

The complaint

Through a claims management company (CMC), Mr and Mrs C have complained that a mortgage was mis-sold by a representative of Legal & General Partnership Services Limited (L&G). They are asking L&G to compensate them for the losses incurred by taking out this mortgage.

What happened

In December 2004 Mr and Mrs C were given mortgage advice by L&G. At the time of the application, Mr and Mrs C were paying £403.80 for their existing mortgage at a rate of 6.75% and approx. £305 for their credit cards, on which they owed about £13,300. They also had a loan they had just taken out on which they owed approx. £3,000, with a monthly payment of £85.

Their gross annual salary was £23,275, giving a net monthly income of approx. £1,700 (including tax credits). Mr and Mrs C explained they were using their overdraft, although were within the limit set by their bank.

They borrowed £56,100 from a mainstream lender over a ten-year term on a capital repayment basis. The first two years of the mortgage were on a discounted rate of 4.84%, giving a monthly repayment of approx. £600, after which the mortgage reverted to the lender's standard variable rate (SVR), giving a payment (assuming SVR was at the rate shown in the mortgage offer) of approx. £640.

After paying off their existing mortgage of about £35,000, debts of about £13,300 and the expenses incurred for the transaction, a balance of about £2,000 was paid to Mr and Mrs C.

In 2019, through the CMC, they complained that the advice was unsuitable. In summary, Mr and Mrs C say:

- L&G used undue influence to sell this mortgage, which wasn't necessary as Mr and Mrs C didn't need to reduce their outgoings or consolidate credit card debt;
- the mortgage wasn't the cheapest option;
- L&G didn't consider which options were available through Mr and Mrs C's existing lender;
- a Payment Protection Insurance (PPI) policy was also mis-sold;
- a Legal Administration fee (LAF) paid to L&G was inappropriate;
- L&G received undisclosed commission from solicitors.

L&G didn't agree that the mortgage had been mis-sold. L&G did, however, agree to refund the £50 commission paid by the solicitors to L&G. Assuming Mr and Mrs C had not remortgaged from the lender recommended by L&G, the payment was calculated as follows:

Commission	£ 50.00
Mortgage interest paid on that £50	£ 15.23

Gross simple interest @ 8% p.a to 16 January 2020	£ 25.88	
Less tax @ 20% basic rate	£ 5.18	£ 20.70
Compensation for trouble and upset		£100.00
Total		£185.93

The CMC didn't accept this and brought the complaint to the Financial Ombudsman Service. An investigator looked at the complaint, but didn't think it should be upheld. The investigator noted that Mr and Mrs C had said they felt undervalued by their existing lender and didn't want to stay with the same business.

He was satisfied that consolidation of the credit card debt was appropriate, given the likely interest rate on those accounts and the level of repayment - £305 per month. He noted the CMC had put forward the argument that Mr and Mrs C could have cut back on their discretionary lifestyle spending, but the information gathered at the time shows that Mr and Mrs C wanted to free up the money they were spending on their credit cards, and the only way this could be done was by consolidating those debts into the new borrowing.

The investigator was also satisfied that L&G had explained that the mortgage had been sourced from a panel, rather than the whole of the market, and that the mortgage recommended was the least expensive of those it was able to source. The investigator also noted that the implications of consolidation had been explained. Overall the investigator didn't think the mortgage had been mis-sold.

In relation to the LAF, the investigator didn't think this should be refunded as he was satisfied Mr and Mrs C had agreed to pay this for administrative work carried out on behalf of the solicitors. He noted L&G had agreed to refund the commission paid by the solicitors to L&G in relation to this fee, as well as interest and compensation. He thought this was fair and that L&G didn't need to do anything more.

The CMC disagreed with the investigator's findings. In summary, the CMC says that the consolidation of the smaller credit card debt was inappropriate as it would have been repaid within a relatively short period of time. The CMC considered the comments about Mr and Mrs C feeling undervalued by their previous lender to be evidence of undue influence in order to justify taking advantage of financially unsophisticated consumers to sell them an unsuitable mortgage.

The CMC says that Mr and Mrs C weren't struggling financially and had a considerable amount of disposable income, so there was no need for them to take out this mortgage. The CMC also says that the adviser failed to provide an illustration giving a comparison of what Mr and Mrs C would pay if they didn't remortgage as against the cost of the new arrangements.

