

complaint

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

background

Acting on a recommendation from L&G, Mr and Mrs L re-mortgaged in 2005. In doing so, they switched lenders, borrowed further monies for debt consolidation and (it is said) home improvements, and added fees and charges to the loan.

Represented by a claims management company, Mr and Mrs L now complain that the mortgage recommendation was unsuitable. Their representative says:

- that they should have been advised to seek a further advance from their existing lender, keeping set up costs down;
- that they should not have been advised to consolidate short term debt to the loan; and
- that they did not need or want additional capital.

L&G says that the recommendation was suitable. It says that the mortgage recommended was the cheapest available and met Mr and Mrs L's objectives. It says the implications of debt consolidation were fully explained and Mr and Mrs L decided to proceed.

Our adjudicator didn't consider the mortgage to have been mis-sold. As Mr and Mrs L didn't agree, the case comes to me for a decision to be made. As I came to a different conclusion, I decided to issue a provisional decision allowing all parties a further opportunity for comment.

my provisional decision

I agreed with the adjudicator that the mortgage recommendation as a whole was suitable. It is recorded in the fact find and the record of suitability that Mr and Mrs L wanted to raise money for home improvements, and I found on balance that was indeed one of their objectives. I didn't therefore consider that unnecessary capital was raised; even if it was, it could – according to the terms of the mortgage offer – have been paid back three months later without penalty.

Mr and Mrs L's representative says that they should have been advised to approach their existing lender rather than incurring the additional costs of switching. However, I wasn't persuaded that this would have resulted in a saving. The existing lender also appears on the sourcing list; its best deal was at an interest rate 0.4% higher, meaning a monthly payment of £40 per month more - £2,400 extra in repayments over the fixed term. It also charged a fee £300 higher than the new lender. And there is no guarantee that the lender would have made that product available to existing borrowers – or agreed to a further advance.

If the existing lender had been selected, Mr and Mrs L would still have had to pay the broker fees, and the higher product fee. As they were looking to increase their borrowing, they may have had to pay a valuation fee as well. They may well have saved the solicitors' fees; but that does not offset the additional costs of the borrowing, even taking into account that the amount borrowed would have been lower had the unsecured debt not been included. So I wasn't persuaded that switching lenders cost them more; and therefore I didn't intend to uphold the complaint in this respect.

However, I did agree that the recommendation to consolidate debt was unsuitable. It consisted of a personal loan with about four years left to run, at a rate around 2% higher than the mortgage. Mr and Mrs L had a disposable income, after taking into account all outgoings, of over £1,000 per month. They were not in any financial difficulty, and had no immediate need to consolidate. Doing so over an 18 year term substantially increased the overall cost of the borrowing.

L&G said the implications of doing so were fully explained in the record of suitability. I didn't agree. The record simply says that "although the interest rate charged will be lower, the overall cost of repaying these liabilities is likely to increase as the term is longer". No illustration is given; no cost for comparison is shown; all that is said is that the overall cost is likely to – not will, or by how much – increase.

L&G's duty was to make a suitable recommendation (which may also be a recommendation not to proceed). Simply presenting information to allow a consumer to decide is not sufficient – but even if it were, that did not happen in this case since full and clear information about the comparative costs was not given. In this case, I wasn't persuaded that the recommendation to consolidate was appropriate since it does not appear that the short term gains outweighed the long term costs; nor were Mr and Mrs L given enough information to make an informed decision. To that extent, I therefore intended to uphold this complaint.

It is not clear from the file how L&G set the broker fee, and I asked it to clarify that in its response to my provisional decision. If the level of the fee was linked to the size of the mortgage advance, I intended to direct its return to the extent that the debt consolidation inflated the size of the advance.

the responses to my provisional decision

L&G didn't accept my provisional decision. It said that debt consolidation was appropriate, and provided further evidence that it said showed that Mr and Mrs L's financial position wasn't as healthy as portrayed in the client review. This consisted of a bank statement from June 2005, showing that Mr and Mrs L had an overdraft that increased from £1,000 to £1,500 over the course of the month.

L&G also provided a mortgage statement for Mr and Mrs L's previous mortgage showing, it said, that they had borrowed back £50,000 and that their monthly payments were higher than they had said in the client review.

From this evidence, L&G drew the conclusion that Mr and Mrs L were overspending and reliant on their overdraft, and therefore that debt consolidation was necessary and suitable.

I put this additional evidence to Mr and Mrs L. They showed that the bank statement showed an overdraft because – as was their usual practice – they paid for their annual holiday and then paid the money back over the following few months. For nine months of the year, and for the year on average as a whole, their account was in substantial credit.

Mr and Mrs L also said that they had borrowed the money back from their previous lender to carry out an extension to their house. The statement showed those transactions and balancing amounts; by the time they came to fill in the client review, their mortgage payments had been fixed at the amount set out in the client review.

Mr and Mrs L therefore said that their finances were in a good state; they were not overspending and (apart from around the time of their annual holiday) had a substantial monthly surplus.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, including the responses to my provisional decision and the further evidence supplied.

I accept, on the balance of probabilities, what Mr and Mrs L now say about their finances at the time of the advice, which is consistent with what was recorded at the time. It seems to me to be more likely that their evidence and the contemporary records are right, than it is that the inference L&G now draws from a single bank statement is right.

That being the case, I remain of the view that debt consolidation wasn't suitable in this case. The long term costs outweighed the short term advantages – advantages Mr and Mrs L didn't need.

my final decision

For the reasons I have given, my final decision is that I uphold this complaint and direct Legal & General Partnership Services Limited to:

- Calculate the amount, in capital and interest payments, Mr and Mrs L have paid in respect of that part of the mortgage represented by the consolidated debt;
- Calculate how much of the consolidated debt remains outstanding on the mortgage balance as at date of settlement;
- Calculate how much Mr and Mrs L would have paid to repay the debt had it not been consolidated;
- Add together the first two figures, deduct the third and pay the result as a lump sum to Mr and Mrs L;
- Insofar as the broker fee was related to the size of the mortgage balance, refund the additional amount due to the consolidated debt, adding interest at the mortgage rate from time to time to date of settlement

Simon Pugh
ombudsman