

## **complaint**

Mr B complains that Legal & General Partnership Services Limited mis-sold a mortgage to him. Mr B is represented by a claims management company, which I will call M.

## **background**

Mr B had an interest only mortgage of about £66,000. He also had an unsecured loan and credit card debts of about £6,500. The term of the mortgage went into Mr B's expected retirement. In 2007 Legal & General recommended a part repayment (£26,000) and part interest-only (£54,000) mortgage to Mr B. M says:

- The mortgage was not affordable. Mr B didn't have enough left over for living expenses.
- Legal & General shouldn't have recommended an interest-only mortgage when Mr B had no means of repaying it. A possible inheritance is not a suitable repayment vehicle. He now has to sell the house.
- The mortgage had a higher interest rate than Mr B's previous mortgage. He consolidated unsecured debts, paid an early repayment charge (ERC) and paid broker's fees. He was worse off as a result of Legal & General's advice.

The adjudicator recommended that the complaint should be upheld. She said:

- Mr B wanted to reduce the term of his mortgage while keeping payments low. He could not afford a repayment mortgage. So he had no option other than a mortgage on part interest-only.
- His monthly payments increased from about £450 to £630. This didn't meet his aim to reduce his monthly payments.
- The advice to re-mortgage was not suitable as Mr B incurred an ERC of £965 which was not outweighed by savings. He also paid fees of over £1,200 and the interest rate on the new mortgage was higher.
- The mortgage was suitable in the longer term as moving to a part repayment mortgage meant Mr B repaid part of the mortgage.

The adjudicator said Legal & General should refund its brokers fees plus interest and pay compensation equal to the ERC plus interest.

Legal & General didn't agree. It said Mr B wanted to reduce the mortgage term which went into his retirement when he'd have limited funds. While he wanted to keep payments low this was not possible if he wanted to reduce the mortgage term and reduce the balance. He would have had to wait two years to re-mortgage to avoid the ERC. This would have made reducing the balance before retirement unaffordable. By re-mortgaging he was in a better position overall.

Mr B also disagreed. On his behalf, M agreed with some of the adjudicator's findings but said the compensation should be increased. It said Mr B's debt payments increased by £180 per month. If he'd used this to make overpayments to his previous mortgage his balance would be £46,000 rather than £54,000. Legal & General should refund the increased interest

on the interest-only part of the mortgage. M also said the debt consolidation was unsuitable. Legal & General's recommendation reduced Mr B's equity in the property.

### **my provisional findings**

I sent a provisional decision to the parties in January 2016 which set out the following provisional findings.

*Legal & General recommended the mortgage. So it had to obtain all relevant information and ensure any mortgage it recommended was suitable for Mr B's needs and circumstances.*

*Legal & General did a fact find and sent a suitability letter to Mr B. It said Mr B wanted the least expensive option. While he wanted a repayment mortgage, this was not affordable. He wanted to reduce the mortgage term while keeping repayments affordable. He wanted the option of making over payments.*

*Overall, I don't think Legal & General's recommendation was suitable. I say this for the following reasons.*

- *Mr B paid an ERC, broker fees and other costs of about £5,000 to re-mortgage. The mortgage recommended by Legal & General had a higher interest rate than Mr B's existing mortgage. I'm not persuaded the benefits of re-mortgaging justified the costs involved.*
- *I don't think consolidating £6,500 unsecured debts into a predominantly interest only mortgage was suitable. It's likely this increased the overall cost of repaying the debt and the unpaid balance is secured on Mr B's home. While Mr B didn't pay off his credit card balance every month, he was well within his credit limits. I don't think he had an urgent need to repay his unsecured debts.*
- *Mr B's secured debt increased from about £66,000 to £79,900. His overall debt increased by £7,000.*
- *One of Mr B's main aims was to reduce his monthly debt payments. Mr B's mortgage interest payments were £281 and he paid about £170 per month towards other debts. After taking out the recommended mortgage his monthly payments were £632, an increase of £180.*
- *I can't see that reducing the mortgage term while leaving most of the mortgage on an interest only basis without a repayment vehicle provided a real benefit to Mr B. He couldn't repay the balance at the end of the term without selling his property.*
- *The repayment part of the mortgage meant Mr B would reduce his mortgage balance to £54,000 by the end of the term. But I think it's likely it would have been cheaper if he'd stayed with his previous lender and made overpayments. Mr B was concerned about reducing his mortgage balance. I think it's likely he would have made overpayments if he'd been able to do so.*

*I think Legal & General should refund its brokers fees plus interest (at the mortgage rate as the brokers fees were added to the mortgage balance).*

*The parties disagree about whether Mr B is better or worse off as a result of Legal & General's advice. I think it's reasonable to ask Legal & General to calculate the difference between the position Mr B would have been in if he'd stayed with his previous lender and made overpayments and the position he is in as a result of its advice. Legal & General should make the following calculations:*