As the matter remains unresolved, it falls to me to issue a final 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 note the PPI complaint is being dealt with separately so I will make no further comment on that here.

The CMC says that Mr and Mrs C didn't need to remortgage but that L&G should have recommended that they use their existing lender to do so. L&G explained in writing that it

sourced lending from a panel rather than whole of market, so this fact wasn't hidden and I'm satisfied that Mr and Mrs C weren't misled about it. In any event, whichever firm L&G recommended they use, it would still have charged for its advice. L&G confirmed to Mr and Mrs C that the recommendation was for the cheapest option from the lenders it used. I'm satisfied that this met L&G's regulatory obligations.

I also can't ignore that Mr and Mrs C said they weren't happy with their existing lender. The CMC says this is evidence of manipulation and undue influence, but I note that in 2004/5, their existing lender was 35th in a table of 35 lenders with regard to competitive interest rates. That lender was a specialist lender rather than a High Street lender and so I'm not persuaded Mr and Mrs C would have been better off looking for a new deal with that lender even if they had said they would have been happy to stay with that business – which they did not say.

I think the debt consolidation was suitable too. While based on their existing mortgage Mr and Mrs C weren't in any financial difficulty, the fact find records they did want to reduce their outgoings if possible. They'd just taken out a £3,000 loan and they had two credit cards on one of which (with the £11,500 debt) they were making minimum repayment and on the other (£1,800) they were paying only £10 over minimum payment. They were paying almost as much each month on their unsecured debt than to their old mortgage.

I don't agree with the CMC that consolidating made the debts significantly more expensive. The mortgage they took was for 10 years at an initial discounted rate below 5%. They consolidated credit card debts which would have been at significantly higher interest rates and where, for the most part, only minimum payment was being made. Given this, I don't think there was a significant additional cost through consolidation and, in my view, what cost there was, was outweighed by the benefits of reducing outgoings to free up more disposable income.

There was no regulatory obligation on L&G to provide a comparison table of the cost of repaying Mr and Mrs C's various debts with other lenders as against the cost of the new mortgage. L&G explained that consolidation could increase the debt – and showed the cost of the mortgage over the term. In any event, consolidating the credit card debts into a ten-year repayment mortgage at a much lower interest rate was, in my opinion, a cheaper and quicker option of repaying those debts than continuing to make minimum payment on the credit cards over the same ten-year period, particularly if the cards continued to be used.

The CMC says that without this mortgage, if they'd needed to reduce their expenditure, Mr and Mrs C could have cut back on their discretionary spending. But the information recorded on the fact find shows that their bank account was in overdraft, and they'd also just taken out a £3,000 loan. The available evidence is persuasive that Mr and Mrs C wanted to increase their disposable income rather than keep paying out the same amount each month on their credit cards and on their SVR mortgage with their previous lender.

Overall I'm satisfied the recommendation was suitable. I've seen no evidence to persuade me any "undue influence" was exercised over Mr and Mrs C which led them to take out this borrowing. The available evidence shows that the adviser fully considered Mr and Mrs C's existing circumstances and financial position and that he explained the recommendation clearly in writing. The recommendation allowed Mr and Mrs C to pay off their debts, reduce their monthly outgoings and repay their mortgage within a ten-year term, in accordance with their stated wishes at the time.

The CMC says that some of the costs in respect of the legal work were charged by L&G rather than the solicitor in the form of the LAF. I don't find anything inherently unreasonable in the LAF itself: there are a number of administrative procedures that need not have been

carried out by a solicitor. If the solicitor had carried out those administrative procedures rather than L&G, Mr and Mrs C would still have had to pay for them. Given this, I'm satisfied passing on the cost of the LAF for the administrative work done by L&G to Mr and Mrs C is reasonable.

The CMC has also raised concerns that L&G received commission for recommending the firm of solicitors used for the conveyancing work. But while the complaint's been with us, L&G has made an offer to resolve that aspect of the complaint. The offer is as set out above a total of £185.93. I'm satisfied this is fair and reasonable.

My final decision

For the reasons set out above, I don't uphold the complaints that the mortgage was mis-sold or that the LAF should not have been charged. Insofar as the commission for the LAF is concerned, Legal & General Partnership Services Limited has made an offer of compensation which I am satisfied is fair and reasonable in all the circumstances. I therefore make no other order or award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 8 March 2021.

Jan O'Leary
Ombudsman