

complaint

Mrs F's complaint is that she was mis-sold a mortgage by an appointed representative of Legal & General Partnership Services Limited ("L&G").

Mrs F is represented in this complaint by a firm of solicitors. But for ease I'll refer to their actions and comments as being those of Mrs F.

background

I wrote to both parties with my provisional decision on Mrs F's complaint last month. The content of my provisional decision is attached to and forms part of this final decision.

Mrs F responded to say, in summary, that she agreed with my provisional findings but asked me to reconsider the redress that I'd thought appropriate. She thought the compensation should include ongoing interest payments for the additional borrowing she took under the new mortgage, as this hadn't been something she'd instructed L&G to arrange.

L&G didn't agree with my provisional findings. It argued, in summary, that Mrs F's objective was to reduce her monthly outgoings as she had no spare money – and that the mortgage it recommended did this. It also said debt consolidation wasn't the only purpose of the re-mortgage, and that Mrs F had wanted the additional borrowing to purchase a new fire and to fund decorating.

L&G also reiterated that the interest rate on the new mortgage was lower than the rate on her existing mortgage – and that the fees she had to pay to take it out were all confirmed in advance. So L&G still thought its recommendation had been suitable for Mrs F.

my findings

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 still don't think L&G's recommendation was suitable for Mrs F. And I think the compensation I proposed in my provisional decision remains a fair way to put things right. I'll explain why.

L&G maintains that Mrs F had "no spare money" at the time of the advice, and that consolidating her debts under the new mortgage gave her a disposable income of around £150. But as I said in my provisional decision, while I acknowledge that things may have been a little tight for Mrs F I don't think there was a clear need for her to consolidate her debts, particularly considering the significant costs of this remortgage.

I agree with L&G's point that Mrs F would no doubt have wanted to have some spare money for holidays, entertainment or socialising. But there was already a small amount budgeted for this within Mrs F's existing arrangements. And the fact find that L&G completed at the time shows that she was also in receipt of £4,400 per year – over £360 per month – from her parents (who were living with her). While not being guaranteed, this seems to have given her ample additional income to use as she wished and is further evidence that a costly remortgage to consolidate debts wasn't required.

L&G says debt consolidation wasn't the only purpose of the mortgage, and that Mrs F had also wanted to raise additional funds. As I noted in my provisional decision, around £2,700 would've been released to her according to the completion statement. But this doesn't seem to have been a primary consideration for Mrs F at the time. The stated aim of the remortgage within L&G's fact find was to consolidate debts. There's barely a mention of a need for any additional borrowing in either that document or L&G's letter of recommendation. And the section within that fact find that sets out what the new mortgage funds are to be used for lists "home improvements" as "£0":

L&G's also sent us a copy of a declaration form, which states that Mrs F wanted this money for decorating and a new fire. But again I don't see this as evidencing a particular need for the additional borrowing. Within a four-page document, question 14 said:

"If you are expecting money back, please confirm what you intend to use it for."

It was answered *"Decorating/new fire."*

The question doesn't relate to any specific additional borrowing or further advance. In fact the way it's worded allows for the fact that there may not be any additional funds at all. The amount Mrs F ended up 'getting back' was significantly less than the "other" amount recorded on the fact find (copied above).

All of this suggests to me that there was little or no discussion around the additional borrowing, and that Mrs F had little or no need for it. And while Mrs F ultimately had the benefit of that additional money, I don't think it makes L&G's recommendation suitable in light of the significant costs and drawbacks as set out in my provisional decision.

L&G points out that the new mortgage allowed Mrs F to make overpayments without penalty – so if she felt she could've paid back any money she didn't need to the mortgage. And that's correct. But I don't think that's enough to make the recommendation itself suitable, particularly as I can't see that L&G discussed that with Mrs F at the time.

I do, however, remain of the view that as Mrs F has had the benefit of those additional funds – so I don't agree that L&G needs to compensate her for the interest charged on that amount.

my final decision

For the reasons set out above and in my provisional decision, I uphold Mrs F's complaint and direct Legal & General Partnership Services Limited to:

- Make redress for the consolidated debt by:
 - Calculating the amount Mrs F has paid to date in capital and interest payments in respect of the consolidated debt
 - Calculating how much remains on her mortgage balance in respect of the consolidated debt
 - Calculating how much Mrs F would've paid to clear the debt had it not been consolidated
 - Adding together the first and second figures, deducting the third and paying the result as a lump sum.

- Refund the ERC paid by Mrs F in redeeming her previous mortgage and add interest at the mortgage rate.
- Refund all broker, legal, lender and valuation fees paid to set up the loan, adding interest at the mortgage rate for fees added to the loan (for any that were paid upfront the interest would be 8% simple) but deducting £1,000 in recognition of the cashback Mrs F received.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 5 May 2017.

