

The complaint

Mr and Mrs T complain that St James's Place Wealth Management Plc (SJP) failed to act on their instructions and they've lost out as a result.

What happened

SJP accept that a broker working on its behalf, failed to complete the actions they should have in a timely manner. It has made an offer to put things right which is based on what it feels the loss is as a result of the broker's actions and what could have happened.

Mr and Mrs T were looking for options to allow them to move out of their existing fixed rate mortgage early, as they had concerns about rising interest rates. Their existing mortgage allowed them to move from it, but an early repayment charge (ERC) would need to be paid. This amount changed, depending on when the mortgage was repaid. If they did this before 1 December 2022, the ERC was 2% of the outstanding mortgage balance. If they moved after this but before 1 December 2023, the ERC reduced to 1%.

The broker Mr and Mrs T were dealing with, left SJP on 31 May 2022 and moved to a new network on 1 June 2022. Based on this, SJP didn't think it would have been able to arrange a mortgage offer for Mr and Mrs T which would have allowed them to avoid the 2% ERC. This is because the maximum term over which the offer would remain valid for was 180 days based on the product they wanted. So any offer would have expired before 1 December if made before the end of May 2022.

SJP felt when the mortgage offer was sent later, after the broker had moved firms, Mr and Mrs T benefited from the saving of the reduced ERC payment and it deducted this from its calculations when determining the loss.

Our investigator looked at Mr and Mrs T's complaint and felt the offer made to put things right was fair. She thought the focus for Mr and Mrs T was on locking in a rate and no one could have been certain when the rate of 2.92% could have been withdrawn. With this in mind she was not sure they would have delayed accepting this and risked missing out on it before it expired. So she felt had the broker done what they should have, the rate would have been fixed in May, meaning the higher ERC couldn't have been avoided. When the broker delayed the application and the rate was missed, she felt Mr and Mrs T had benefited from the reduced ERC.

Mr and Mrs T replied to say they had made it clear to the broker they were only prepared to pay the 1% ERC. So they disagreed on this point and said they would not have fixed sooner if this meant they couldn't avoid the higher fee. And although the broker they were dealing with left SJP at the end of May 2022, this wasn't immediately apparent. The old SJP email was copied in on correspondence after this date. So Mr and Mrs T still believed they were receiving advice on their options from SJP. Mr and Mrs T feel it is unfair that because of the dates of the broker leaving SJP, they have lost out.

Our investigator's opinion remained unchanged and because of this, the complaint has been passed to me for decision.

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.

I've decided not to uphold this complaint for much the same reasons as our investigator. I know Mr and Mrs T will be disappointed by this, but I'll explain why I think the offer SJP has made is fair.

There are a number of things Mr and Mrs T have questioned about the redress offered by SJP. They think the interest rate used as the comparison against what they are now paying should be lower. And it isn't fair to say the ERC would have been higher if SJP and its broker had acted in a timelier manner.

The comparable interest rate.

Mr and Mrs T have questioned whether SJP has acted fairly when it's used a rate of 2.92% as the comparison for what they could have got. Mr and Mrs T feel the rate of 2.91% should be used as the comparison. This has been used because SJP believe it was the correct rate available, based on the loan to value (LTV) ratio Mr and Mrs T have with their property. Mr and Mrs T feel the broker incorrectly recorded the value of the property and relied on the original valuation figure from their existing mortgage over using the figure they provided.

I understand why Mr and Mrs T feel the higher valuation they submitted should be considered, but their opinion on the value of their property is not what would be relied on by a lender. The lender would, as part of the application process, have a valuation completed and this would be relied on when determining the LTV in their eyes. I don't think using what had previously been agreed as the value of the property was an unreasonable starting point when the broker was pulling together what options were available.

