Six weeks of additional interest on Miss P's old mortgage, at SVR - £83
- Compensation - £100
- Total - £9,056.40

Mr P contests this. He says that the amount borrowed was supposed to be £160,000, not £140,000, and Miss P's future losses should be based on the difference between the interest rate she could have obtained in early April and the interest rate she eventually obtained, on the £160,000 of borrowing she did eventually secure.

HL says it can only see evidence that Mr P asked for £140,000 of borrowing. Mr P says although this is the only written evidence, he rang the broker on the day of the application, to ask for a higher amount.

There's no agreement on the amount applied for, and no clear contemporaneous evidence of that. And Mr P has no record of this call with the broker where he made the request for more lending. He initially told us that he couldn't access his phone records from this time, but he has since managed to show a record of a short outgoing call on this date. He says the call in question though was an incoming call, which he can't evidence. And HL obviously has no record of an application that its broker never actually made.

That means I have to weigh up the evidence we do have, and decide what's most likely to have happened.

Before I do that, I should address a point Mr P has made, about the relative weight to be given to different evidence in this case. Mr P says that the broker in this case had quite clearly lied, so he thought that when an issue had to be judged on the balance of probabilities, then given the history of the case, it ought to favour his version of events.

I understand why Mr P would expect me to approach the broker's version of events with some caution. However, much of the evidence to be weighed here is either contemporaneous written evidence, or evidence from HP more generally. To suggest that HP's existing staff are also lying would be a very serious accusation, and I see no reason to assume that HP more generally is trying to deceive our service about this case.

HL said when it spoke to Mr P about this complaint, he said the application was only for £120,000. But we do have written evidence that Mr P asked for £140,000 on the morning that the application was made. HL has accepted this, and offered compensation based on this amount.

I have seen a message between the broker and Mr P, from 5 April, which says *"Please see attached. When you make the application please do it for ??140K - just in case. We will end up using less. Regards"*.

It appears that this was sent in the very early hours of the morning, on the same date as messages between Mr P and the broker suggested that the application was being done (although we now know it wasn't).

Mr P has shown us evidence of a very short call to the broker on the same day that he'd understood the application was being made, at 13.54. He says that he left a voicemail, but the call is only three seconds in duration, so I cannot be confident that this is sufficient time for a voicemail to have been left.

There are unfortunately no call recordings showing that Mr P and the broker actually spoke on 5 April. The screenshots we have suggest they were communicating by email that day. They also suggest that the broker messaged Mr P after his call, and Mr P replied, saying *"Thank just checking if you need anything else"*. Although the evidence I have isn't consistent on this, as later screenshots seem to omit Mr P's reply, the chain of messages does seem to follow more logically if this quoted message from Mr P was sent.

There are no screenshots or emails on this date showing this higher figure of £160,000.

Mr P now says the broker rang him back, and on that call Mr P asked him to increase the mortgage amount to £160,000. This doesn't point in the same direction as the written evidence we do have, where Mr P asked for a smaller amount, and said he didn't envisage Miss P needing all of that. And the notes made by HL when Mr P complained say he only mentioned borrowing of £120,000.

I've also taken account of the fact that Miss P did later apply for £160,000 in borrowing. Mr P says this is evidence that he had asked for the same amount previously, but unfortunately, Mr P seems to have initially been unsure whether Miss P ought to borrow £150,000 or £160,000 when he was exploring this second, successful application, and there's no reference there to the amount Miss P wanted in her 5 April borrowing request. So I think it would be equally consistent with all the written evidence we have, if Mr P had only ever asked for £140,000.

I know Mr P says the reason he rang the broker was to increase the amount. But in these circumstances, I don't think I'm able to decide its more likely than not that Mr P did speak to the broker on 5 April and ask him to increase Miss P's requested borrowing to £160,000.

Mr P also said he hadn't asked to take out a mortgage for Miss P at 1.6%, with no lender's fee, he'd asked for 1.44% including a lender's fee. He said that was the most cost effective

option, and it made a difference of £285 over five years. So he thought the compensation should be based on 1.44%, but HL had used 1.6%.

I can see an email where loans at both 1.44% (with a sizeable fee) and 1.6% (without a fee) are discussed. HL's notes suggest Mr P told Miss P that Miss P had applied for the 1.6% lending.