Ben Jennings
Ombudsman

Copy of Provisional Decision

complaint

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Mrs F is represented in this complaint by a firm of solicitors. But for ease I'll refer to their actions and comments as being those of Mrs F.

background

Mrs F was advised by L&G to re-mortgage in 2006. The new mortgage consolidated an unsecured loan that Mrs F already had. And she incurred fees and charges in taking out the new mortgage, including an early repayment charge (ERC) payable to her existing lender. These were all added to the new mortgage balance.

Mrs F complained as she thought L&G's advice had been unsuitable. In particular, she said her unsecured loan had a low interest rate and that consolidating it into a mortgage with a longer term had caused her unnecessary financial loss. She also said that incurring an ERC was disproportionate to any benefits in increasing her monthly disposable income.

L&G said the mortgage it recommended to Mrs F allowed her to increase her disposable income from £34 to £163 and gave her peace of mind with fixed, maximum mortgage payments. While it acknowledged that Mrs F had paid an ERC of £1,100, it pointed out that she'd received a cashback incentive of £1,000 which offset most of this.

Mrs F referred her complaint to us and it was reviewed by one of our investigators. He thought the new mortgage had achieved Mrs F's aim of reducing her outgoings to free up some money each month. He also thought L&G had explained the longer-term costs of debt consolidation to Mrs F, and that the cost of the ERC had been offset by the cashback incentive. So he didn't think L&G's recommendation had been unsuitable.

Mrs F didn't accept our investigator's view. She still thought that any short-term increase in her disposable income was far outweighed by the costs of the increased amount she'd borrowed. So she asked for an ombudsman to review her complaint, and it was passed to me.

my provisional findings

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

Prior to the re-mortgage, Mrs F was paying around £620 a month to service her mortgage and the unsecured loan. The new mortgage consolidated her borrowing, so she was just making one monthly payment of around £470. So she did get some benefit in reducing her outgoings and paying a lower interest rate (albeit by only 0.8%) on the money she owed. I also see that Mrs F would've received some additional funds to spend as she wished, as around £2,700 was released to her according to the completion statement.

But set against the benefits of the new arrangement are some significant costs – both in terms of setting up the new mortgage and in having to pay some of the debt over a much longer term. In order to switch mortgages, Mrs F incurred the following (approximate) costs:

- Broker fees of £1470;
- Mortgage fees of £1085;
- Legal fees of £450;
- A valuation fee of £200; and
- An early repayment charge on her existing mortgage of £1,100.

These come to a total of around £4300. Mrs F did receive a 'help with costs' cashback incentive of £1,000. Even taking that into account, Mrs F had to borrow an extra £3,300 to pay for the costs in setting up the mortgage that was supposed to be saving her money. And these costs were all added to Mrs F's mortgage – meaning she'd be paying them off with interest over a term of 23 years.

While 'debt consolidation' was the stated purpose of the re-mortgage, I can't really see that Mrs F had an urgent need to do this. Set against her stated net monthly income of around £1,300, the monthly cost of her existing borrowing (£620) doesn't seem unaffordable. Although the income and expenditure assessment completed at the time does show things might be a little tight, it did include a budget for holidays, hobbies and other entertainment. So I don't think Mrs F was in any particular financial difficulty. And there's nothing to suggest that she wasn't able to make the payments on her existing mortgage or loan.

Mrs F was about halfway through the term of her secured loan – she had another three years or so left before it would be paid off. But by consolidating it within her mortgage, she'd be paying it off over the 23-year mortgage term. So the overall amount she'd pay increased significantly. While Mrs F may have been given some information explaining this, she would understandably – and legitimately – have been led by the advisor's recommendation. If it hadn't been recommended to her, I don't think she would've proceeded.

So looking at everything, I don't think the advice to consolidate the unsecured debt was necessary – or suitable – for Mrs F. And with no other clear objective for taking out this mortgage, I don't think it should've been recommended to her.

As I've outlined, I think Mrs F has lost out – and will continue to lose out – as a result of L&G's unsuitable advice. So to put things right, I think it should put Mrs F in the position she would've been in, as far as is now possible. To do so, L&G should refund all the fees and charges Mrs F paid to set up the mortgage, and should make redress for the unnecessarily consolidated debt. It should also refund the ERC Mrs F paid when redeeming her previous mortgage. But I think it would be fair for L&G to deduct the £1,000 cashback from the settlement, which Mrs F benefitted from under the re-mortgage. And I don't think L&G needs to do anything in respect of the additional funds Mrs F received as she's also benefitted from them – and had the opportunity under the terms of the mortgage to repay them without charge.

my provisional decision

For the reasons set out above, I intend to uphold Mrs F's complaint and direct Legal & General Partnership Services Limited to:

- Make redress for the consolidated debt by:
 - Calculating the amount Mrs F has paid to date in capital and interest payments in respect of the consolidated debt
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