- a) the total monthly payments made by Mr B to his mortgage account from taking out the recommended mortgage to date of settlement (or to the end of the mortgage term if earlier). Legal & General should take account of the brokers fees and related interest as I have asked it to refund this separately.*
- b) the amount it would have cost Mr B to pay back the unsecured debts if they hadn't been consolidated (if a loan, this is the monthly payment times the number of months left, if a credit card, assume the balance and monthly payments stayed constant).*
- c) the total monthly interest payments he would have made to his previous mortgage account if it hadn't been repaid from the date he took out the recommended mortgage to date of settlement (or to the end of the term of the recommended mortgage if earlier). When calculating the interest, Legal & General should assume Mr B would have reduced the balance by making over payments equal to the difference between his monthly debt payments before he took out the recommended mortgage and his contractual monthly payments after.*

*This will provide information about whether Mr B was better or worse off as a result of Legal & General's advice. I can then decide what compensation, if any, would be fair and reasonable. I think it's reasonable to ask Mr B and M to provide information to Legal & General about Mr B's mortgage account needed to make the calculations.*

*Both parties should, of course, provide any further information they think is relevant and any comments they have on my provisional findings.*

After receiving comments from the parties and calculations from Legal & General, I sent a further provisional decision to the parties in June 2016 which set out the following provisional findings.

*Legal & General pointed out that I referred in my provisional decision to the monthly payments for the recommended mortgage as £632 when they were £622. So the increased monthly cost of the recommended mortgage was £170. Having checked the mortgage offer, I agree this is correct. The calculations provided by Legal & General show:*

- Mr B made payments of £55,954 to his mortgage account between taking out the mortgage recommended by Legal & General and selling his property in October 2015. There was £54,200 remaining. So the overall cost was £110,154.*
- If Mr B had stayed with his previous lender and only made interest payments, he would have made payments of £26,444 and had £64,309 remaining when he sold his property. He would have paid £8,889 towards his unsecured debts. So the overall cost would have been £99,078.*
- If B had stayed with his previous lender and made overpayments equal to the additional cost of the mortgage recommended by Legal & General, he would have made payments*

*of £35,487 and had £48,713 remaining in April 2014. With the cost of the unsecured debts, the overall cost would have been £93,089.*

*The calculations provided by Legal & General aren't easy to compare as they've used a different end date for the last calculation. But they give a strong indication that Mr B would have been better off by between about £11,000 and £17,000 if he'd stayed with his previous lender.*

*Legal & General say its unlikely Mr B would have made overpayments if he'd stayed with his previous lender. It says his mortgage increased over the years and he'd made no effort to move to a repayment mortgage or make overpayments. It says he was relying on a possible inheritance and knew he'd have to sell his property if he didn't receive this in time.*

*I think this demonstrates that the more expensive part repayment mortgage was unsuitable. Mr B was still at risk of having to sell his property. We can't know whether Mr B would have made overpayments if he'd stayed with his previous lender. But the mortgage sales documents say he wanted a repayment mortgage but couldn't afford it. He wanted the option to make overpayments. So I think it's likely he would have made some overpayments.*

*I think Legal & General should refund its brokers fees plus interest. I think it should compensate Mr B for the additional cost of the mortgage it recommended. I think it's reasonable to assume Mr B would have made some overpayments. So I think Legal & General should pay him £14,000. Legal & General took four months to provide the calculations I requested. This delayed Mr B receiving a final decision and the settlement. I think it would be fair in the circumstances to require Legal & General to pay interest on the compensation at 8% from the beginning of April 2016 to the date of settlement.*

Legal & General didn't agree with my provisional findings. It repeated its view that Mr B wouldn't have made overpayments. It also said Mr B was happy to rely on a potential inheritance and an equity scheme of £7,000. It said this wasn't referred to in the decision and felt it was being penalised for Mr B using this money for other purposes.

Mr B's representative said it had no further comments.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I explained in my provisional decisions why I think the mortgage recommended by Legal & General wasn't suitable. After considering Legal & General's comments, I'm not persuaded to change my mind about this.

I also explained in my provisional decisions why I think Mr B would have made overpayments if he'd stayed with his previous mortgage. I'd like to note though that Legal & General's calculations show Mr B would have been better off with his previous mortgage even if he *didn't* make overpayments.

One of the sales documents says Mr B made payments (about £7,000) into an equity scheme in the three years before Legal & General recommended the mortgage. There's little information about this. I don't think Legal & General is being penalised because Mr B didn't use money from the equity scheme to reduce the mortgage. I've asked Legal & General to pay compensation to Mr B for the additional cost of the mortgage it recommended as compared to keeping his previous mortgage and making overpayments. As any money from the equity scheme could equally have been used to reduce the previous mortgage, I'm not sure how relevant this is to the outcome here.

I remain of the view that Legal & General should refund its brokers fees plus interest and pay £14,000 to Mr B as compensation for the additional cost of the mortgage it recommended. Given its delays in providing information and responding to my provisional decisions, I think Legal & General should also pay interest on this at 8% simple from April this year.

### **my final decision**

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

- Refund its brokers fees plus interest at the mortgage rate to the date the mortgage was repaid and at 8% simple from then to the date of settlement; and
- Pay £14,000 to Mr B plus interest at 8% simple from 1 April 2016 to the date of settlement.

If tax is deducted from the interest awarded, appropriate documentation should be provided to Mr B for HMRC purposes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 26 August 2016.

Ruth Stevenson  
**ombudsman**