

complaint

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

background

Mr B had a mortgage, on a fixed rate. In 2008, towards the end of the fixed rate period, L & G advised him and Mrs B to remortgage with a new lender. In doing so they put the mortgage into joint names, fixed the interest rate, extended the term and consolidated some debt.

Their representative now says that the mortgage was unsuitable for them. L & G cold called them. They should have been advised to stay with Mr B's previous lender. They didn't need to consolidate debt, which was (in part) at a lower interest rate than their new mortgage.

L & G considered its recommendation was suitable for Mr and Mrs B and met their objectives. Our adjudicator concluded they had been looking for stability, and the fixed rate achieved this. But the remortgage cost them more than their previous mortgage. The interest rate was higher than the rates on the credit card and one of the loans, so consolidation wasn't suitable. He recommended L & G refund its fees for arranging the mortgage and the increased cost to Mr and Mrs B of consolidating the debt. He also recommended it pay £300 for distress and inconvenience.

L & G didn't agree. It said, in summary, that the new mortgage rate was lower, because the previous lender's fixed rate was coming to an end. And they were unhappy with that lender. Its recommendation achieved Mr and Mrs B's aims of stability, flexibility and debt consolidation. Their disposable income increased by over £500 a month. And it couldn't see they'd suffered material distress and inconvenience. Mr and Mrs B's representative didn't add anything further.

my findings

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

Mr and Mrs B say that L & G cold called them. L & G doesn't agree, and said they'd opted in to marketing. But I don't consider this is a central issue given they decided to accept the advice. I need to decide whether L & G recommended a suitable mortgage for them.

Like the adjudicator, I have some concerns about the mortgage recommendation. I'm satisfied from the documentation that L & G talked about Mr B's existing lender, which was offering interest rates of 6.15% (with a £995 fee) and 6.59% (without a fee). The mortgage it recommended with the new lender was 6.39% fixed for 5 years. The recommended mortgage had a 'cash back' payment of £500, but also had a fee of £495. So the new mortgage was essentially only 0.2% lower than the fixed rate available with Mr B's existing lender, without a fee. So while a fixed rate might have been appropriate, I can't see the recommendation to remortgage was suitable, given the broker's fee they would incur of more than £1,700. So I conclude that L & G should refund the broker's fee.

I have noted L & G's suggestion that Mr and Mrs B were unhappy with their then existing lender. But I'm not persuaded by this argument. They said the service 'was not that great' –

but I don't consider there is clear evidence they wouldn't want to stay with their existing lender. And I think it likely they were asked, as part of a sales process, a question designed to create these feelings of dissatisfaction. So I don't place any weight on their response.

Turning to the debt consolidation, I am also concerned that L & G recommended Mr and Mrs B consolidate the credit card debt (at 3.7%) and the smaller loan (at 6.5%). They were making minimum payments on their credit card. But the mortgage interest rate was considerably higher, and I don't consider their finances were so stretched that they needed to consolidate. The loan was at a higher rate – but only by 0.11%. And it had 10 months to run. Overall I'm not satisfied the advice to consolidate this loan was suitable or appropriate. So I agree with the adjudicator's recommended settlement.

I consider the unsuitable mortgage recommendation caused Mr and Mrs B material distress and inconvenience. As a result of the advice, they've repaid debt over a considerably longer period. I share the adjudicator's opinion that £300 compensation for this is fair and reasonable.

Mr and Mrs B did have a surplus of around £3,600 on completion of the mortgage. I can't see they had wanted to raise additional money. But they could have repaid this amount under the terms of their mortgage, had they not needed it. So I don't make any award for this part of the complaint.

my final decision

My decision is that I uphold this complaint in part. I order Legal & General Partnership Services Limited to:

1. calculate the amount Mr and Mrs B have paid in capital and interest payments for the consolidated credit card and smaller loan (the loan which had around £1,100 outstanding);
2. calculate, as at the date of settlement, the amount of the outstanding mortgage balance represented by the consolidated debt;
3. calculate the amount Mr and Mrs B would have paid to settle the credit card (based on the monthly payments they were making of £55) and the smaller loan had these debts not been consolidated;
4. add together the first two figures, deduct the third and pay the result as a lump sum to Mr and Mrs B;
5. refund all broker fees paid to set up this mortgage, adding interest at the mortgage rate for any fees added to the loan and interest at the annual rate of 8% simple for any fees paid up front.
6. pay Mr and Mrs B £300 for distress and inconvenience.

If L & G considers it is required to deduct tax from the interest element of my award, it should give Mr and Mrs B a tax deduction certificate. They can use that to reclaim that amount 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 B to accept or reject my decision before 23 December 2014.

Amanda Maycock
ombudsman