Financial Ombudsman Service

complaint

Ms W's complaint is that she was badly advised by Legal & General Partnership Services Limited (L&G). She says that she was mis-sold a mortgage in 2008 as the advice to consolidate debts into an interest-only mortgage was unsuitable. Ms W is represented in her complaint by a complaint management company, BF.

background

Ms W spoke to L&G in 2008 about her mortgage arrangements. At that time she had a repayment mortgage on her home. Ms W also had two unsecured loans outstanding and a significant amount of credit card debt spread over four different credit cards. It was documented that her outgoings were more than her income each month.

L&G advised Ms W to take out a new mortgage with a new lender. A couple of lenders were approached but both declined her application. L&G did then find a lender who accepted Miss W's application. The new mortgage was for more than her existing one. This was to allow Ms W to release money to pay off some off her unsecured debts – two of the credit cards and one of the loans. The new mortgage was recommended on an interest-only basis and on a discounted rate for two years. This was to make the mortgage affordable for Ms W and to reduce her monthly outgoings. The adviser told Ms W there was no guarantee the mortgage would be repaid by the end of the term. This was because she had no definite plans in place to repay the balance at the end of the mortgage term. The adviser and Ms W discussed the need to review this in the near future. L&G's records show she planned to switch all or part of her new mortgage to a repayment basis when she reviewed her situation.

Before Ms W's re-mortgage, L&G's records show her total outgoings each month were around £287 more than her income. Afterwards, it says her monthly income was around £200 more than her outgoings. This meant Mrs W wasn't increasing the amount of debt she was in and the re-mortgage freed up around £200 each month to help her with her existing finances.

In 2016 Ms W complained to L&G that the advice to consolidate some of her debts into an interest-only mortgage wasn't suitable. L&G looked into the complaint. If found the advice was suitable. So Ms W brought her complaint to us.

One of our investigators looked at Mr W's case. She thought the complaint should be upheld. The investigator thought that although Ms W had more disposable income in the short term, by consolidating her debts into an interest-only mortgage she was no longer paying off these debts. Ms W was only postponing their payment until some point in the future and was adding more interest to them. L&G disagreed with the investigator's view and her proposed redress. It asked for a review by an ombudsman.
I considered the evidence in this case and issued my provisional decision on 16 June 2017. I explained my reasoning and conclusions.

I said that based on the information Ms W gave the adviser, her monthly outgoings were £287 more than her income. While BF said that Ms W's bank statement didn't back up that she was in financial difficulty, I didn't agree. Although Ms W's bank account might not have been overdrawn, I could see she had just under £19,000 of credit card debt at the time. Also, L&G did approach two lenders on Ms W's behalf. But these lenders refused to offer her a mortgage because of adverse information on her credit file. L&G told us this adverse information was made up of missed and late payments on several of Ms W's credit cards. I'd also seen confirmation from these lenders that Ms W had problems with her credit file. So I was satisfied she was struggling with her finances at the time.

I explained our investigator thought L&G hadn't taken into account Ms W's bonus from her employer. I said there was conflicting information about exactly how much this bonus was. But in any event, this wasn't a guaranteed bonus, so Ms W might not have got anything. That meant most lenders wouldn't have taken it into consideration – and I thought it was also reasonable for L&G not to consider it.

It was clear to me that Ms W needed to do something to sort out her finances. She was spending more than she was earning – and she was missing payments on her unsecured debts which affected her credit file. So I needed to consider if the advice to consolidate some of these debts into an interest-only mortgage was appropriate.

I went on to explain by consolidating the two credit cards and the loan into her mortgage, Ms W added just over £20,000 to her secured debt. This also had the effect of extending the remaining term of the loan from just under two years to 15 years. That said, the interest rate on the mortgage was lower than that on both the loan and credit cards. From what Ms W told the adviser it also seemed she wasn't reducing the balances on her credit cards at all each month. It seemed likely that Ms W was borrowing close to the maximum amount she could on the new mortgage in relation to the value of her property. So I thought the debts that were consolidated were the logical choices for her to maximise the reduction in her monthly outgoings.