So it follows, that I don't think SJP has been unreasonable when taking the rate available based on what was known about the value and LTV on Mr and Mrs T's property. If a rate had been selected which was later unavailable if the valuation didn't match, Mr and Mrs T could have lost out when needing to take a different rate at a later point. So I think the broker acted fairly when using a valuation that had previously been agreed.

Should SJP deduct the ERC saving from the redress.

I appreciate Mr and Mrs T have said they did not realise the broker they were dealing with had left SJP part way through their dealings with them. And they continued to operate under the pretence that SJP was the company responsible for the advice and service received.

I think the broker clearly could have done more here to explain what was happening and what business and platform she was working from at different points. While it appears to have no impact on the products that were available, it is relevant to this complaint and the outcome of it. As the company ultimately responsible for the advice and actions changed during the period.

SJP is responsible for the advice of its broker and the service provided on its behalf. If the advice is not provided by its agents, it is not its responsibility.

The crux of this complaint is whether it would be fair to say that SJP and its broker would have been able to offer a product to Mr and Mrs T which would have allowed them to avoid paying the higher ERC. And whether it is fair that SJP consider the delays and service beyond the time the broker was working for it.

On 13 May 2022, Mr T wrote to the broker with a number of questions about his and Mrs T's options with their mortgage. He was following up on an earlier email sent in May which hadn't been responded to. This included asking from what date an offer could be put in place, allowing them to secure a new rate and reduce their ERC to the lower amount. There was no response to these questions until 29 May 2022 when the broker set out a list of options explaining why moving the mortgage now, with an ERC of £9578.00 approximately, would be beneficial even if rates increased by another 1% in the following year.

A mortgage illustration and key facts was sent in support of this and the broker set out her new contact details going forward. Although they didn't explicitly say they were changing firms, it was implied as there was no reference to SJP going forward. The broker also explained they were out of the office for the following week and would have limited capacity to pick up their emails.

The advice and information provided to Mr and Mrs T at this point was correct – based on the point in time and the costs they would have incurred if they secured an offer and moved the mortgage within 180 days of then.

On 1 June 2022, Mr T responded to the new contact details provided, while copying in the SJP contact address, to confirm they would like to proceed with one of the options put forward. It was clear Mr and Mrs T wanted to look at options that allowed them to change their mortgage in December and avoid the higher ERC as they asked a number of questions about the process and whether the rate could be secured until then. These questions were answered on 9 June 2022 with the broker responding from their new company and contact details.

All actions of the broker and whether they did what they should have done after they moved are not the responsibility of SJP. And as I think the advice and information provided about Mr and Mrs T's options prior to this was correct, I think the offer now made is fair.

The broker could not have made an application and received an offer for a mortgage for Mr and Mrs T which would have avoided them incurring the higher ERC, during the time they were employed by SJP. So even if they had responded to the initial emails sooner, Mr and Mrs T would have needed to decide whether they wanted to proceed on this basis or wait and risk the interest rate changing.

Mr and Mrs T did respond to their broker to confirm what product they wanted to go for before it was removed. But at this point the broker was not working for SJP and their actions and whether there was a failing here are not its responsibility. So whether this should have been actioned sooner and whether they lost out as a result of this is something that would need to be considered by the new firm.

Based on what the broker could have done when working for SJP, I think the offer made is fair. It correctly identifies any rate secured at this point would have needed to be taken out before 1 December 2022 which would have meant Mr and Mrs T would have paid a higher ERC.

Overall, I'm not persuaded it would be fair and reasonable to ask SJP to increase the offer it has made to Mr and Mrs T. I think it correctly identifies the loss which Mr and Mrs T have suffered based on the broker not acting on the requests for advice more quickly. And I don't expect it to consider any future actions or work completed when the broker was acting for another firm which received the benefit of any commission paid on the mortgage when it was completed.

My final decision

For the reasons I've explained above, I don't uphold Mr and Mrs T's complaint as the offer previously made to put things right is fair.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 12 December 2023.

Thomas Brissenden
Ombudsman