I understand Mr P's argument that he would always have chosen the more cost-effective lending, but it's not clear to me that the lending with a fee would be the preferred lending for Miss P if she or Mr P were planning to pay further lump sums off the mortgage. And I also have to bear in mind that the offer HL makes is for a lump sum payment of compensation now. So Miss P will have the advantage of being able to use this right away to reduce her current lending, if she wishes.

Bearing in mind the above, I think compensation based on HL's calculation of additional interest on £140,000 does form part of a fair and reasonable outcome to this complaint.

Mr P also said that money he'd used to reduce Miss P's mortgage was a loan, not a gift. But he said the terms of this loan went beyond simply asking Miss P to pay it back. He said the lending was always intended to attract interest at 2%, to be paid back out of Miss P's eventual mortgage. Mr P says this was a verbal agreement, and says it was witnessed.

In support of his argument, Mr P has shown us transactions suggesting Miss P has paid back the bulk of the money borrowed. But he hasn't shown us that Miss P has yet paid back either the interest, or the full amount of the original loan. Rather, Mr P said the interest won't be payable until Miss P's financial circumstances improve. Mr P has also told us that the loan was partly repaid by the family reducing the amount of a planned gift to Miss P from £2,000 to £1,000. I do think this illustrates the informality of this arrangement.

Mr P said *"One should only focus on whether the loan exists or not. How it is handled in the family environment, given [Miss P's] mental health, is only our concern."* He noted that HP told the lenders it applied to that this was a loan. Mr P later said that *"It is ... ridiculous to expect some sort of regular monthly payments of interest..."* from Miss P to him, and *"One cannot expect a family arrangement to match with a bank loan arrangement."*

I think this payment was, at least in part, a loan, because Miss P appears to have paid some of it back. But even if I accept this was entirely a loan, and no part of it formed a gift at the time, or was likely to be forgiven, as a gift to Miss P in future, that wouldn't assist with this complaint. Our service is being asked to compel HL to cover Miss P's loss – which isn't money she was lent, it's the interest paid on any loan. And to compel HP to pay that, I have to be able to see it is a loss to her. So I have to see Miss P must pay interest on this money.

Mr P told us he borrowed some of this money himself, extending his mortgage, but I have no powers to make an award in respect of losses not experienced by Miss P. So unless I can see that Miss P has actually lost this money, the interest Mr P says she will have to pay eventually (or face a reduction in her future inheritance) I cannot ask HL to repay it.

Firstly, I would note that this payment doesn't seem to have been made initially to Miss P because of any difficulty with the mortgage application currently under consideration, but because Miss P hadn't expected her mortgage to end at that time. So any initial interest on such a loan, before a new mortgage offer could reasonably have been secured for Miss P, wouldn't seem to me to form part of this complaint.

As for interest after this time, I would like to recognise that this is a sensitive issue, and that Mr P faces an extremely difficult situation if he seeks to recover interest from a close family

member who is unwell. But I don't think I can fairly ask HL to pay interest on this loan. I'll explain why not.

The evidence is that the principal hasn't been fully repaid – Miss P apparently didn't borrow sufficient money in her second, successful mortgage application to pay back all the money she had borrowed. I know Mr P says this is a family loan and how it's handled is their business. But I've explained that before I can require HP to make any payment, I have to be able to see it is a loss to her.

I have considered this issue carefully, but on the evidence I have seen, I cannot be confident that this loss, in the form of interest payable on this lending, will ultimately fall on Miss P, rather than her family.

Mr P also challenged the assessment of compensation in this case. He felt that £1,000 more fairly reflected the impact this case had.

I do understand that Miss P has told us she's previously experienced mental health difficulties, but was otherwise well and not experiencing panic attacks before this problem. And I don't wish to downplay the ill health she's experienced. But I think it's very difficult to unpick the impact of HL's broker's actions here, in not putting forward the application at all for Miss P, from other issues, such as Miss P's previous mortgage ending unexpectedly at the end of March 2022 (which isn't part of this complaint) and the application not being progressed until the end of March 2022 (which doesn't appear to be HL's fault).

So I do think that our investigator's suggestion, of an increase in compensation from £100 to £300, does provide a fair and reasonable outcome to this part of Miss P's complaint.

### **My final decision**

My final decision is that HL Partnership Limited must pay £9,256.40 now, made up of £8956.40 to cover Miss P's additional costs, and £300 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 13 February 2023.

Esther Absalom-Gough

**Ombudsman**