I said it was important to point out that consolidating these debts into the mortgage wasn't something that should have been done without considering the negative consequences – such as the debts costing more in the long term. I could see that the adviser did make Ms W aware of this. But given her monthly income deficit and the problems with her credit file, I didn't think Ms W had too many options at this time to reduce her outgoings. After re-mortgaging, rather than having a shortfall of £287 each month, L&G said Ms W actually had a surplus of £200. Having looked at expenditure details she gave the adviser, I thought this was the minimum surplus Ms W now had. It may well have been slightly more.

While consolidating two of the credit cards and the loan wasn't ideal, as I had said above, I wasn't satisfied Ms W had many other options given her need to cut her spending so she could pay her remaining debts.

I noted BF had asked why the mortgage was transferred from repayment to interest-only. It also asked why an application to a different lender didn't proceed and why her existing lender wasn't approached for an interest-only mortgage. I pointed out that as I had already said, Ms W had two applications refused by mainstream lenders because of the missed payments on her existing credit. I thought it more likely than not that any approach to her existing mainstream lender would have got the same response. In the end, L&G had to approach a non-mainstream lender to get Ms W's application approved.

I was satisfied an interest-only mortgage was recommended to Ms W in order to keep her outgoings as low as possible in the short term. I was also satisfied this was never intended to be a long term solution or that it was intended to remain on an interest-only basis throughout the whole term. It was clear that the plan was for Ms W to review her situation in the near future and to change all or part of the mortgage back to repayment. The change to interest-only was designed to give Ms W some breathing space to get her finances in order and to possibly improve her credit file. Whether or not she actually took advantage of this breathing space was a matter for her and not down to the advice given by L&G.

But I did need to think about if it was suitable to recommend that Ms W effectively took a break from paying capital off her mortgage and the debts she repaid with it. Again, this wasn't ideal. But there are times when taking a break from paying capital where there are financial difficulties is appropriate. Indeed, many lenders will do this to help a borrower through such difficult times. Given Ms W's outgoings each month were more than her income, and she was missing payments on her other debts, I thought it was clear she was having financial difficulties. I didn't think it was unreasonable for L&G to give her advice that allowed her some time to sort these out.

Overall I was satisfied the advice given to Ms W was reasonable in her circumstances at the time.

Both L&G and BF confirmed they had received my provision decision. L&G told us it had no further points to make. BF replied saying it didn't have enough information to refute what I'd said about Ms W's financial position and what other lenders had said. BF said it wasn't clear whether the lender issues were caused by defaults/missed payments or related to the level of borrowing being recommended. BF also said it wasn't clear what information had been disclosed to this service. So our investigator sent BF a copy of the information L&G had given us.

In response, BF said while it was unclear what was on Ms W's credit file, it was damaging enough to stop her being able to get a mortgage from a mainstream lender. BF asked me to reconsider the suitability of the debt consolidation advice. It said if an interest-only mortgage from a non-mainstream lender was the only option, this undermined the need and suitability of some of the debt consolidation. BF said one of the debts had about a year left to run with a relatively modest monthly payment.

my findings

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

BF, in response to my provisional decision, asked me to reconsider the suitability of the debt consolidation advice. I've done this and I'm still satisfied the advice given to Ms W was reasonable in her circumstances at the time. The two credit card debts had interest rates that were quite a bit higher than the new mortgage. And as I said above, Ms W didn't seem to be reducing the outstanding balance on these each month.

In its response, BF didn't confirm which debt it was referring to when it said it had about a year left to run with a relatively modest monthly payment. But given BF mentioned an end date – and the credit cards weren't being reduced – it can only be talking about the loan. The loan also had a slightly higher interest rate than the new mortgage. From the available evidence, this still had close to two years still left to run rather than around one year as BF has suggested. Also, the monthly payment was recorded as £116. BF may consider this to be relatively modest. But given Ms W had a shortfall of £287 each month, not having to pay this would have made a big difference to her.

As I said in my provisional findings, L&G did make Ms W aware that consolidating these debts into an interest-only mortgage could cost her more in the long term. But given her circumstances, Ms W didn't have many other options. And, as I also said, given she seemed to be raising close to the maximum amount she could on the new mortgage in relation to the value of her property, I still think the debts that were consolidated were the logical choices for her to maximise the reduction in her monthly outgoings.

Having fully considered the further points made by BF, I see no reason to depart from my earlier conclusions.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 14 August 2017.

John Miles
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