

The complaint

This complaint's about a consolidation re-mortgage Mr R and Mrs R took out in 2005 on advice given by a representative of Legal & General Partnership Services Limited (L&G). Mr R and Mrs R, who have third-party representation, believe it was mis-sold.

What happened

By way of a provisional decision earlier this month, I set out, with reasons, the basis on which I intended to determine the complaint. The following is an extract from that provisional decision.

"The broad circumstances of this complaint are well known to both parties. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here. Our decisions are published and it's important that I don't include any information that might result in Mr R and Mrs R being identified.

Instead I'll give a brief summary of the current situation in my own words and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. The investigator didn't uphold the main thrust of the complaint; he wasn't persuaded the mortgage overall had been unsuitable for Mr R and Mrs R's circumstances as recorded at the time.

He did have some concerns about some ancillary aspects of the sale and made the following recommendations to resolve the complaint:

- *L&G should honour an already-made offer to refund, with interest, a £50 commission payment received from the solicitors that did the legal work for the re-mortgage and pay £100 further compensation; and*
- *L&G's proposal to pay redress for having wrongly included a debt from a lender I'll call C in the consolidation, subject to receiving evidence it had been repaid, was fair.*

The case has come to me for review, because Mr R and Mrs R's representative has said it disagrees with the investigator's findings; it believes it's unfair to expect Mr R and Mrs R to produce evidence of having repaid the loan with C in 2005.

What I've provisionally decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference

from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

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

If the available evidence is incomplete and/or contradictory, we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

Consolidation of unsecured consumer debt

Advising people to re-mortgage to consolidate existing debt isn't inherently unsuitable. It all depends on the grounds given for the argument that the advice was unsuitable, and the individual's circumstances and objectives at the time the advice was given. Hindsight can't be a factor here.

The main argument against consolidating credit card and loan debts into a mortgage are that the debts becomes secured, and are repaid over a longer period. So, even if the mortgage is on a lower rate, it's likely the overall interest cost will be higher in the long term. The main argument in favour of consolidation is that it frees up cashflow in the consumers' monthly budget. The balancing factor tends to be the extent to which there is a need for improved cashflow, and so it proves here.

I'm satisfied that L&G's advisor drew Mr R and Mrs R's attention to the downsides of consolidation, which I detailed a moment ago, allowing them to make an informed decision that, for them, at that time, the benefits generally outweighed the disadvantages.

But there should be a measure of selectivity in that assessment. What I mean by that is just because consolidation was generally beneficial to Mr R and Mrs R, it doesn't follow that every existing debt should have been included. When it addressed the complaint, L&G accepted that one of Mr R and Mrs R's debts – the one owed to C – should not have been included but left to run as it was. I'm inclined to agree, given the time left to run on the loan, and the interest rate being charged on it.

I'm satisfied L&G has made an offer to remedy that, but I've thought very hard about the representative's point that it's unfair to make the offer conditional upon Mr R and Mrs R having retained proof of repaying the debt from 2005. I have some sympathy with that argument. Either the inclusion of the loan with C in the consolidation was appropriate or it wasn't.

Insofar as L&G accepts that the loan with C should not have been consolidated, I think it's asking rather too much of Mr R and Mrs R, sixteen years later, to say it will pay redress only if they can prove the loan was repaid. L&G should make that offer unconditional.

The legal administration fee

This is a subject we've looked at before. In 2014, a fellow ombudsman concluded that the fee was legitimate, in that it covered the costs of the broker's liaison with the conveyancing solicitor. In 2020, another ombudsman colleague reviewing a separate case concluded that whilst the fee was legitimate, he wasn't satisfied from the available evidence that it been properly disclosed to the consumers.

Our final decisions don't form binding precedents; but we do aim to be consistent when deciding different cases on similar fact, so it's sensible and prudent that I consider them in the context of the case I'm deciding here.

Those two decisions don't contradict each other; they determine different things. One decided that the legal administration fee was legitimate, and I've reached the same conclusion here. The other decided that the consumers hadn't been properly informed about the legal administration fee, and I've reached a different conclusion here. That's because I have sight of a Solicitors Form of Authorisation signed by Mr R and Mrs R on 15 February 2005 putting them on notice of, and obtaining their agreement to, the fee being incurred.

Other matters

In its main complaint letter on Mr R and Mrs R's behalf, their representative describes L&G as "a commercial business" who "...weren't altruistic". I'm not sure that comes as news to anyone, but from the associated comments, it's clear that the inference I'm being invited to draw is that this meant L&G's objectives didn't coincide with Mr R and Mrs R's, and goes towards why the representative believes the mortgage was mis-sold.

But L&G didn't need to share Mr R and Mrs R's objectives; it simply had a duty to advise them on the best way of achieving them. In any event, I'm not sure how helpful those descriptions are to Mr R and Mrs R's case, as it could equally be argued this applied to her representative, given it too is a non-altruistic, commercial business."

I gave the parties until 22 June 2021 to respond. We've not heard from Mr R and Mrs R's representative; L&G has replied broadly agreeing with my provisional findings, but asking why I was proposing to award more compensation than the £100 we typically award for cases where the solicitor's commission payment needed to be refunded.

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.

Having done so, I'm not persuaded to depart from my provisional conclusions. I'll explain why.

I'm aware that the service generally awards £100 compensation in cases where the solicitor's commission payment needed refunding. But in this case, I have also found that L&G had imposed an unfair condition on settling the consolidation aspect of the complaint. The additional £100 of my award reflects that.

My final decision

My final decision is that I uphold this complaint in part. In full and final settlement, I direct Legal & General Partnership Services Limited to:

- using the information about the outstanding balance and term collected at the point of sale, calculate the extra interest Mr R and Mrs R paid on the mortgage as a result of including the loan with C in the consolidation, deduct the interest they would have paid on the loan if it had run to term, and pay Mr R and Mrs R the difference;
- calculate and pay Mr R and Mrs R interest at 8% simple per annum* on the differential interest as set out above;
- in the event Mr R and Mrs R want to pay the redress off their current mortgage balance, L&G should reimburse them any early repayment charge imposed by their lender, if relevant;
- refund £50 solicitor's commission payment, plus mortgage interest charged on it up to the eventual settlement date; and
- pay Mr R and Mrs R £200 compensation.

*If Legal & General Partnership Services Limited deducts basic rate income tax from the interest award, it should then provide Mr R and Mrs R with the relevant tax certificate. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 2 August 2021.

Jeff Parrington

Ombudsman