

complaint

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

background

Mr and Mrs H had a mortgage and a range of debts, including credit cards and loans. Acting on advice from L&G, they re-mortgaged to another lender which allowed them to borrow up to 125% of the value of their property. They consolidated their debt, raised some additional capital and shortened the term of their mortgage slightly.

Our adjudicator didn't think that this was a suitable recommendation. He noted that Mr and Mrs H had no disposable income left each month, though they were maintaining their payments to all their debts. Although consolidation increased their disposable income to around £100 each month, he noted that that came at considerable long term cost, as a series of short term debts were converted into twenty year borrowing.

Taking into account that Mr and Mrs H also had to pay an early repayment charge ("ERC") of almost £3,000 to their previous mortgage lender, the adjudicator didn't consider that the costs of consolidating outweighed the benefits. In support of that, he noted that Mr and Mrs H had handwritten on the suitability record that they were willing and able to reduce their monthly spending on discretionary items and expenditure if necessary – while this was in the context of affordability of the new mortgage, the adjudicator considered that that showed that Mr and Mrs H had flexibility in their spending and so there wasn't a pressing need to consolidate. He thought that Mr and Mrs H should have been advised to reduce their expenditure instead of re-mortgaging.

L&G didn't agree with his recommendation. It said that Mr and Mrs H needed to reduce their outgoings and the mortgage achieved that. While they could have chosen to reduce their expenditure, they chose to consolidate debt to the mortgage instead. It said that the reduced monthly expenditure, coupled with cashback from the new lender, meant that the ERC would be recouped within the fixed term of the new mortgage. It asked that an ombudsman review the complaint.

my findings

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

Having done so, I find that I am in agreement with the adjudicator. The fact find shows that Mr and Mrs H had no disposable income each month left after meeting their regular outgoings. After the re-mortgage, their outgoings reduced by £100 per month.

The suitability record is signed by Mr and Mrs H, and at the end of it they have added a hand-written note which says *"the mortgage...is affordable to us now and in the future. If required we are able to reduce our holiday / leisure / general living expenditure without affecting our standard of living to ensure the mortgage payments are always met."*

If that is true of the mortgage payments, it is also true of Mr and Mrs H's other debts. They could reduce their other expenditure to ensure the payments were always made – and there is no evidence that they had ever missed a payment.

Consolidating the debt made it considerably more expensive over the longer term of the mortgage. Incurring an ERC to leave the existing mortgage made it more expensive still. And doing so resulted in a relatively small monthly saving – which, by their own account to the adviser at the time, Mr and Mrs H didn't need to meet their obligations. It also resulted in a higher fixed interest rate than the one Mr and Mrs H were already on.

If reducing their other expenditure was an option for them, they should have been given that advice – and there is no evidence that they were. I'm satisfied that this is a case where the most suitable recommendation would have been not to proceed.

I have considered L&G's argument that the ERC would have been recouped – but that fails to take into account the interest charged by adding it to the mortgage balance over a twenty year term.

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:

- In respect of the debt consolidation:
 - Calculate the amount Mr and Mrs H have paid, in interest and capital, in respect of the consolidated debt to date of settlement;
 - Calculate the amount of consolidated debt still outstanding on the mortgage balance as at date of settlement;
 - Calculate the amount it would have cost Mr and Mrs H to repay the debts had they not been consolidated;
 - Add together the first two figures, deduct the third and pay the result as a lump sum to Mr and Mrs H;
- In respect of the set up fees of the new loan:
 - Refund broker, lender, valuation and legal fees, together with the ERC and redemption fee for the previous mortgage, adding interest at the mortgage rate to date of settlement;
- In respect of the higher interest rate applicable to the new loan:
 - Calculate the difference between the interest paid to the new lender compared to the interest that would have been paid to the old lender to the end of the new lender's fixed rate period (disregarding the refunded debt and fees from the balance). Pay the resulting amount to Mr and Mrs H, adding simple interest* at 8% running to date of settlement.

I understand that Mr and Mrs H switched their new mortgage again at a later date, meaning that the interest rate on the unsecured part of their borrowing increased. I make no allowance for that since Mr and Mrs H didn't have to switch, increasing that interest rate. But had they not done so, they would have stayed on the standard variable rate. For the purposes of this calculation, L&G should assume that Mr and Mrs H's entire mortgage debt stayed at the fixed rate for the five year period and then remained on the lender's standard variable rate thereafter.

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs H to accept or reject my decision before 12 March 2015.

Simon Pugh
ombudsman