DRN-4294972

The complaint

Mr L and Miss T complain that they were wrongly advised by a broker working for HL Partnership Limited to obtain a mortgage offer which would expire before their property purchase was due to complete, and which the lender wouldn't then extend.

What happened

Mr L and Miss T were buying a new-build property. At the end of March 2022, they applied for a mortgage with a broker working under the umbrella of HL. They got an offer at the end of April 2022, with a rate of 2.38% fixed for around five years. They said they were immediately concerned to see the offer would expire on 30 September. Their completion was then scheduled for September to October 2022, so they were worried their offer might expire before their new home was ready.

Mr L and Miss T said they were told at the time that if that happened, they would have to choose a new mortgage product closer to completion of their purchase. Their broker said there were no other options.

Mr L and Miss T said their completion date then moved to October to November, and they informed their broker of this in May. They were told in July that the lender wouldn't extend their offer, but then their broker said it was ok, the lender would extend after all, and the offer would be valid until April 2023. That wasn't true, and Mr L and Miss T ended up having to apply for a more expensive mortgage product.

Mr L and Miss T said they now knew that there were other options for them at the outset. They could have applied for a new build mortgage, and the offer would have been valid for much longer. They said that would have worked out much cheaper for them. They thought the mortgage which had been recommended wasn't suitable for them.

HL said that the more flexible product that Mr L and Miss T now said they would have chosen initially, was considerably more expensive. So it didn't think Mr L and Miss T would have chosen that option at the time, even if their broker had suggested it. HL didn't think the original recommendation made to Mr L and Miss T was unsuitable. It said the broker had chosen this lender, specifically because the completion date was noted as October and this lender would offer an extension without reassessing the case, unlike other lenders that offered slightly lower rates.

HL accepted Mr L and Miss T had notified their broker on 7 May that completion had been moved to October to November. But HL didn't think the broker should have recommended Mr L and Miss T take out a new offer then, as the product they had was available until the end of October, so completion was still possible while their existing offer was valid.

HL did accept that between 28 June and 5 July, something went wrong, as the broker advised Mr L and Miss T that their product would remain available until late April 2023. The product wasn't going to be available past 30 September 2022, with a maximum extension to the end of October, so HL thought its broker must have made a mistake.

HL said Mr L and Miss T had applied for a new product at the end of September 2022, but it thought they should have been advised to do this at the start of July. It said they would then have obtained a rate of 3.51%, not the 3.92% they later got. So it offered a little over £4,000 to cover the difference between what they were paying now, and what they would have been paying, if they'd secured a rate in July 2022.

Mr L and Miss T didn't think that was fair, because they thought things went wrong much earlier than this. They thought they should have been told at the outset that more flexible mortgage products were available, including those designed for new build properties, which would have a longer validity. They said if they'd been told about the risks, they would certainly have chosen this option, even if it was a little more expensive at the time. They said they'd paid over their life savings as a non-refundable deposit on the property, so they needed to be sure that they would be able to complete on the purchase, whenever the house ended up being ready for them. Mr L and Miss T stressed that they'd raised concerns about the validity of the mortgage from the outset.

Our investigator asked how much more a new-build mortgage might have cost, if that was taken out when Mr L and Miss T obtained their offer. HL said that these were 0.2% more, which would mean Mr L and Miss T paying approximately £25 more per calendar month or approximately £1,500 over the 5-year fixed rate period. Plus their outstanding balance would have been higher at the end of this period.

Our investigator thought this complaint should be upheld. She said the broker is the expert in the mortgage industry, and she would have expected him to be aware of the uncertainty with new build properties. So he should have discussed more flexible products, designed to deal with any change in timeframes surrounding the completion of new build properties.

Our investigator noted that Mr L and Miss T promptly sought guidance from their broker when they learned their completion target date had slipped. Our investigator thought this showed that they were concerned about the expiry of their offer.

Our investigator said there wasn't a significant difference between the repayments on the rate of the flexible product and those for the rate Mr L and Miss T obtained. She thought Mr L and Miss T would have been more comfortable with the flexible product, especially in the context of rising interest rates, and the uncertainty around their completion timetable.

Our investigator felt, overall, that the broker had made an unsuitable recommendation. She said HL should compensate Mr L and Miss T based on the more flexible product they could have taken out at the time their broker made his first recommendation. And it should pay Mr L and Miss T £200 in compensation to make up for the distress and inconvenience.

Mr L and Miss T agreed. But HL didn't. It said the mortgage originally recommended was entirely suitable based on the known circumstances and needs at that time. It said there was no reason to suspect initially that a more flexible product would be required. HL said it was only a change in circumstances in relation to the completion date, which happened after the original advice was given, which made the recommendation unsuitable.

Our investigator didn't change her mind. Mr L and Miss T sent evidence that they had concerns about the likely completion date being over six months from their application, and they'd raised these concerns as early as 20 March. They said their broker told them they didn't have any choice, they might well have to wait until they were within six months of planned completion, and apply again then.

Mr L and Miss T said they now knew they did have more choice available to them, through flexible products. They said they simply didn't know these products existed at the time.

