

The complaint

This complaint is about a re-mortgage that Mrs and Mr D carried out in 2007 on the advice and recommendation of a broker who represented Legal & General Partnership Services Limited (“L&G”). Mrs and Mr D, who have third party representation, say the advice to take the mortgage out was unsuitable, because it meant they paid an early repayment charge (ERC) of around £6,000 to redeem their existing mortgage. They say they should have been advised to wait until the existing lenders ERC period ended.

What happened

The details of this complaint are well known to both parties so I won’t repeat them again in detail here. Instead I’ll give a brief summary (in my own words and rounding the figures involved) and then focus on giving the reasons for my decision.

Mrs and Mr D took the mortgage in 2007 it was for around £243,000 (including fees), on interest-only, and repayable after 15 years. The purpose of the mortgage was to repay their existing mortgage (around £156,000 including the ERC) and raise funds to pay for home improvements. The complaint is that the advisor should have recommended they wait until the ERC period with the existing lender expired in May 2008. Our investigator didn’t recommend the complaint be upheld. Mrs and Mr D’s representative has asked for the complaint to be reviewed by an ombudsman.

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.

If I don’t comment on any specific point it’s not because I’ve failed to consider it but because I don’t think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what’s fair “in the round”.

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, or when we have enough information on file to decide it.

In this decision I have to look at the sale of the mortgage (in terms of regulatory requirements and what was regarded as good industry practice *at the relevant time*) and considered generally whether L&G did anything wrong when the mortgage was taken out. In doing that, I can give no regard to the regulatory standards as they are *today*, or to any hindsight that the intervening years might have brought.

I’ve considered all of this very carefully; it’s for us to assess the reliability of evidence and decide how much weight should be attached to it. When doing that, we don’t just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture.

The starting point in a complaint of this type is the point-of-sale documentation from 2007. The value of such documents is that they're contemporaneous; so they should reflect what was said and agreed at the relevant time. Unless there's a compelling reason to believe the information is inaccurate, we'll generally attach some weight to it. Even if anomalies or mistakes are identified, that doesn't automatically mean a mis-sale has taken place. We still have to consider whether they might or might not have affected the suitability of the advice that was given.

The essence of the complaint is that Mrs and Mr D should have been advised to wait a few months until they could redeem their existing mortgage without incurring an ERC. On that key issue, the point of sale documentation shows conflicting information. On the one hand, the client review records Mrs and Mr D as not wanting to pay an ERC to end their current mortgage. On the other hand, the draft of the Mortgage Record Of Suitability notes them wishing to proceed immediately in order to secure a low rate before rates rose, and to release funds to pay their builders.

Where the evidence is contradictory, as it is here, 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. Also, for a complaint to succeed as a result of a finding on the balance of probabilities, the complainants' case has to be more likely than the respondent's; *equally* likely is not enough.

Mrs and Mr D's representative has inferred that they might have been subject to undue influence by L&G's advisor. The alternative is that they simply changed their minds. The timing is important here; the advice was given in July 2007, approximately two months *before* the first series of events in what would eventually become known as the financial crisis took place.

It's now a matter of economic history that interest rates generally fell dramatically once the financial crisis took hold during late 2007 and into 2008. However, in the middle part of 2007 when Mrs and Mr D were being advised on their re-mortgage, the view of financial markets as a whole was that interest rates generally were expected to rise. So I find it entirely plausible that Mrs and Mr D might have wanted to secure a rate for their new mortgage immediately, rather than wait until the spring of 2008.

In my view, the interest rate factor alone would have been a likely incentive for Mrs and Mr D to want to proceed right away, independently from any time pressure there might have been in respect of the building work itself. Overall that seems a more likely explanation than undue influence. Mrs and Mr D's representative makes the point that they weren't on notice of the amount of the ERC when they made the decision to go ahead. That's not true; it's recorded as being £6,020 in the client review; one of the documents on which Mrs and Mr D's representative has relied on to make their case.

My final decision

I don't uphold this complaint. 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 and Mr D to accept or reject my decision before 20 March 2023.

Jeff Parrington
Ombudsman