

The complaint

Miss U complains that HL Partnership Limited failed to advise her how to apply for a help to buy loan to go alongside her application for a mortgage.

What happened

Miss U was looking to buy a property and found one she wanted to purchase. She would need to take out a help to buy shared equity loan as well as a standard mortgage to fund the purchase.

Miss U paid a reservation fee on the property and approached HL for assistance with the mortgage. She explained that she wanted both a mortgage and a help to buy loan.

HL is a regulated network of mortgage brokers, and Miss U was dealing with one of its appointed representatives. For ease I'll refer to HL throughout this decision.

In situations like this, a regulated mortgage broker – such as HL – makes an application to a mortgage lender for the main mortgage. But the borrower – Miss U in this case – needs to make a separate application for the help to buy loan themselves. It's not something that's dealt with by HL.

Miss U didn't understand that. She thought HL would apply for both loans for her. The result was that Miss U didn't progress her help to buy application.

Around the same time, the government was closing the help to buy scheme to new applications. The change took effect from 1 October 2022.

As a result, by the time Miss U realised what had happened and that she would need to apply herself, it was too late. The scheme was closed and Miss U could not get a help to buy loan.

Miss U complained. She said that HL hadn't made clear that it was only dealing with the mortgage, not the help to buy loan, and hadn't told her what she needed to do. Without the help to buy loan she could no longer afford to buy the property and so had had to pull out of the purchase. As a result she'd lost the reservation fee, which was non-refundable. She'd also spent money buying furniture and other items specifically for that property which she could no longer use and was having to pay to store. She'd also paid solicitors fees.

Miss U wanted HL to refund all those costs. And she said that it should compensate her for no longer being able to afford the property she wanted to buy – the help to buy loan would have given her 40% of the purchase price, so she said HL ought to pay her that amount.

Miss U also complained that HL had set up direct debits to come out of her bank account in respect of insurance costs before she'd agreed to the insurance.

HL accepted that the direct debits shouldn't have been put in place, but said they'd been cancelled again before any payments were taken. It said it should have done more to ensure that the help to buy application was in progress and that Miss U understood what she

needed to do, and that it wasn't something HL could help her with. It offered £150 compensation.

Our investigator didn't think HL's offer went far enough. He didn't think that it would be fair to ask HL to contribute to the cost of buying a property. And he didn't think it was fair to ask it to refund the cost of the furniture and other items, since Miss U still had them, and it was her choice to buy them before the property purchase was confirmed. But he said it should refund the £500 reservation fee, as well as £395 she had paid to solicitors and the £394 she'd been charged by HL. He also said that losing the property she'd hoped to buy had had a significant impact on Miss U and so he thought £750 compensation would be fair.

HL said it didn't think it was solely to blame, as Miss U's solicitor and the property developer also ought to have told her how to apply for a help to buy loan. It therefore said it didn't think it was fair for it to refund the £500 reservation fee or the £395 solicitor costs. As no agreement could be reached, the case comes to me for a final decision to be made.

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.

Help to buy loans aren't regulated, and therefore advice about them is not something that falls within the jurisdiction of the Financial Ombudsman Service. In any case, HL wasn't giving Miss U advice about a help to buy loan – in the sense that it wasn't recommending a particular loan to her.

However, it was giving regulated mortgage advice in respect of the first charge mortgage Miss U would also be taking to fund her purchase. That is a regulated activity which falls within our jurisdiction – and our jurisdiction extends to matters which are ancillary to a regulated activity. In this case, the only way Miss U could buy her property was with both a mortgage and a help to buy loan – and so the mortgage and help to buy loan were inextricably linked. Without the help to buy loan, the mortgage couldn't go ahead.

That doesn't mean that HL was obliged to give Miss U detailed advice about the help to buy loan, or apply for or arrange it for her. It wasn't. But in my view, as part of giving her mortgage advice – or ancillary to doing so – it ought to have made sure she understood what she would need to do to make the other necessary arrangements to fund her purchase, and made sure she understood what HL would and wouldn't be doing for her. And it didn't do that – and so didn't act fairly in giving mortgage advice.

That much is not in dispute in this case. What remains in dispute is what HL needs to do to put matters right.

Putting things right

There are three areas for me to consider – the costs Miss U has incurred and the extent it would be fair to expect HL to refund them; the impact that has had on Miss U's ability to purchase a property; and compensation for the distress and inconvenience caused.

Dealing first with Miss U's expenses, I think it would be fair for HL to refund the fees it charged. Because it didn't make clear what it would be doing for her, and what she would need to do herself, Miss U was left in a position where the mortgage application couldn't proceed. I don't think it's fair that HL charges her for the advice it gave in those circumstances.

I also think it's fair that HL refunds the reservation fee and legal costs Miss U had to pay. These are costs that Miss U wasted because she was no longer able to go ahead with the purchase. I'm satisfied that HL is responsible for that as it ought to have ensured Miss U had all the funding arrangements in place.

However I don't think it would be fair to require HL to refund the cost of furniture and other items Miss U incurred – including those she had custom-made to fit the property. I think it was premature to incur such substantial costs before the property purchase was confirmed and in doing so Miss U put herself at risk. I've not seen any evidence that HL advised her that the purchase was guaranteed to go ahead or that she should start to buy furniture. Property purchases can fall through for many reasons and it's therefore not generally appropriate to commit to costs like this before contracts have been exchanged.

I also don't think it would be fair to require HL to pay Miss U the amount she would have borrowed on the help to buy loan. I appreciate that without a help to buy loan – which is no longer available – Miss U lost this property and might well not be able to afford to buy another. That lost opportunity is something to take into account in the compensation for distress. But I don't think I can fairly require HL to pay her the amount she can no longer borrow from help to buy, since that would put her in a much better position than she would have been in had nothing gone wrong. Had she bought the property, she would owe 40% of the purchase price on an interest-bearing loan; giving her that amount of money, with no requirement to pay interest on it or pay it back, goes beyond what can fairly be expected in my view.

But it's important to recognise the impact this situation has had on Miss U. Not only did she lose the specific property she wanted to buy, she may well also have lost the opportunity to buy a property at all – at least for now. That's had a substantial impact on her, and I agree that £750 compensation is fair in all the circumstances.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint. I direct HL Partnership Limited to:

- Refund all fees it or the mortgage lender charged Miss U.
- Reimburse Miss U for the £500 reservation fee and £395 legal fees.
- In both cases, it should add simple annual interest of 8% running from the dates Miss U paid those amounts to the date they are refunded. HL may deduct income tax from the 8% interest element of my award, as required by HMRC, but should tell Miss U what it has deducted so she can reclaim the tax if she's entitled to do so.
- Pay Miss U £750 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss U to accept or reject my decision before 12 February 2024.

Simon Pugh
Ombudsman