

complaint

Mr H and Ms D complain they were mis-sold a mortgage by an appointed representative of Legal & General Partnership Services Limited.

background

Mr H and Ms D took advice from L&G when the fixed rate on their previous mortgage was coming to an end.

As a result of the advice they re-mortgaged to another lender, taking a five year fixed rate. They consolidated most of their unsecured debt and borrowed around another £11,000. Now a claims management company (CMC) acting on their behalf claims this was unsuitable, and that they were charged excessive and unfair fees to do so. Our investigator didn't recommend upholding the complaint, so it comes to me for a final decision to be made.

my findings

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

I've looked at the fact find that was taken at the time – it's not been suggested that it's an inaccurate record of Mr H and Ms D's financial position at the time of the advice. It shows that they had six credit and store cards, and three personal loans – one of which had been taken out for a previous debt consolidation. It also shows that they had a shortfall of around £100 per month on their income and expenditure.

So I think Mr H and Ms D were in financial difficulty at the time. They had a history of running up and consolidating debt, and had run up further debts. They were over-spending each month. The CMC says that debt consolidation was unnecessary, and they could have reduced their outgoings instead. But their monthly spending on non-essential and uncommitted expenditure doesn't seem unreasonably high, and I think there was relatively little room for cuts – the £100 shortfall could have been eliminated, but I don't think it would have been possible to get to a comfortable surplus just by cutting expenditure.

In my view, the only realistic alternative to consolidation to allow Mr H and Ms D to get their finances back on track was to enter into an arrangement with their creditors – but that's a serious step, and I can understand why Mr H and Ms D may have preferred another consolidation.

Overall, therefore, I don't think it was unsuitable to consolidate the debts. However, I do have some concerns about the further borrowing. The suitability record shows that Mr H and Ms D decided not to consolidate all their debt so they could use some of the additional funds – borrowing up to the maximum the lender would lend – for an expensive holiday. I don't think this was wise and I think the adviser should have advised them against borrowing further funds for lifestyle expenditure rather than using them to eliminate their other debts. However, I don't intend to uphold this part of the complaint and direct L&G to pay redress for it. That's because, firstly, given their spending history and what they wanted to do at the time, I'm not entirely persuaded they would have taken such advice if given. And secondly, they have had the benefit of the funds, so it wouldn't be fair to require L&G to repay the capital borrowed to them. If they had borrowed the same amount in another way, I think it's likely the interest rate would have been significantly higher – and, if over a shorter term – the

monthly payments would be too. If they'd borrowed the amount on their credit cards, it would have been particularly expensive. So I'm not persuaded there's been a quantifiable financial loss.

The CMC also complains about the fees the broker charged. L&G has offered to refund commission the broker received for referring Mr H and Ms D to a solicitor, plus £100. I'm not persuaded the fees charged to Mr H and Ms D were unfair or unreasonable. Other brokers may charge different amounts, or structure their charges differently. But there's no rule that says a broker must charge no more than a particular amount, or describe their fees in a particular way. I think the key point is that Mr H and Ms D were clearly told what they would have to pay, agreed to do so, and received the service they'd paid for.

my final decision

For the reasons I've given, my final decision is that I think Legal & General Partnership Services Limited has made a fair and reasonable offer to settle this complaint and I don't require it to take any further action beyond that.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Ms D to accept or reject my decision before 9 April 2020

Simon Pugh
ombudsman