Financial Ombudsman Service

complaint

Through a claims management company (CMC) Mr and Mrs T complain that a mortgage was mis-sold to them in 2006 by an appointed representative (AWD) of Legal & General Partnership Services Limited.

background

In 2006 Mr and Mrs T were given mortgage advice by AWD, as a result of which they took out a new mortgage, borrowing £253,600 on a part-repayment, part-interest-only basis. They repaid their existing mortgage and consolidated loan and credit card debts of approx £39,000 into the new loan.

In 2013 the CMC complained that the advice was unsuitable. In summary the CMC says that the adviser placed his interests above those of Mr and Mrs T by advising them to take out this mortgage. Instead, the CMC argues, Mr and Mrs T should have been advised to approach their existing lender in order to restructure their borrowing.

Our adjudicator didn't recommend the complaint should be upheld. She was satisfied the recommendation was suitable. The CMC disagreed and asked for an ombudsman to review the complaint. In response to the adjudicator's findings the CMC says that debt consolidation hadn't been explained and was inappropriate. It has reiterated that the adviser should have advised Mr and Mrs T about remortgaging with their existing lender.

The CMC also says that Mr and Mrs T weren't told about the implications of the early repayment charge (ERC) on their existing mortgage and that they should have been advised to wait until they were out of the period in which the ERC would apply.

The CMC insists that Mr and Mrs T were cold-called and pressurised into taking out this remortgage by an adviser whose sole interest was to maximise his own commission.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

First, I've seen no evidence to persuade me AWD cold-called Mr and Mrs T, as the CMC suggests. It has explained that its customers came either from its existing customer base or through opt-in marketing campaigns. I think it likely that Mr and Mrs T had opted into being contacted when dealing with another service provider.

AWD offered advice in relation to only a limited panel of lenders. Mr and Mrs T's existing lender was not on the panel. So AWD wasn't able to offer any advice about the products available from that lender.

It was open to Mr and Mrs T to discuss their finances with their own lender, had they wished to do so. But AWD was under no obligation to offer them advice about a lender which wasn't on its panel.

According to Land Registry records, it seems Mr and Mrs T bought the property in September 2002 for approx £160,000 and so it appears they may already have remortgaged in 2004 when they took out the mortgage with their previous lender for £195,600. Given this, remortgaging doesn't appear to be something with which Mr and Mrs T were unfamiliar or uncomfortable.

It appears Mr and Mrs T had more than one meeting or discussion with AWD. I say this because the initial advice was given in March 2006, when there were two records of suitability dated 13 March and 28 March. And in April 2006 Mr and Mrs T confirmed in writing that they were aware of the implications of completing their new mortgage within the ERC period. So I'm satisfied Mr and Mrs T had sufficient time to consider their options and decide whether or not to accept the advice they'd been given, or to approach their own lender instead.

The remortgage achieved Mr and Mrs T's stated aims of reducing their monthly outgoings and clearing their unsecured debts. Although consolidating unsecured debt into a long-term mortgage can be more expensive over the term, there can be benefits if debts that are cleared are credit cards where minimum repayments are being made, as is the case here. Mr and Mrs T were not significantly reducing their unsecured debts.

At the time of the advice Mr and Mrs T's outgoings on their existing mortgage and unsecured debt took about 50% of their disposable income - £1,994 from a net income of £3,958. They told AWD their other essential expenses (council tax, insurances, utilities, motoring costs and food) were about another £1,130 per month. Discretionary spending accounted for another £580 per month. This left very little available disposable income.

The remortgage enabled Mr and Mrs T to free up a substantial amount of disposal income. Given that Mr and Mrs T were not significantly reducing their credit card debts with their monthly repayments, I'm not persuaded the advice to consolidate those debts was unsuitable.

I've also seen nothing to persuade me AWD acted only in its best interests in arranging this remortgage.

my final decision

My final decision is that I do not uphold this complaint.

Jan O'Leary
ombudsman