

## **complaint**

Mr and Mrs M complain that they were mis-sold mortgages by an authorised representative of Legal & General Partnership Services Ltd ("L&G").

## **background**

Mr and Mrs M re-mortgaged following a recommendation from L&G in 2006, and did so again in 2009. It is common ground that there were problems with both recommendations, and when Mr and Mrs M's representative first complained, L&G made an offer of redress. As no agreement could be reached on the amount of redress, Mr and Mrs M's representative complained to this service.

The matters in issue are how redress should be made for debt consolidation added to the loans, and the extent to which broker and legal fees should be refunded. Refund of an early repayment charge ("ERC") in 2006 was agreed, but it was disputed whether a discount should be applied to it. Our adjudicator considered L&G's offer in respect of the debt consolidation to be reasonable, and recommended it should reimburse the ERC and the 2006 broker fees in full, together with the 2009 legal fees and half the broker fee.

L&G did not agree, considering its original offer to be reasonable, and so the case came to me for a decision to be made. I agreed with the substance of the adjudicator's recommendation but took a different approach to redress for debt consolidation. I therefore issued a provisional decision allowing all parties to draw any final matters to my attention.

## **my provisional decision**

In my provisional decision, I said:

### *debt consolidation*

L&G has agreed that consolidating 0% credit cards was not suitable, and has offered to make redress by calculating the interest paid to date on the consolidated debt. To that it has added interest on the debt to the end of the mortgage term, at the current prevailing interest rate, discounted by 3% to represent that it is future loss.

Approaching the consolidation in this way assumes that the mortgage interest rate will not rise in the future; given the length of the remaining term, and the current historically low level of interest rates, this seems to me to be a questionable assumption. Nor do I agree that the mere fact that the loss has not yet occurred justifies a 3% discount.

I approach redress for debt consolidation in a different way. To restore Mr and Mrs M to the position they would have been in had the recommendation not been made requires the additional cost of consolidation to be refunded to them – that is the cost of the consolidated debt, less what it would have cost unconsolidated. L&G should calculate:

- The monthly payments Mr and Mrs M have made in respect of that part of the mortgage balance represented by the consolidated debt
- The amount of the mortgage balance represented by the consolidated debt outstanding as at date of settlement
- The amount Mr and Mrs M would have paid to clear the credit card debts, assuming they remained at 0% interest

It should then add together the first two figures and deduct the third, and pay the result as a lump sum to Mr and Mrs M. This represents the total additional cost as at date of settlement; if Mr and Mrs M then wish to pay that to the mortgage balance they can do so, ensuring that they do not incur further additional interest for the remainder of the term.

#### *the ERC*

I agree that it should be refunded. To it should be added interest at the mortgage rate running to date of settlement – because it was added to the loan balance. In addition, L&G should calculate the additional mortgage payments Mr and Mrs M have made by adding the ERC to the loan and refund those, adding interest at 8% simple.

#### *savings made through switching*

L&G has discounted from the redress it has offered the amount that Mr and Mrs M saved by switching their mortgage from its previous fixed rate to a lower fixed rate. As this reduces their financial loss caused by the recommendation, this is a reasonable approach to take. The calculation should be based on the difference between rates for the mortgage balance after the additional borrowing caused by the unsuitable recommendations has been removed, not the actual amount Mr and Mrs M borrowed.

#### *2006 fees*

The adjudicator recommended that the 2006 broker fees be refunded in full, and half of the 2009 fees be refunded. L&G were not willing to do this, as it considered that the 2006 recommendation was premature (because of the ERC) rather than inherently unsuitable, and had Mr and Mrs M been advised to wait until 2007 and the end of the ERC, they would have still incurred the broker fees at that point.

That may be true; but equally it may not. I cannot now say what would have happened in 2007. Mr and Mrs M may have returned to L&G, they may have gone to another broker or their existing lender, they may have done nothing. This complaint is about the 2006 recommendation; it is a recommendation that should not have been made and a transaction that should not have taken place, and so L&G should refund all fees Mr and Mrs M paid in connection with the transaction. To those fees should be added interest at the mortgage rate for fees added to the loan and interest at 8% simple for fees paid up front.

#### *2009 fees*

The adjudicator recommended that all the legal fees be refunded, as the lender offered free legal services with the loan, but L&G recommended that another solicitor be used instead. L&G offered to refund the solicitors' fees, but not the "legal administration fee". L&G said that this fee related to its representative's administration costs in liaising with the solicitor and would have been incurred anyway. I'm not persuaded of this. I can find no description of a "legal administration fee" chargeable by the broker in the initial disclosure document, or anywhere else. But there are separate charges for the broker fee and an administration fee elsewhere on the completion statement.

The 2006 completion statement also contains a "legal administration fee", but this is described as being charged in accordance with the provisions of the Solicitors Referral Code

– in other words, it appears to be a referral fee paid by the solicitors to the broker and then recovered from Mr and Mrs M by the solicitor.

Given that no “legal administration fee” chargeable by the broker was disclosed by the broker, and that separate broker and administration fees were charged, I’m minded to find that the 2009 “legal administration fee” is also a referral fee. If L&G continues to consider that its representative in fact charged a separate additional fee for the administration work involved in dealing with the solicitor, I would be grateful if it would provide evidence for the disclosure and charging of that fee and the work it represented in response to this provisional decision. In the absence of such evidence, I’m minded to direct that this fee, plus interest at the mortgage rate, should also be refunded. L&G should also, as it has offered to do, refund the solicitors’ fees plus interest at the mortgage rate.

The adjudicator recommended that half the 2009 broker fee also be refunded. L&G did not agree, but offered a refund of £1,500 for both the 2006 and 2009 fees in recognition that both recommendations contained unsuitable elements. I have dealt with the 2006 fees already. In respect of the 2009 broker fee, I agree that a refund of half of the fee, plus interest, is reasonable. The recommendation to consolidate debt was unsuitable, as was the recommendation to incur unnecessary legal fees that were added to the loan. As the advice was therefore in part unsuitable, half the fee should be refunded.

### **the responses to my provisional decision**

Mr and Mrs M’s representative accepted my provisional decision. L&G accepted the bulk of it. In respect of the 2009 “legal administration fee” it provided an authorisation form, signed by Mr and Mrs M, showing that the fee was for administration costs and was payable to L&G’s representative.

### **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 considered the further information provided by L&G, I’m satisfied that the “legal administration fee” charged in 2009 is an administration fee and was charged by the broker. It related to the broker’s administration work in dealing with the solicitor – whoever that was – and so I accept it should not now be refunded. That apart, I see no reason to depart from my provisional decision.

### **my final decision**

For the reasons I have given, my final decision is that I uphold this complaint and direct Legal & General Partnership Services Ltd to:

- Make redress for the consolidated debt in the way I have set out;
- Refund the ERC, plus additional monthly payments incurred, plus interest, calculated in the way I have set out;
- Refund all fees paid to set up the 2006 loan, plus interest calculated in the way I have set out;
- Refund the solicitors’ fee for the 2009 loan, plus interest at the mortgage rate;
- Refund half the fees paid to L&G in 2009, plus interest at the mortgage rate

From the total, L&G can deduct the savings made by switching the 2006 fixed rate to a lower rate, calculated by reference to the mortgage balance disregarding that part of the borrowing to be refunded as set out above.

If L&G considers that it should deduct tax from the interest elements of my award, it should give Mr and Mrs M the necessary certificate.

Simon Pugh  
**ombudsman**