

complaint

Mrs D complains that Swift 1st Limited arranged a mortgage that was unaffordable for her.

background

On the advice of a mortgage broker, Mrs D bought a property jointly with her now late mother under the right to buy scheme with a mortgage from Swift 1st. The mortgage fell into arrears soon afterwards and Mrs D's mother sadly passed away.

Mrs D's representative considered that Swift 1st did not carry out adequate affordability checks and that has led to the significant arrears on the account and the possibility that Mrs D will lose her home.

Subject to any further submissions, my second provisional decision was to uphold the complaint. I found that Swift 1st:

- Had not assessed Mrs D or her mother's outgoings as required by its lending policy.
- Did not take into consideration that some of the benefits declared by Mrs D were not going to continue for the term of the mortgage.
- Should have asked Mrs D and her mother more detailed questions about her and her mother's circumstances.
- Ought to have taken into account Mrs D's mother's age and the probability of whether she would contribute to the mortgage over its whole term.
- Had not shown that it had followed its policy or demonstrated how much it would have lent had it carried out a more thorough and fair affordability assessment – bearing in mind the requirement for Swift 1st to give due regard to Mrs D and her mother's interests (as part of its lending policy and as one of the FCA's high level principles).
- Would have lent Mrs D and her mother less if it had carried a reasonable affordability assessment – although I accepted it was likely that Mrs D and her mother could have afforded a lower mortgage amount.

I considered that if Swift 1st had declined the application or said it would lend Mrs D and her mother less, then they would still have sought to borrow enough to proceed with their right to buy purchase – either with Swift 1st or another lender. But I did not see that there was any overriding need for Mrs D to borrow more than the purchase price of the property. I did not consider that Mrs D would have borrowed more than the purchase price if Swift 1st had not made it available to her through its inadequate affordability assessment.

The detriment suffered by Mrs D and her mother was in borrowing more than they needed to or could (on a reasonable assessment) afford. They were enabled to do this by the unreasonable lending decision that Swift 1st made in the first place.

I explained that usually I would look to put Mrs D in the position she would have been in had the negligence by Swift 1st not occurred – and I had considered awarding Mrs D the full difference between the purchase price and the amount borrowed, with the interest paid on that amount. But I did not think this was fair in the circumstances because:

- Mrs D and her mother had the benefit of the money they borrowed over and above the purchase price.
- The mortgage was introduced by a third party broker.
- If Swift 1st had carried out a reasonable affordability assessment it is likely that it still could have agreed some borrowing.
- Mrs D and her mother understood the nature of the transaction they were entering into and received independent legal advice about its implications.

In addition to Swift 1st honouring its offer to accept reduced payments and charge a lower interest rate, I considered a reduction in the balance of the mortgage by a lump sum of £10,000 broadly and fairly reflects the detriment suffered by Mrs D overall because of the unreasonable decision made by Swift 1st to lend her and her mother more than they actually needed to buy their home, given the concerns it ought reasonably to have had about the affordability of the mortgage.

Swift 1st said that it would not be sending us anything further in relation to this complaint.

Mrs D's representative responded to say, in summary:

- It was unacceptable for Swift 1st to rely on statistical data rather than carrying out a proper repayment assessment.
- It was irresponsible to accept certain types of benefit to be used to service long term debt.
- Mrs D can only afford £300 a month and this is unlikely to change in the foreseeable future – Swift 1st should accept this amount for the remaining term of the mortgage.
- The unaffordable lending has put Mrs D's home at risk and she has incurred additional interest and fees. These should be refunded to the mortgage.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from the conclusions I reached in my provisional decision.

While I accept that the monthly payment did fit Swift 1st's debt to income ratio based on all of the income available to Mrs D and her mother at the time of the application – I don't consider it was fair or reasonable for it to only apply that method in assessing whether the loan was affordable or not. Swift 1st did not give due regard to Mrs D and her mother's interests and did not properly take account of their circumstances. It should have taken into account that Mrs D was not going to receive child benefits and tax credits over the term of the mortgage and that Mrs D's mother was already elderly. Therefore Swift 1st did not assess the long-term affordability of this mortgage.

If Swift 1st had carried out a reasonable affordability assessment (including looking at expenditure and taking into account that child benefit and tax credits would stop at some

point) it would have lent Mrs D and her mother less than it did – and I accept that Mrs D and her mother could reasonably have afforded a lower mortgage amount.

Even if Swift 1st had declined Mrs D's application or said it would only lend her less, it is likely that she and her mother would still have sought to borrow enough to buy the house at a discount under the right to buy scheme– either through Swift 1st or by other means.

As far as I can see, there was no overriding need for Mrs D and her mother to borrow more than the purchase price of the property. While I can see that she also had the benefit of the additional funds over and above the purchase price, I do not consider that she would have borrowed that additional amount if Swift 1st had not made it available to her through its inadequate affordability assessment. The detriment suffered by Mrs D and her mother was in borrowing more than they needed to or could (on a reasonable assessment) afford. They were enabled to do this by the unreasonable lending decision that Swift 1st made in the first place.

I considered awarding Mrs D the full difference between the purchase price and the amount borrowed – with the interest paid on that amount. But I have to determine what I consider to be fair and reasonable in all the circumstances of this complaint. Taking into account that Mrs D had some benefit from the amount over and above the purchase price of the property, I do not consider the exact amount of the difference with interest would be fair in the individual circumstances of this complaint.

I consider a reduction in the balance of the mortgage by a lump sum of £10,000 broadly and fairly reflects the detriment suffered by Mrs D overall because of the unreasonable decision made by Swift 1st to lend her and her mother more than they actually needed to buy their home, given the concerns it ought reasonably to have had about the affordability of the mortgage – but taking into account that Mrs D had the use of the funds that they borrowed over the purchase price, the sale was advised by a third party and they understood the nature of the transaction they were entering into.

This award will increase the chances that Mrs D will be able to restructure the borrowing in a sustainable way or (if the mortgage is not sustainable) reduce the amount needed to repay the mortgage. If the unaffordable balance were to remain Mrs D could potentially suffer further detriment in either of those scenarios.

I think it is necessary for me to include Swift 1st's proposed forbearance in my decision so that (if Mrs D chooses to accept my decision) it is binding. Mrs D will then have some breathing space to consider her options and review them after a year. I would suggest that she seeks independent financial advice about the options that are available to her. I would remind Swift 1st again of its ongoing obligation to treat Mrs D fairly.

my final decision

My final decision is that I uphold this complaint. In full and final settlement of it Swift 1st Limited should:

- Reduce the balance of Mrs D's mortgage by £10,000.
- Pay Mrs D directly £500 for any distress and inconvenience.

And act on its offer to:

- Accept payments of £300 a month for twelve months from date of settlement – and charge an interest rate which means that the payment will cover any interest.
- Review Mrs D's income and expenditure after twelve months from date of settlement and explore any options that are available to assist her.

Ken Rose
ombudsman