DRN-5219850

The complaint

Ms S has complained about the service she received when she applied for a mortgage through an appointed representative of St. James's Place Wealth Management Plc ("SJP"). She's said the communication was poor, she had to chase things up, and the delays left her concerned she would lose her home. Ms S has said she ended up going to a different firm of advisers and whilst she obtained a mortgage through them, the delays meant it is at a much higher interest rate.

Any reference to SJP in this decision should be taken to mean that individual broker where appropriate.

What happened

Ms S held a mortgage with a lender that I'll refer to as lender L. She'd taken that mortgage out in 2008 on an interest only basis over a 15-year term. Since 1 May 2010 Ms S's mortgage had been on a variable rate that was capped at 2% above the Bank of England base rate.

Ms S approached SJP in February 2022 as she needed to remortgage by April 2023. That's because her mortgage term was due to end at that time, and she wasn't in a position to repay the outstanding mortgage balance.

Ms S spoke to the adviser on 16 February about her needs and circumstances and followed that up the following day by email confirming some details such as that her outstanding mortgage balance was just under £149,000. As she hadn't heard anything back from her email and voicemail messages left for the adviser, Ms S sent a further email a week later asking if the lack of response meant the adviser was unable to help her. The adviser replied to say he would help Ms S and that he had been busy and arranged for a further call on 1 March.

It's not clear what happened after that as there is a gap in the email trail until the end of April. Ms S has told us that she spoke to the adviser at the start of March and he said he would start the ball rolling.

On 5 May the adviser ran a decision in principle with a lender I'll refer to as lender S for a mortgage of £145,000. The adviser has said lender S was the only lender that was prepared to lend to Ms S based on her circumstances and the fact she wanted an interest only mortgage. The decision in principle was declined, with lender S saying Ms S should check her credit file.

Ms S checked her credit file and there were some missed payments showing. Ms S emailed the adviser on 8 May to say that the credit file information was being corrected as it was a mistake however she'd been told it could take up to two months for that to happen.

On 31 May Ms S sent a current copy of her credit file to the adviser saying the error had been corrected and asking if an application could now be made.

The adviser undertook an affordability check on 1 June, and that came back that lender S may be able to lend up to £149,000 to Ms S.

On 6 June the adviser said they tried a further decision in principle with lender S, with it this time being declined for affordability reasons.

On 10 June the adviser said they were going to speak to their business development manager, and on 15 June they said they'd be sending information through to lender S so it could be looked at. Ms S chased things up, with the adviser saying he'd been busy but "Don't worry we will be fine"

On 30 June Ms S provided up to date payslips and bank statements to the adviser, and said she was going away for a month in three weeks' time. Ms S chased things up again on 8 July, but the email trail ends there for that time period.

The next contact that is evidenced is Ms S sending an email to the adviser on 5 September saying she recalled the adviser saying he could run an application again on 1 September, and asking if there was any news. The adviser replied that he would follow it up that week and check if it could be done. Ms S chased that up on 10 September, and the adviser asked if a telephone call could be arranged to "get this thing started again".

On 13 September Ms S sent the latest copy of her credit file to the adviser and asked for a call to go through an application. And on 20 September the adviser asked if an outstanding balance of £399 was correct for a credit card. Ms S replied to say it was £10 when she'd run the report, and was £78 that day, and that she would be paying it off later. Ms S said those figures were being taken directly from her credit card statement, and she could run a new credit report when she got home.

The next contact showing in the email trail is on 24 October. In that Ms S says she had another updated credit report and she asked for a secure link so she could send that to the adviser. She also asked what the chances of being approved were as the cost of her current mortgage was going up monthly. To which the adviser replied "we have time don't panic".

Ms S sent a further copy of her credit file across as the adviser said he hadn't received the first one, and a further call was arranged.

The adviser ran a further affordability check on 8 November and that showed a £149,000 mortgage was affordable, and then on 9 November the adviser obtained a decision in principle from lender S for a £149,000 mortgage for Ms S.

The following day the adviser submitted a full application and then realised he had input an incorrect figure for Ms S's income (on the affordability check, decision in principle and full application), declaring it to be £6,000 higher than it actually was. When the correct figure was used it didn't pass the affordability check. At that time the adviser recommended Ms S approach her current lender, lender L, to see if it could help.

The last email we seem to have on file is one Ms S sent to the adviser on 18 November in which she said lender L couldn't help, but that they would give her time to sell the property.

Ms S then approached a different broker who put forward two potential options, either an application to lender S for a loan amount of around £125,000 over a six-year term, or an application to lender H with an eleven-year term.

