

complaint

Mr and Mrs B, represented by a claims management company, complain that they were mis-sold a mortgage by an approved representative of Legal & General Partnership Services Limited ("L&G").

background

Mr and Mrs B acted on a recommendation from L&G to re-mortgage. Because this was only around five months after they had previously re-mortgaged, they incurred a significant early repayment charge ("ERC") to their previous lender. They increased their loan balance by consolidating some debt and adding fees, charges and insurance to the loan.

Mr and Mrs B's representative now complains that the mortgage was mis-sold, because it was unnecessary for them to re-mortgage so soon and because debt consolidation increased the costs of the debts in the long term. It also complains that Mr and Mrs B were cold-called, that the mortgage was unnecessary and that an excessively long fixed rate term was arranged.

Our adjudicator recommended upholding the complaint. She agreed that the re-mortgage was unnecessary and said that L&G should refund the ERC and all fees paid to set up the loan, and make redress for the increased costs of consolidating the debt. L&G did not agree.

my findings

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

I agree with the conclusions reached by the adjudicator, and do so for much the same reason. I note that L&G has not contested her findings that the mortgage was unnecessary and that the fees, charges and ERC should be refunded.

I'm satisfied that the complaint should be upheld in this respect. There was no need for Mr and Mrs B to re-mortgage so soon. There was no pressing need to raise additional capital or to consolidate debt; had there been, that could have been done five months earlier – but it wasn't. They incurred a significant ERC, and did not exchange it for a mortgage whose terms were significantly better – though the new mortgage did have a very long fixed term.

There is no reason, it seems to me, why Mr and Mrs B could not have been advised to wait until the end of their previous lender's ERC period. In its response, L&G pointed to its mortgage analysis questionnaire which, it says, showed that they were dissatisfied with their existing lender and wanted to move. I have considered this document and attach little or no weight to it. I don't agree that Mr and Mrs B's responses show that they were sufficiently concerned after five months that moving lender was an urgent imperative – and, to my mind, the questions were in any case designed to induce those feelings rather than merely record them.

I also agree that there was no need to consolidate debt at this point. Mr and Mrs B were not under financial pressure, according to the fact find, and had no pressing need to reduce their outgoings. L&G now suggests that the fact find taken by its adviser may not record all their expenditure, and that it is reasonable to believe they were in fact spending more. If that is

correct, it casts doubt on the basis on which the recommendation was made in the first place, and so does not assist L&G's case that the recommendation was suitable. But in any event, I have no evidence that it is correct, and so take the fact find at face value.

L&G also points to the fact that Mr and Mrs B had consolidated debt before, and says that to do so was their choice this time. But there isn't any suggestion they did so when they took their previous mortgage a few months earlier – certainly these debts continued. They had consolidated in the past but chose not to the last time their mortgage was reviewed; I consider this supports my conclusion that there was no need for them to do so and that the impetus to do so this time came not from them but from L&G.

The suitability record says that capital of £2,000 was to be raised on re-mortgage, though there is no clear record on the file anywhere what this was for. In fact, over £4,000 was raised – twice as much as Mr and Mrs B agreed. Had they required £2,000 at this time, that could have been raised through a personal loan, not a mortgage which cost several times that amount in fees, charges and ERC to obtain.

Taking everything into consideration, I can see no good reason why a re-mortgage was recommended so soon after the last one had been taken out. The correct recommendation was not to proceed, and that is what L&G should have done. I therefore uphold this complaint.

Mr and Mrs B's representative complains that the new mortgage's fifteen year fixed rate term was too long and rendered them prisoners of the new lender. It says that they redeemed that loan and incurred an ERC in doing so. However, despite numerous requests no evidence of that has been provided and so I don't take account of that in setting the redress.

my final decision

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

- Refund to Mr and Mrs B all the fees and charges, and the ERC, that they paid to set up this loan
- Add interest at the mortgage rate to date of settlement to charges added to the loan and interest of 8% simple to date of settlement to charges paid up front
- Make redress for the debt consolidation by:
 - Calculating the amount Mr and Mrs B have paid in capital and interest payments to date of settlement in respect of the consolidated debt
 - Calculating the amount they would have paid towards their consolidated debts over the same period
 - Deducting the second figure from the first and paying the result as a lump sum to Mr and Mrs B.

In order for the debt consolidation calculation to be done, Mr and Mrs B's representative will need to provide to L&G details of their subsequent mortgage arrangements. While I have no power to direct that to happen, I hope that it will do so.

If L&G considers that it should deduct tax from the 8% interest element of my award, it should give Mr and Mrs B the necessary certificate.

Simon Pugh
ombudsman