

## **complaint**

Mr and Mrs N complain that Southern Pacific Mortgage Limited shouldn't have offered them an interest only mortgage. They were unable to repay the capital when the mortgage expired and are worried about losing their home. Mr and Mrs N are represented by their daughter, who I'll refer to as Miss N. Mr and Mrs N want to remain in their home and receive justice for the mortgage being mis-sold to them.

## **background**

Mr and Mrs N took out a mortgage in March 2007 for £139,500 on an interest only basis over a ten-year term. The mortgage was arranged by a broker. Mr and Mrs N were unable to repay the mortgage when its term expired in 2017.

When Mr and Mrs N took out the mortgage they said it was their intention to switch to a repayment mortgage at a later date to ensure it was paid off, or sell the property. Mr and Mrs N self-certified their income. Miss N says Mr and Mrs N's income was inflated to make the mortgage appear affordable. She says SPML should have asked for evidence of their income and expenditure and the repayment vehicle.

Mr and Mrs N say SPML didn't contact them during the mortgage term to check how they intended to repay the mortgage. Instead, it wrote to them once and they didn't open the letter. After the mortgage expired, they say SPML declined the payment plans they offered and took court action to possess the property.

Our investigator didn't think the complaint about SPML offering the mortgage should be upheld. She said the information about Mr and Mrs N's income was consistent in the application documents and SPML wouldn't have known if it wasn't correct.

Our investigator said SPML hadn't acted unreasonably in taking action to recover the debt after the mortgage term expired. It took Mr and Mrs N's circumstances into account and agreed to hold recovery action to allow Mr and Mrs N time to look into their options. When Mr and Mrs N said they intended to sell the property, SPML had held recovery action to allow them to do this.

However, our investigator said SPML had caused unnecessary upset. It failed to provide information requested by Mr and Mrs N on three occasions in 2019 and had sent a warrant for possession letter in February 2019 after it said proceedings were on hold. The investigator said SPML should pay compensation of £250 for this.

SPML agreed to pay the compensation. Mr and Mrs N didn't agree. On their behalf, Miss N said, in summary:

- the mortgage was rushed through. It wasn't affordable and SPML shouldn't have offered the mortgage without proof of income and a repayment vehicle. Mr and Mrs N fell into arrears soon after taking out the mortgage.
- SPML didn't make enough effort to contact Mr and Mrs N about their strategy to repay the mortgage.
- SPML used scare tactics after the mortgage term expired.

*My provisional decision:*

As Mr and Mrs N disagreed with our investigator's recommendations, the complaint was passed to me. I issued a provisional decision, to explain what I thought about this complaint. I set out the following provisional findings in my provisional decision:

*the offer of the mortgage in 2007*

Regulations related to mortgage lending have changed considerably since Mr and Mrs N took out their mortgage. But I have to take account of regulation and good industry practice at that time when reaching my decision.

Mr and Mrs N took out a 10 year mortgage in 2007 on an interest only basis. The documents say the mortgage was arranged by a broker on a non-advised basis. The broker and SPML provided documents from that time, including the mortgage application, the mortgage offer and correspondence. Mr and Mrs N used the mortgage proceeds to re-finance their first charge mortgage (about £94,000) and second charge mortgage (about £33,000). They repaid unsecured debt of about £1,500. Fees of about £5,300 were added to the mortgage loan.

The mortgage application says Mr and Mrs N's income was £30,000 each. SPML asked the broker to break down Mr and Mrs N's income between their employed and self employed income and to explain why the income was self certified. Miss N says this shows SPML knew the mortgage was unaffordable. But SPML was entitled to ask for more information about Mr and Mrs N's income – which the broker provided. I don't think this means SPML knew the mortgage wasn't affordable or that the information provided to it wasn't correct.

Mr and Mrs N's income was self certified, as permitted by regulations at that time. Mr and Mrs N signed a declaration to self-certify their income as £30,000 each. They also signed the fact find completed with the broker, confirming it was accurate. The income information is consistent across the documents related to the mortgage sale.

The mortgage application says Mr and Mrs N intended to switch to capital repayment in about two years. At that time, SPML didn't need to ask for evidence of Mr and Mrs N's repayment vehicle.

Miss N says Mr and Mrs N signed blank forms and information was completed later, or that information in the forms was altered by the broker after Mr and Mrs N had signed. I haven't seen evidence to support this. And I can't see that SPML would have known if this had happened.

I don't know if the income stated in the mortgage documents was correct or if Mr and Mrs N believed at the time that it was correct. Mr and Mrs N had defaults recorded on their credit files and had missed payments to their second charge lender, which they said in the mortgage application was due to Mr N not working for a time due to an injury. But this doesn't mean that SPML should have known that the income information it received – which suggested the mortgage was affordable – wasn't correct.