Because no agreement had been reached, this case then came to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

> HL has said that the recommendation which was made in late March 2022 was entirely suitable for Mr L and Miss T, and it's only events after this, when the completion date slipped, which meant the original offer didn't work out for Mr L and Miss T. HL says that it's not unusual for completion dates to change on any purchase.
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> I think that a combination of factors in this case mean that Mr L and Miss T should at least have been alerted to the different mortgage options they had, in purchasing a new build. These are, firstly, that it's not at all unusual for completion dates to slip on a new build project, secondly, that Mr L and Miss T were looking for a mortgage on a property that was six to seven months away from completion so any slippage had a higher risk that the offer would no longer be valid, and finally, that interest rates were expected to rise.
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> Those factors, taken with the concern that Mr L and Miss T expressed from the outset about their mortgage expiring before completion, makes me think they should have been offered a product specifically designed for new builds, with a much longer validity period. And I should also note, for completeness, that one of the reasons why Mr L and Miss T have felt so aggrieved about what has happened here, is they told us that the other buyers they spoke to on the development had all been advised to take new build specific mortgage products.
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> Mr L and Miss T have evidenced that they were concerned, as early as March 2022, about rising interest rates. They've stressed that they had invested all their life savings in the deposit for this property, which would not be refunded if they weren't able to complete. So I think they would have been likely to consider the extra security of a mortgage offer which was valid for longer, to be worth the additional cost of £25 per month. I think they would have been likely to take up this recommendation if it had been made then. For those reasons, I have reached the same overall conclusion on this complaint as our investigator.
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> Our investigator suggested that HL should apply the mortgage Mr L and Miss T could have obtained in March 2022. But HL isn't actually their lender, so I don't think it can do that for Mr L and Miss T. I wrote to HL in advance of my decision, to say if this complaint was upheld, I would ask it instead to provide financial compensation covering the difference between the rate Mr L and Miss T are paying now, of 3.92% fixed until 31 December 2027, and the rate I think they could have secured, of 2.58%. I'll ask HL to work that out for the whole of the fixed rate period for Mr L and Miss T's current mortgage, and pay it as a lump sum upfront.
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> That means Mr L and Miss T will receive a lump sum, paid largely in advance of having to make the relevant mortgage payments. I think there are advantages to receiving a lump sum in advance of payments needing to be made, and I have to take account of that, when deciding what's fair and reasonable in all the circumstances of this case. Our investigator has suggested that HL should also pay interest on the overpayment amount which relates to payments already made. But given that this award mainly covers future payments, and given the benefits of having this award in advance, I don't think it would

be fair and reasonable in this case to also ask HL to pay interest on payments already made.

Finally, I also agree with our investigator that the advice Mr L and Miss T received has caused them some distress, at what was already a stressful time. I think that HL should pay Mr L and Miss T £200 in compensation, to make up for that.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

Mr L and Miss T replied to say they had nothing to add, and wanted to accept my provisional decision. They said they would agree to forego the payment of interest on payments already made. And they asked if they would have the chance to see any further comments that HL made, before the decision was finalised. They were eager to bring this complaint to a close.

I note Mr L and Miss T's final comments. I would have offered an opportunity for them to see, and respond to, the comments that HL has made, if I was considering changing my mind on this complaint. But, for the reasons I'll set out below, I haven't changed my mind. So I'll simply record the comments HL made and my response to those in this final decision.

HL replied to say it didn't agree with the decision I'd reached, but it would settle on the basis that I'd outlined, subject to reconsideration on one point it thought I'd got wrong.

HL said it couldn't understand why it was being asked to calculate the difference in monthly payments until 31 December 2027, the date that Mr L and Miss T's existing 3.92% rate runs to. HL said if Mr L and Miss T had completed on the 2.58% rate which I'd said they should have secured, that would only have been fixed until 30 June 2027. So HL said it should only be calculating the difference in payments between 28 January 2023 (which it understood was the date of completion) and 30 June 2027.

HL thought, given the current state of interest rates, it was likely that Mr L and Miss T would benefit from the 3.92% rate being fixed for longer than the 2.58% rate would have been. So even if HL didn't pay for this period, it still thought Mr L and Miss T would likely have lower payments between July 2027 and January 2028 than they would have had otherwise. HL said it accepted we didn't know this for certain now, but it still thought what would be fair is for it to calculate the added costs to 30 June 2027, not 31 December 2027. So HL said it would be willing to settle on this basis.

I had considered this issue in setting my proposed award, and I've reconsidered the issues now, in the light of HL's comments. And unfortunately, I don't feel able to say what interest rates are likely to be available for a remortgage in summer 2027. So I can't say it's more likely than not that the rate Mr L and Miss T will be tied into between the end of June 2027 and the end of December 2027 will be better than the rate they would be able to get in the mortgage market at that time. Nor can I tell now whether rates will drop or rise during this period. So I can't tell whether Mr L and Miss T will be better or worse off after this time, by their mortgage deal ending on 31 December 2027, not 30 June 2027.

The only certainty in this case appears to me to be that, between 30 June 2027 and 31 December 2027, Mr L and Miss T will be tied into a mortgage deal which runs for longer, and is set at a higher rate, than they should have secured if they'd been properly advised. In the light of that, I do think it's fair and reasonable to continue the compensation for the higher rate they are tied to, until that rate ends, rather than, as HL suggests, when a lower rate would have ended.

For those reasons, I haven't changed my mind about the appropriate outcome in this case. I'll now make the decision I originally proposed.

My final decision

My final decision is that HL Partnership Limited must calculate the difference between the mortgage payments Mr L and Miss T are making now, and those they would have made if they'd secured a mortgage, at 2.58%, fixed until 31 December 2027. HL Partnership Limited must work out the total difference over the fixed interest rate period, and pay this to Mr L and Miss T as a lump sum upfront.

HL Partnership Limited must also pay Mr L and Miss T £200 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Miss T to accept or reject my decision before 11 September 2023.

Esther Absalom-Gough
Ombudsman