

complaint

Mrs D complains that she received unsuitable mortgage advice from an appointed representative of Legal & General Partnership Services Limited (L&G).

background

Mrs D exercised her right to buy a council property in February 2005 and took mortgage borrowing with a third party lender. She was contacted by L&G within six months and it reviewed her finances. It recommended that she re-mortgage to a different lender and consolidate unsecured debt.

our adjudicator's view

The adjudicator did not recommend that the complaint should be upheld. She said that:

- Mrs D was made aware of the impact of consolidating previously unsecured debts in a mortgage record of suitability (suitability letter) provided by L&G.
- The income and expenditure analysis L&G undertook showed that Mrs D was overspending each month by £18.
- This included payments she made to three credit cards and to store card debt.
- When these payments were consolidated into the re-mortgage Mrs D's total debt repayments fell by £158 giving her a disposable income of £140 per month.
- Although Mrs D was required to pay an early repayment charge (ERC) of around £1,300 when she redeemed the existing mortgage, this was outweighed by the benefits to Mrs D of providing her with additional disposable income.

Mrs D, who is represented in this complaint, said that she did not agree. She said that there was no pressing need for her to re-mortgage and that she had been paying more than the minimum amount required on her previously unsecured debt.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs D and to L&G on 29 April 2015.

I could see from an L&G client review form that Mrs D was making more than the minimum required payment on her unsecured borrowing. Her representative said that the excess of payment over the minimum was just over £152 per month. Having looked at the information provided I considered this to be a fair estimate. This meant that Mrs D did not have essential expenditure in excess of her monthly income. As a result I did not agree with the statement made by L&G in its final response letter that Mrs D *"...had little choice but to rearrange her finances to avoid getting into more debt, and damaging her position further"* and that it was urgent she did this. There is no evidence that Mrs D was in difficulty in maintaining her payments. She was choosing to make payments higher than required.

I noted that, as Mrs D had exercised her right to buy, L&G said there were limited re-mortgage options open to her given the short time since her purchase. I was not clear whether this included her existing mainstream lender and whether that lender was considered. But, this suggested that by not waiting longer to re-mortgage Mrs D was possibly unable to access a more favourable re-mortgage deal. I also could not see that Mrs D was advised to contact her unsecured lenders as I might have expected if she was having real difficulty making payments.

Mrs D paid a number of fees and charges to re-mortgage which totalled £3,266.66 (ERC £1,316.97; L&G broker fee £952.00; Completion fee £575.00 Existing mortgage redemption £195.00; Valuation fee £155.69; Telegraphic Transfer £47.00; Mortgage insurance checking £25.00).

I did not consider that it was financially beneficial for her to consolidate her debt. She made no real monthly savings in her repayments and paid the fees summarised above which were high in relation to the monthly reduction in her payments. The new mortgage had an ERC of up to 7% of the balance and there was no overpayment facility.

The suitability letter said that even though the mortgage interest rate was less than the amount Mrs D was paying on her unsecured debt, she would pay more interest as the term had been extended. It also drew to her attention that the borrowing would now be secured against her home. I agreed that she was made reasonably aware of the implications of debt consolidation. But I did not consider that debt consolidation was a suitable recommendation to her. Mrs D could simply have reduced the monthly payments she was making to her unsecured lenders and I did not see any real benefit of her having only one payment to manage monthly. Although it was clearly her choice whether to take the re-mortgage I provisionally found that she did so having accepted an unsuitable recommendation.

Subject to any further representations by Mrs D or L&G my provisional decision was to uphold this complaint. I noted that Mrs D did make lower repayments and had the benefit of additional income and that it was her decision to accept the re-mortgage rate. But, I did not consider that it was fair for her to incur the fees and charges set out above and I intended to order that these be repaid to her plus interest. The debt consolidation advice was unsuitable and she should be put back in the position she was in had it not happened. I also considered that she has been caused distress and inconvenience by what has happened and should be compensated with £400 to reflect this.

my findings

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

L&G did not agree and said, in summary, that Mrs D was in a better position after the re-mortgage. The new mortgage had a reduced term which would now end before she retired. The faster she paid this off, the less expensive it would be for her. In addition two of the interest rates on her unsecured debt looked like introductory offers and Mrs D was unlikely to make any significant capital repayments to this debt. If she increased her disposable income by reducing her payments to her unsecured debt this would mean that these were paid off more slowly. It also said that it did not think the payment of distress and inconvenience for a mis-sold mortgage was appropriate and that there had been no delays or errors in the handling of the complaint.

The question I need to decide is whether it was appropriate for Mrs D to be advised to consolidate debt at that time. As I set out above the final response letter said that this was an urgent requirement. The latest comments from L&G have a different focus indicating that a re-mortgage was instead a more sensible way for Mrs D to handle her commitments. I do not agree. Mrs D was not in financial difficulty and did not need to reduce her monthly outgoings. She was choosing to pay off her unsecured debt as fast as she could. I do not see that she needed to have more disposable monthly income or to consolidate her

unsecured debts which would make them more expensive over the term of the mortgage. I cannot see that the benefits of reducing the term of the mortgage at that time outweighed this. I previously noted that the re-mortgage choices were limited and there were significant costs of making this change.

I reviewed whether there was additional evidence of distress and inconvenience caused to Mrs D. I asked her representative to clarify this and it did not provide any further information and seemed to accept that there were no firm grounds for this to be included in my award. As a result I am not making an order for compensation for this element.

But for the reasons given above I confirm my provisional finding that the advice to consolidate debt was unsuitable.

my final decision

In light of the above, my decision is that I uphold this complaint. I order Legal & General Partnership Services Limited to:

- 1) Refund to Mrs D fees and charges of £3,266.66
- 2) Pay Mrs D interest at the interest rate applying to the mortgage per annum from the date the fees and charges in 1) were initially applied or paid to the date of settlement. If L&G considers that it has to deduct tax from the interest element of my award it should provide Mrs D with appropriate documentation so that she can reclaim this if she is eligible.
- 3) Make redress for the debt consolidation by:
 - a. Calculating the amount Mrs D has paid, in monthly payments, in respect of that part of the mortgage balance represented by the consolidated debt;
 - b. Calculating how much of the consolidated debt is still outstanding as part of the mortgage balance as at date of settlement;
 - c. Calculating how much Mrs D would have had to pay to repay the debt had it not been consolidated;
 - d. Adding together the first two figures, deducting the third and paying the result as a lump sum to Mrs D.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs D to accept or reject my decision before 23 July 2015.

Michael Crewe
ombudsman