

## **complaint**

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

## **background**

In 2007 L & G recommended that Mr and Mrs R remortgage with another lender. In doing so they paid an early repayment charge of over £2,700. They also took a new 5 year fixed rate, consolidated some debt and raised some cash. They switched their mortgage to an interest only basis. They extended the mortgage term by 3 years. Their representative now says the mortgage recommendation was unsuitable for them.

L & G said it had recommended a suitable mortgage for Mr and Mrs R. Money had been tight for them. Their unsecured lending was increasing at a faster rate than their mortgage debt was reducing.

Our adjudicator didn't agree. She said that after the remortgage Mr and Mrs R's monthly payments reduced by only around £100. And they were worse off because the mortgage interest rate went up, and they weren't paying off any capital on their mortgage or their consolidated loan. They'd paid significant costs to set up the mortgage. They should have been advised to stay with their existing lender.

Our adjudicator said L & G should refund to Mr and Mrs R the costs for setting up the mortgage. She said it should also pay them the amount by which their mortgage was 'underfunded'; that is, to pay them the amount of capital they'd have paid off the new mortgage balance on a repayment basis.

L & G didn't agree. It said Mr and Mrs R had decided to change their mortgage to interest only terms for 5 years. When their children were older, Mrs R intended to go back to full-time work and they could then afford to swap back to repayment. They had consolidated loans and credit cards already, and they had built up another credit card balance. L & G didn't accept the mortgage was underfunded. Mr and Mrs R had needed an interest only mortgage, so it shouldn't have to pay compensation to them for switching to interest only terms. And entering a debt arrangement would be a last resort, which would damage Mr and Mrs R's credit rating.

## **my findings**

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

When L & G saw Mr and Mrs R in 2007 they had a repayment mortgage, with 21 years remaining, on a fixed rate of 4.79% to October 2010. They also had a long term loan of around £35,000, which they'd taken in 2005 for debt consolidation. This loan had 23 years remaining at an interest rate of 8.9%. They had another personal loan taken early in 2007 for debt consolidation of around £11,000 over a 5 year term, at 6.9%. In addition they had credit card debt of around £6,500.

Mr and Mr R were making monthly payments of £555 for the mortgage, £311 for the long term loan and £165 for the short term loan. They were also paying around £150 towards the credit card debt. So, they were paying around £1,181 a month.

L & G recommended an interest only mortgage over a longer term of 24 years. Mr and Mrs R didn't have enough equity in their house to consolidate both loans and the credit card. And so the mortgage it recommended included an unsecured loan at the same rate as the mortgage. This meant they could consolidate the larger loan. It was at 7.29% fixed for 5 years, on an interest only basis. This gave a monthly payment of £1,074. They still had to pay their smaller loan which hadn't been consolidated. And Mr and Mrs R paid fees to set up the mortgage and the early repayment charge of just over £2,700.

I agree with the adjudicator that L & G's recommendation to remortgage wasn't suitable for Mr and Mrs R. They already had a fixed interest rate of £4.79% for a further 3 years. They remortgaged to a higher interest rate of 7.29%. They paid significant costs, including an early repayment charge. They still had to pay the smaller loan. I can't see there were any real advantages for them, and the borrowing was largely switched to interest only.

I do accept L & G's point that Mr and Mrs R's finances were under some pressure. But they'd taken control of that by consolidating their debts with loans. The larger loan interest rate was at a rate only slightly higher than the new mortgage rate. They'd built up another credit card debt, but were meeting at least the minimum payment and intended to switch to interest free terms. And they were making payments, on a capital and interest basis, on their mortgage and two loans. They were able to do this with a total monthly payment of only £100 more than the new mortgage, which was on interest only terms.

So I think the right thing to do was for L & G to advise Mr and Mrs R to stay where they were, at least until the end of their fixed rate period. In my view, the advantages of remortgaging didn't outweigh the disadvantages. They were meeting their payments on their repayment mortgage and loans at that time. They could have taken some advice on managing their money, but I don't think this would have meant a debt arrangement.

So I agree that L & G should refund to Mr and Mrs R the costs and fees they paid to remortgage.

I also agree with the adjudicator that, in the specific circumstances of this complaint, L & G should also compensate Mr and Mrs R for underfunding. That is, the amount their mortgage balance with the new lender would have reduced by had it been on repayment terms rather than interest only, for the five years of the fixed rate. I think it reasonable they could have reviewed their position after five years as they always intended to do.

The adjudicator's point was that if the adviser felt their existing mortgage was unaffordable for them, then, at best, the adviser should have suggested they ask their lender to convert to interest only terms. It can't have been right that they incur so many costs just to change to interest only terms, with such minimal reduction in their monthly payment and an increase in mortgage rate. And I find they were able to maintain repayment terms under their original mortgage arrangements, so they've lost out because of the switch to interest only terms.

I find the remortgage wasn't suitable for Mr and Mrs R's needs and didn't properly meet their objectives to reduce their outgoings.

### **my final decision**

My decision is that I uphold this complaint, and I order Legal & General Partnership Services Limited to refund to Mr and Mrs R:

- the amount by which their new mortgage was underfunded over the first five years; that is, the amount of capital they would have repaid after five years had the new mortgage been set up on a repayment mortgage rather than interest only terms; and
- the early repayment charge they paid to redeem their previous mortgage. As I understand this amount was included with the new mortgage balance L & G should add interest at the mortgage rate, from the date the new mortgage completed to the date of settlement; and
- the broker, lending, valuation and legal fees they paid to set up the new mortgage. L & G should add interest at the mortgage rate for any fees added to the new mortgage, and 8% simple interest to any fees paid up front, calculated from the date the new mortgage completed (or the date they paid any up front fees) to the date of settlement.

If L & G considers it has to deduct tax from the interest element of my proposed award, it should give Mr and Mrs R a tax deduction certificate when it pays them. They can use this to reclaim the tax from HMRC if they are entitled to do so.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs R to accept or reject my decision before 16 March 2015.

Amanda Maycock  
**ombudsman**