*Contact during the mortgage term about how the mortgage would be repaid*

Miss N says SPML didn't do enough to contact Mr and Mrs N about their plans to repay the mortgage. But it's hard to see how more contact would have helped. Mr and Mrs N struggled to maintain contractual monthly payments on an interest only basis throughout the mortgage term. It seems unlikely they'd have been able to afford to switch to capital repayment or had the means to fund an investment vehicle.

Miss N says if the repayment plan was to sell the property, SPML should have contacted Mr and Mrs N early enough to allow them time to organise this. SPML wrote to Mr and Mrs N in March 2016 saying that the mortgage is interest only and they will need to make plans to repay it. It gives examples of ways they might repay the debt – such as from investments or sale of the property. This was a year before the mortgage expired, which would usually be enough time for Mr and Mrs N to try and sell the property if they wanted to do so.

*action taken by SPML to recover the debt after the mortgage term expired*

Mr and Mrs N's mortgage expired in March 2017 with an unpaid balance of about £143,000.

Mr and Mrs N are in a difficult situation. They borrowed the money from SPML, and they do have to pay it back. Fairness requires, as a starting point, that they did so when it was due at the end of the term. However, it seems, from what Mr and Mrs N have said, they don't have the means to repay the mortgage other than by selling the property. There are restrictions on the property title related to debts owed to other creditors, and it seems this has made it difficult for Mr and Mrs N to sell the property.

Understandably, Mr and Mrs N have found this situation very upsetting. I'd expect SPML to pay due regard to Mr and Mrs N's interests and treat them fairly. The regulator issued guidance for lenders when dealing with customers who are unable to repay their interest only mortgages. I think this is a good starting point here.

The guidance encourages lenders to communicate with customers. After maturity, lenders' communications with customers should encourage them to contact the firm to agree a resolution and set out options available, with warnings of the potential consequences of not taking action.

SPML wrote to Mr and Mrs N about the unpaid balance. It asked them to contact it on the number provided and gave contact details for organisations offering advice. It asked Mr and Mrs N to provide information about their income and expenditure. These letters also set out the possible consequences of not getting in contact to repay the debt, including legal action to take possession and/or a visit by a field agent.

I can understand that Mr and Mrs N found these letters upsetting. But I think it was right for SPML to write to them about the debt and encourage them to remain in contact with the aim of agreeing a way for the debt to be repaid.

The regulator's guidance gives examples of options that lenders can offer customers, such as switching to capital repayment or extending the term to allow time for repayment or to sell the property. I'd only expect SPML to offer an option which is

likely to improve the situation for Mr and Mrs N. I've briefly summarised what happened after March 2017, when the mortgage term expired.

There was contact between Mr and Mrs N and SPML in March 2017. SPML said it couldn't offer a capital repayment mortgage. Mrs N asked it to extend the mortgage term while they re-mortgaged or sold the property.

In September and October 2017 Mr and Mrs N told SPML they were in the process of re-mortgaging, and SPML asked for evidence of this. Mr and Mrs N didn't provide information about their income and expenditure or evidence of the re-mortgage. SPML says it was unsuccessful in contacting them again. It started legal action in February 2018.

A court hearing scheduled for April 2018 was adjourned to allow Mr and Mrs N time to prepare a defence. A court order for possession was granted in June 2018. Mr and Mrs N told SPML they were selling the property. SPML held recovery action: however it didn't receive evidence the property was being marketed for sale.

In September 2018 Miss N told SPML the mortgage debt would be paid by a family member, who was taking out a mortgage to buy the property.

In November 2018 Miss N asked SPML to hold activity due to the effect on Mr and Mrs N's health. SPML put a hold on activity until January 2019.

In mid-January 2019, SPML asked its solicitors to enforce the warrant for possession. It agreed to cancel this and allow three months for the property sale to complete after Mrs N called to say the sale would soon complete. Miss N says she sent emails to SPML and its solicitors about this time without a response. Although SPML put recovery action on hold in late January, it was too late for it to stop a letter about taking possession going to Mr and Mrs N.

The property sale was held up as there are restrictions on the title relating to debts owed to other creditors. It seems the proceeds of the sale of the property wouldn't be enough to repay the mortgage loan and these other debts.

SPML put recovery action on hold while we looked into Mr and Mrs N's complaint.

Miss N provided an update on the sale of the property recently. An email from Mr and Mrs N's solicitor says they are negotiating settlements with Mr and Mrs N's other creditors with the aim of removing restrictions on the property title to allow a sale to go ahead.

*what should happen now?*

SPML offered £150 compensation for the upset caused when it wasn't able to stop its letter about taking possession in late January 2019. It's agreed to pay another £100 compensation for the upset caused to Mr and Mrs N by not responding to Miss N's emails. I think this is fair.

