complaint

Mr and Mrs W complain that they were mis-sold a mortgage by an appointed representative of Legal & General Partnership Services Ltd ("L&G").

background

In 2008 Mr and Mrs W were given advice about re-mortgaging by L&G's representative. The advisor recommended a two year tracker rate mortgage on a repayment basis. The mortgage was for a higher loan amount but a shorter term than their existing loan. The increase in the loan was due to:

i) Releasing funds for home improvements;
ii) Consolidating the cost of, and advisor's fee for, an insurance policy;
iii) Consolidating a credit card debt which was being repaid at 0% interest.

Mr and Mrs W took out the recommended mortgage. But in 2015 they complained, via a representative, that the credit card debt shouldn't have been consolidated.

L&G rejected the complaint. It accepted that Mr and Mrs W may have made a small loss in the short term by consolidating. But said that they would have paid more in the long term when the 0% interest rate increased. And so ultimately there was no loss.

The adjudicator decided that the debt consolidation was unsuitable. L&G disagreed on the basis that if Mr and Mrs W could have afforded the credit card debt they would have paid more than the minimum monthly payments. Also, the advisor explained consolidation in sufficient detail. And so it asked for an ombudsman to make a final decision.

my findings

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

Although Mr and Mrs W only complain about the debt consolidation I have nevertheless considered the suitability of all parts of the advisor's recommendation.

<u>Type of mortgage</u>
I have seen no evidence of a repayment vehicle, other than life assurance, and so a repayment mortgage was clearly the best option for Mr and Mrs W.

The notes in the mortgage record of suitability ("MROS") and client review form ("CRF") show that Mr and Mrs W initially wanted a fixed rate product. But then they changed their minds and so a tracker rate was recommended. Based on the MROS and CRF both options were equally affordable. Given that both have advantages and risks in different ways I think that either recommendation was justifiable. And so there was nothing wrong with the revised recommendation. Mr and Mrs W also wanted to be able to underpay, overpay and take payment holidays. The terms of the mortgage allowed all of these things and so it met their needs.

Reduced term
The reduced term of the mortgage meant that Mr and Mrs W's monthly repayments increased. Their disposable income was enough to cover this increase. Plus reducing the term of the mortgage means that Mr and Mrs W will repay their loan sooner.

Increased loan
Again, a higher loan meant higher repayments but Mr and Mrs W's disposable income was enough to cover this. But affordability alone didn't necessarily make it suitable.

In relation to the home improvements, Mr and Mrs W were asking for a reasonable amount and for a justifiable reason. And so I don't think the advisor did anything wrong by recommending a higher loan to provide these funds.

In relation to the consolidated cost and fee of the insurance policy, L&G upheld a complaint about the mis-sale of that policy in 2013 and paid redress to Mr and Mrs W. And so there's no need for me to consider this part of the recommendation.

Turning to the consolidation of the credit card debt, it's clear from the MROS that the advisor fully explained the consequences of consolidating. But the only reason given for the recommendation is that Mr and Mrs W were "happy" to consolidate because the 0% interest rate was coming to an end soon. When making a recommendation an advisor shouldn't be guided by what a consumer is "happy" with but rather what is actually suitable.

Consolidating generated a slightly higher monthly disposable income. But the minimal difference it made was disproportionate to the amount of additional interest that Mr and Mrs W will pay for the remainder of their mortgage. Even with an increase in the 0% interest rate Mr and Mrs W would have repaid the debt by now and saved on the additional mortgage interest. I'm not persuaded that making the minimum payments on their credit card meant that they couldn't afford the debt. After all they had no incentive to pay more until the interest rate increased.

For all of these reasons I'm satisfied that all aspects of the advisor's recommendation was suitable apart from the consolidation of the credit card debt.

my final decision

For the reasons I've given, my final decision is to uphold this complaint. I direct Legal & General Partnership Ltd to:

- Calculate the monthly payments to service the amount consolidated for the credit card debt, including the interest paid, up to the date of settlement ("figure A").
- Calculate how much of the consolidated debt remains as part of the mortgage balance at the date of settlement ("figure B").
- Calculate how much it would have cost Mr and Mrs W to pay back the debt if it hadn't been consolidated ("figure C").

- Then add together figures A and B minus figure C and pay that amount as a lump sum to Mr and Mrs W.
- Repay Mr and Mrs W the proportion of the advisor's fee related to the higher mortgage balance for consolidating the debt, plus 8% annual simple interest if the fee was paid up front or interest at the mortgage rate if the fee was added to the mortgage.

If L&G considers it should deduct income tax from the 8% element of my award it may do so, but should give Mr and Mrs W the necessary certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 29 October 2015.

Sim Ozen
ombudsman