An application was made to lender H and Ms S received a mortgage offer on 18 January 2023. That was for a loan amount of £130,000, on an interest only basis over an eleven-year term, with an interest rate fixed at 5.95% for five years.

The new mortgage completed on 16 March 2023, with Ms S paying the residual balance of around £19,000. Ms S has told us this sum was a gift from a family member.

Ms S complained to SJP on 22 April 2023. SJP responded to that complaint on 2 October 2023. It didn't uphold the complaint, although it offered £200 in recognition of the time taken to provide a response to the complaint.

Our Investigator thought that offer was fair and didn't recommend SJP needed to do anything further to resolve the complaint.

Ms S didn't agree and so the complaint was referred for an Ombudsman's decision.

What I've decided – and why

I issued a provisional decision earlier this month, the findings of which said:

> 'Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.
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> At the heart of this complaint is a dispute about whether the adviser should – or could – have done anything sooner to move Ms S's application forward, whether that be an application through him or by telling Ms S he couldn't help so she could seek advice elsewhere, as she eventually did in November 2022.
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> It's not in dispute that the first contact between the parties was at the start of February 2022. It seems there was a conversation at that time, and some follow up emails, but it doesn't seem anything was progressed by the adviser. It isn't clear why that was. Ms S has said she started the process a year before her term was due to end as she was concerned about what would happen with her property, and wanted to ensure she had something in place in good time before April 2023. So, whilst Ms S had *until* April 2023 to get something in place, it is clear from her submissions, and from her contact with the broker chasing things up, that Ms S wanted things resolved far in advance of that date.
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> The first real action from the broker seems to be on 5 May 2022 when he requested a decision in principle from lender S. That showed an issue with Ms S's credit file which she had resolved by 31 May. It seems likely that had the broker progressed the application back at the start of March then the issue would have come to light much sooner, and hence been resolved much sooner. Ms S was unaware of the issue until the broker told her, and when she was told she resolved it within weeks. I see no reason to believe that [wouldn't] also have been the case had Ms S been notified of the problem at the start of March.
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> I think it is also worth noting here that it seems the broker made a mistake with the May decision in principle as he submitted it on the basis that Ms S needed a loan amount of £145,000, rather than the £149,000 she actually needed. Had that been input correctly at that time it is possible the affordability issues would also have become apparent a month earlier than they actually did on 6 June.
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> The adviser has said that the constantly changing credit outlook kept putting the required loan out of reach, with the adviser saying Ms S kept using her credit cards. But there's no record in any of the emails, or in any contact notes, that the adviser discussed with Ms S

whether she could stop using the cards as it was what was stopping her getting a mortgage. And in any event the amount of credit card debt declared in the June decision in principle was actually lower than the amount declared in the May decision in principle.
Ms S has said that if the adviser had told her to pay off her credit cards and/or to stop using them then she would have done so. That's feasible as people often put day to day spending on credit cards and then pay the balance off, and Ms S has said one was on a 0% interest rate which is why she didn't clear the balance without being told she needed to do so to be eligible for the mortgage.

Although the adviser has said he continued to run affordability checks throughout June, July and August there's no supporting evidence of that on file, either by way of copies of the affordability checks (like were provided for other affordability checks) or an email trail between the adviser and Ms S. The adviser's calendar snapshot he has provided also doesn't show any contact in that period.

It isn't clear why the adviser was so focused on obtaining a mortgage through lender S when lender H, who Ms S eventually obtained a mortgage through, was also on its panel. SJP has referred to lender S being a "high street lender" but while lender H isn't such a large lender it is equally valid as an option. The adviser has also said "I would again respectfully point out that [Ms S] did finally get a mortgage through a new broker, but this was a Retirement Interest Only mortgage. In other words, this new broker failed, as I did, to get a standard "high street" mortgage for [Ms S] and instead had to revert to a RIO mortgage. This should be evidence enough that it was HER situation that dictated her inability to obtain a new mortgage and NOT my abilities as a mortgage broker."

It isn't clear why the adviser seems to feel what he has referred to as a retirement interest only mortgage is somehow "lesser" or unsuitable for Ms S. The mortgage Ms S obtained is simply an interest only mortgage over an eleven-year term. Whilst that is far into her retirement and they are marketed to people aged 50 or over, it is still a "normal" mortgage in that she makes monthly interest only payments, has to repay the debt at the end of the term and the early repayment charges are similar to that you would see with any other five-year fixed interest rate mortgage.