It's now nearly three years since the mortgage term expired. SPML agreed to hold recovery action on a number of occasions to allow Mr and Mrs N time to pursue options to repay the loan. It took account of their circumstances and put a further

hold on action when told about Mr and Mrs N's poor health. It agreed to put action on hold while we looked into their complaint.

I think SPML acted fairly in allowing Mr and Mrs N time to look at other options and to sell the property themselves. There are difficulties with the sale of the property, due to restrictions on the title. SPML isn't responsible for this. However, it seems from what Mr and Mrs N's solicitor has said, that one or more of the restrictions on title could be removed in the near future which would allow a sale to go ahead. I think it would make sense at this point for SPML to allow Mr and Mrs N some more time to see if this is possible.

I think SPML should hold further recovery action until the end of March 2020. Hopefully by then Mr and Mrs N will be able to provide evidence to SPML that their creditors have agreed to remove their restrictions on title and that the sale of the property is progressing.

But I must be fair to both parties here. By the end of March it will be three years since the mortgage expired. If Mr and Mrs N don't provide suitable evidence by then that the sale of the property is progressing, I don't think I can fairly require SPML to continue to hold recovery action.

*What happened since my provisional decision?*

I issued my provisional decision in February 2020. I've delayed issuing my final decision. First because Miss N said in February the sale of the house was "well under way" and said she'd send evidence of this. And then due to the Covid-19 pandemic and related Government restrictions, which could have caused difficulties for Mr and Mrs N in completing the sale of their property to a family member, or in moving home if this fell through and SPML took possession. The property market is now active again and the Government has changed restrictions and advice related to social distancing and shielding. So, having considered what the parties have said in response to my provisional decision, I will now issue a final decision.

SPML agreed to pay compensation and hold recovery action, in line with my provisional decision. Miss N disagreed with my provisional decision, on behalf of Mr and Mrs N.

Miss N referred to advice from a solicitor which she says supports what she says. However, she didn't provide a copy of the advice.

Miss N provided a copy of an email from a solicitor about the sale of Mr and Mrs N's property, suggesting a completion date of 7 April 2020, subject to some outstanding matters and exchange of contracts. She hasn't since updated us.

Ms N said the compensation isn't enough for Mr and Mrs N's distress and the time she's spent on the complaint. She asked how I knew Mr and Mrs N had a poor credit. And she referred to points she'd made in previous emails which she feels weren't fully addressed.

Miss N also raised a new issue, that SPML had unfairly added interest and fees to the mortgage account.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Miss N said I didn't refer to the points raised in her emails. We provide an informal dispute resolution service and in line with that I don't refer to every point made by either party, or each item of evidence I review or rely on. I have read and considered Miss N's emails. Miss N asked how I knew Mr and Mrs N had a poor credit. However, I don't think I said they had a poor credit.

Miss N says £250 isn't enough compensation for Mr and Mrs N's distress. But I think their worry and upset is most likely due to having a mortgage they can't repay without selling their property. I don't think it's wrong for SPML to contact Mr and Mrs N about repayment, or unfair that it expects the mortgage to be repaid. I don't think it would be fair and reasonable to require it to pay more compensation for Mr and Mrs N's upset.

Miss N asks for compensation for the time she's spent on this complaint. However, she isn't the complainant here and our rules don't allow me to award compensation to her.

Miss N also raised a concern about interest and fees which she says were unfairly added to Mr and Mrs N's mortgage account. While she said she'd send evidence of this she hasn't done so. It seems likely this is a new issue – that is, it wasn't part of the complaint that was brought to us. And so I can't deal with it here. If Mr and Mrs N remain concerned, they should first raise their concerns with SPML.

Having re-read the evidence and comments, and considered the responses to my provisional decision, I don't intend to change my findings from those set out in my provisional decision. I appreciate that Miss N disagrees, but she hasn't provided any new evidence to persuade me to change my findings. But I do need to consider what should happen now.

Due to the Covid-19 pandemic and related Government restrictions, the regulator issued guidelines. Current guidelines say that lenders can't take or resume possession action until November 2020 – by which time it will be more than three years since the mortgage term expired. SPML has acted fairly in allowing Mr and Mrs N time to sell the property themselves, or to investigate whether they have another route to repay the mortgage.

Mr and Mrs N will have a few months' breathing space, before November 2020, to complete the sale of their property (if this hasn't already happened). They should keep SPML informed about the sale. I'd expect SPML to continue to treat Mr and Mrs N fairly while the sale completes, which will hopefully be soon, and to take into account any further guidance from the regulator. But, ultimately, if Mr and Mrs N aren't able to sell the property or otherwise repay the mortgage, SPML is entitled to take possession as a last resort.

## **my final decision**

My decision is that I uphold this complaint. I order Southern Pacific Mortgage Limited to pay £250 to Mr and Mrs N.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 10 September 2020.

Ruth Stevenson  
**ombudsman**