Financial Ombudsman Service

complaint

Ms P through her representative B complains that an appointed representative of Legal & General Partnership Services Limited mis-sold her a mortgage in 2006. She wants compensation.

background

Ms P took advice about a new mortgage from A, an appointed representative of Legal & General. B said that it mis-sold her a mortgage because it advised her to borrow money under the mortgage to repay a loan with 0% interest (known as debt consolidation).

B complained to Legal & General about this and other issues not raised in this complaint. It said that it thought A had recommended a suitable mortgage to Ms P and hadn't mis-sold it. Legal & General said Ms P was using debt for her living expenses when A advised her and her original mortgage was due to go on after she retired. It also said Ms P wanted to reduce her monthly outgoings, the amount owed under her mortgage and the time to pay it. She planned to use an investment to repay the interest-only element. Legal & General pointed out that the debt consolidation included other debts and saved Ms P a significant amount of money each month. It said that the 0% loan was included in order to make the mortgage affordable, given Ms P's overall financial position.

B complained to us. The adjudicator's view was that Legal & General hadn't done anything wrong. She said that Ms P was struggling financially when A advised her, and was unable to clear her overdraft despite allegedly having disposable income. By changing part of her mortgage to interest only (to be paid using an investment) and consolidating her debts, Ms P increased her disposable income. The adjudicator thought including the 0% loan was reasonable as there was a concern whether Ms P could keep paying the monthly payments. She said that the mortgage was suitable, but accepted that Ms P in the long-term paid more interest and an early repayment charge. The adjudicator noted that this had been explained to her by A.

B disagreed. It said that it didn't accept Ms P was struggling financially and hindsight was being used. It pointed out Ms P had significant savings and credit wasn't a negative thing. B noted that the new mortgage increased Ms P's debt, but she could've waited a couple of years when the interest free loan was paid and then remortgage without paying an early repayment charge. She would still be left with a debt to pay when the mortgage ended due to the interest only element. It felt the advice given by A was aimed to sell insurance policies.

A second adjudicator reviewed the complaint, but found that Legal & General wasn't at fault. He noted that there was a repayment plan to deal with the interest only part of the new mortgage, and it seemed to have been followed. The adjudicator thought it was reasonable to assume Ms P knew she could use her savings to deal with her debts, but for some reason she didn't do so. This meant debt consolidation was reasonable in his view, and including the interest free loan wasn't unsuitable given the overall circumstances. Ms P was able to retire earlier due to the changes to her financial position caused by the new mortgage in the adjudicator's view. B disagreed and felt the adjudicator focussed too much on what Ms P could've done, rather than the advice given by A and whether it was suitable.

my findings

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

Initially, this complaint was brought on the basis that including an interest free loan within the debt consolidation exercise was unsuitable advice. The complaint has now developed into saying the whole debt consolidation exercise was unsuitable. That said, I’m satisfied that Legal & General has had an opportunity to investigate and respond to the developed complaint and I can deal with all the issues.

Ms P as a result of the advice received from A ended up borrowing more money under her new mortgage on a part repayment part interest only basis. I think that effectively most of the extra borrowing was dealt with under the interest only element of the new mortgage. This was to be paid (and indeed was paid) using the investment which didn’t mature until three years after the remortgage. As Ms P couldn’t access the investment earlier, A’s advice enabled her to use the money to deal with her debts and to spend the rest as she wished. A’s advice also meant the whole mortgage was paid in full earlier and enabled Ms P to retire earlier. I think based on the evidence available to me that this was part of the reason why Ms P accepted A’s advice, and I think it met her needs.

But what about the debt consolidation? Ms P told A she didn’t want to include her interest free overdraft. This shows that she understood the advice and was able to form her own views about what course of action was best for her. I agree with B that using credit isn’t necessarily an unwise step, despite Ms P’s savings, but equally I think that it’s more likely than not that the savings weren’t easily accessible as Ms P’s actions show when she was able to access funds to reduce her mortgage, she did so.

Taking a wider view of the whole situation, debt consolidation was suitable. From the evidence available to me, Ms P did appear to be unable to use her disposable income or savings to clear her debts. But in order to borrow more money through the remortgage, she needed to show that the new mortgage would be affordable. By consolidating her debts, including the interest free loan, Ms P was able to do that.

A explained in a document signed by Ms P that debt consolidation would cost more in interest payments overall, but would also reduce her monthly payments. That’s wasn’t unfair or unreasonable advice, particularly when I bear in mind that the extra borrowing was to be repaid in full using the investment monies three years later. I accept A’s duty required more than simply letting Ms P do something which wasn’t in her best interests, but it wasn’t a debt counsellor. Ms P was told in writing that she’d have to pay an early repayment charge, but chose to go ahead rather than wait. Given the amount she wanted to borrow overall compared to the value of the property, her income and the investment due to mature in three years time, I can’t say the advice to consolidate all the loans wasn’t suitable.

From the available evidence, I’m not satisfied that A deliberately structured its advice to get Ms P to take out the policy.

The mortgage recommended was suitable in my view. It met Ms P's needs as it enabled her to borrow more money under the new mortgage in a cost-efficient way as the interest only element would be paid in full in three years' time with the investment. It enabled her to pay the full mortgage more quickly and before she retired (compared to the position under the original mortgage). Ms P chose which debts to consolidate the debts and increased her monthly disposable income. A also recommended the shortest term possible for the mortgage which was affordable and considered whether it would be affordable in the future.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 24 November 2017.

Claire Sharp
ombudsman