SJP has said that the adviser could have arranged a mortgage with lender H so it isn't clear why the adviser didn't look into other options when he was struggling with lender S. There's also nothing to evidence that the adviser discussed other options with Ms S like the second broker did, such as whether she could put a lump sum forward and borrow a lower mortgage amount. The adviser has said that Ms S told him on several occasions that there were no other funds, but we've nothing on file to support that. The adviser also said Ms S's credit card debt suggests she didn't have money available to do so, but as this was an (attempted) advised sale I would expect to see a full fact find setting out everything that was discussed, what was discounted as not suitable and why. That situation should also have been regularly reviewed.

It is unfortunate Ms S didn't approach the second broker sooner, but the SJP adviser was reassuring and at no point, in the email trail, can I see that the SJP adviser said that he was unlikely to be able to get a full £149,000 mortgage with lender S and he didn't have anything else to suggest instead. Instead the adviser sent emails to Ms S saying things like, "we have time don't panic" and "don't worry we will be fine" so I can understand why Ms S felt able to leave things with the adviser for so long.

The adviser missed a few opportunities here, each of which individually could have led to [Ms S] getting her mortgage with lender H at a lower rate if the service from the SJP adviser had been better:

- The adviser could have started the process in March rather than May, which would have meant the error on Ms S's credit file would have come to light – and therefore been rectified – two months sooner.

- The May decision in principle could have been input for £149,000 rather than £145,000 which may have shown up the affordability issues a month sooner.

- The adviser could have raised the credit card issue with Ms S and discussed whether she was in a position to stop using the cards, and possibly pay some of the debt off.

- The adviser could have discussed other options with Ms S, such as whether she was in a position to proceed with a lower mortgage balance, whether a 50+ mortgage (or retirement interest only mortgage) was a suitable option for her, and whether there was a non-high street lender option available.

- The adviser could have told Ms S much earlier on that he was unable to obtain the mortgage he was looking at so she could consider approaching a different broker.

It is clear from the email trail that it was Ms S driving the contact and trying to get matters progressed. The adviser has accepted that he could possibly have done more to keep in contact, citing the fact it was an exceptionally busy year as his reason for not doing so. But if the adviser felt he was too busy to help Ms S then he needed to tell her that so she had the opportunity to go elsewhere.

Ms S spoke to the second broker at the end of November, and had a mortgage offer by January, and this was at a time when interest rates were much higher so affordability was harder to achieve. So it seems, had other options been considered and discussed – or the SJP broker had told Ms S he couldn't help her – then there was no reason why Ms S couldn't have obtained that same lending much sooner, and at a much lower interest rate.

Even putting aside the earlier issues (such as the delay between March and May) I'm satisfied the adviser should have told Ms S by 6 June 2022 that he would be unable to source the mortgage for her. I can see from the emails the adviser said he was going to discuss matters with his business development manager, but then another month passed with no progress, so I'm satisfied 6 June is the point the adviser should have said that he couldn't help Ms S.

And if I'm wrong about that, and it wasn't unreasonable to allow another month or so for the business development manager to look at things, then instead looking at the delay between March and May at the start of the process I think the adviser still should have been in a position to tell Ms S that he couldn't help by 6 June. To explain; if the adviser had progressed matters back in March (rather than at the start of May) then he would have told Ms S in mid-March that there was a problem with her credit file. Had that happened then it is likely she would have resolved that by mid-April so I still think that by 6 June the adviser should have been in a position to tell Ms S he couldn't help her, even giving another month or so for the adviser to discuss things with the business development manager.

Whilst the adviser has said he continued to run affordability checks over the next few months, there's nothing on file to support that. Mortgage interest rates had already started to increase and it was generally accepted that would continue so affordability was only going to get harder to achieve.

Having considered everything very carefully I don't think the adviser provided Ms S with the level of service she was entitled to expect, and I think the adviser should have told Ms S by 6 June 2022 that he was unable to help her, leaving her free to seek advice elsewhere.

Each month of delay left Ms S in a worse situation as her existing mortgage interest rate was rising, and her chance of meeting the affordability criteria of any new lender was lessening.

If the adviser had told Ms S on 6 June 2022 that he was unable to source a mortgage for her then I'm satisfied she would then have approached the second broker. In the absence of any evidence to the contrary I think it is reasonable to assume that Ms S would have taken a similar amount of time to approach the second broker as she did in November 2022, that any application would have been to the same lender (lender H) and on the same basis as the November application, and I also must assume that any application would have taken the same amount of time to complete as it eventually did.

For that reason I think SJP is liable for the additional costs Ms S has incurred due to the approximate five month delay in Ms S making that application to lender H.'

SJP said it accepted that it can't continue to challenge that the adviser could have acted in a more timely fashion, and it asked whether an earlier redemption date with lender L would have attracted an early repayment charge.

Ms S also accepted my provisional decision, albeit she expressed her concerns about her mortgage payments now, saying that if she had got the mortgage earlier at a lower interest rate things would have been different.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I thank both sides for their prompt responses to my provisional decision.

I can confirm there would have been no early repayment charge on the mortgage Ms S held with lender L for a redemption in October 2022 as I investigated that point before issuing my provisional findings; I apologise for not mentioning that in my provisional decision as I understand why SJP want that clarified. That information was provided to our service by lender L directly and showed Ms S had remained on the same product since 2008, with there being no early repayment charge since 30 April 2010.

I understand Ms S's concerns for the future, especially as she turned 66 years old this month and is about to receive her first state pension payment. The redress I have set out is designed to put Ms S back in the position she would have been in had she got a mortgage with lender H earlier and at a lower interest rate. She will receive a lump sum payment from SJP that will cover both any higher payments she has made since October 2022, as well as the higher payments she will make until October 2027. Ms S can then use that sum to 'top up' her monthly payments each month from what she would have paid on the 4.60% interest rate product to what she has to pay on the interest rate product she took.

Which leads me onto another point. Since my provisional decision was issued I asked Ms S to provide a full copy of her mortgage offer with lender H and that shows the rate she eventually took was 5.70% fixed for five years, rather than the 5.95% fixed rate that was on the illustration she'd previously provided. The Investigator sent both sides an email yesterday explaining that and setting out the revised redress so it takes into account the fact Ms S has a rate fixed at 5.70% rather than the 5.95% we'd previously thought.

I've carefully considered what both sides said in response to my provisional decision and I've reviewed the full file afresh. Having done so I see no reason to depart from the findings I reached – and the redress I was minded to order (other than the amendment from 5.95% to 5.70% as set out above) – in my provisional decision.

Putting things right

Ms S was told on 10 November 2022 that the adviser couldn't get the mortgage with lender S. I think Ms S should have been told that on 6 June 2022 instead.

Ms S spoke to the second broker at the end of November 2022, so I think it is reasonable to assume that she would instead have spoken to the second broker at the end of June 2022 instead.

If that had happened Ms S could have applied to lender H for a rate fixed at 4.60% for 60 months, instead of the rate she obtained which was fixed at 5.70% for 60 months. In both scenarios I think it is fair to assume everything else would have remained the same, that is Ms S would have borrowed £130,000 over an eleven-year term on an interest only basis.

I think it is also reasonable to assume the application would have taken around the same time to complete, so that means completion would have taken place on 16 October 2022 rather than 16 March 2023.

That means, to put things right St. James's Place Wealth Management Plc needs to pay redress calculated as follows:

(A) <u>To redress the period from 16 October 2022 until 16 March 2023</u>

Ms S had her £149,000 mortgage with lender L for this period, when she should have had her new £130,000 mortgage with lender H.

So SJP needs to compare the interest Ms S paid on her £149,000 mortgage with lender L for that period to the interest she would have paid on a £130,000 mortgage with lender H.

Lender L has confirmed Ms S's interest rate was as follows:

- 16 October to 31 October 3.75%
- 1 November to 30 November 4.25%
- 1 December to 31 January 5.00%
- 1 February to 28 February 5.50%
- 1 March to 16 March 6.00%

The interest rate for lender H would have remained at 4.60% throughout the period.

(B) <u>To redress the period from 16 March 2023 until 16 October 2027</u>

Ms S has a £130,000 mortgage with lender H fixed at 5.70% when she should have a £130,000 mortgage with lender H fixed at 4.60%.

The end date of 16 October 2027 is to be used as that is when the 4.60% fixed rate would have ended, and we have no way of knowing what rate Ms S would be paying after that date.

Any loss in part (A) should be added to the loss calculated in part (B), and if part (A) shows a gain in Ms S's favour, then that can be deducted from the loss calculated in part (B). The total sum should then be paid to Ms S as a lump sum.

I recognise there is a benefit to Ms S in receiving a lump sum payment now bearing in mind a fair amount of that sum will represent payments that haven't yet fallen due. For the reasons I've explained, I think it's fair and reasonable in the circumstances that she receives a sum equivalent to the higher payments that will fall due. However, because she will be getting the lump sum in advance of when those payments will actually become due, I make no further award of compensation for any distress and inconvenience caused in respect of the delays by the adviser at the time, nor do I award an additional 8% simple interest on any higher mortgage payments already made.

I do however consider that SJP should also pay the £200 it offered previously in recognition of the delay in responding to the complaint.

My final decision

I uphold this complaint and order St. James's Place Wealth Management Plc to settle it as I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms S to accept or reject my decision before 16 January 2025.

Julia Meadows
Ombudsman