

complaint

Mr and Mrs M complain that Legal & General Partnership Services Limited mis-sold a mortgage to them. Mr and Mrs M are represented by a solicitor, which I will call A.

background

In 2006 L&G recommended a mortgage to Mr and Mrs M. It also recommended they consolidate about £28,000 of unsecured debts. Mr and Mrs M say they were not financially minded and relied on L&G's recommendation believing they would save money. A says the mortgage was not suitable as:

- L&G did not consider whether it was appropriate to consolidate unsecured debts or explain the costs of increasing the period over which the debt was repaid.
- Increasing the debt meant a higher lending charge applied and re-mortgaging was more difficult.
- They had to pay an early repayment charge (ERC) to re-mortgage and the interest rate was higher.

The adjudicator recommended that the complaint should be upheld. She said while Mr and Mrs M had unsecured debts, they had a high disposable income suggesting they were not in financial difficulties. They did not need to re-mortgage. The mortgage recommended by L&G had a higher interest rate. The adjudicator said both the mortgage product and the debt consolidation recommended by L&G were unsuitable. She recommended L&G refund the ERC and all fees and charges paid to set up the loan, plus interest. She also recommended it pay compensation for the additional costs of the consolidated debt.

L&G did not agree. It said Mr and Mrs M were having difficulty maintaining payments to their credit card accounts and were only making minimum payments. Their mortgage balance had increased over the previous 18 months, suggesting missed payments or further borrowing. They had recently taken out a loan. It said the re-mortgage reduced their monthly debt payments from £1355 to £864 and this saving was necessary.

Mr and Mrs M agreed in part. A said while the sale documents said Mr and Mrs M were sometimes late with credit card payments, this did not mean they were in financial difficulties. They chose to borrow. It said the adjudicators proposed compensation was too difficult to calculate and suggested L&G refund the total cost of the consolidated debt.

My provisional findings

I issued a provisional decision in May in which I made the following findings.

L&G recommended the mortgage. So the rules in the Mortgage Conduct of Business sourcebook (MCOB) for advised sales – such as obtaining all relevant information and ensuring any mortgage it recommends is suitable for the customer's needs and circumstances – applied.

I am satisfied L&G conducted a fact find and provided a mortgage record of suitability. Mr and Mrs M had a repayment mortgage of about £94,000. They had three credit card accounts with a total balance of £5,500 and three personal or hire

purchase loans with £21,500 outstanding in total. They did not have arrears or missed payments on their mortgage or loan accounts. Mrs M was employed and Mr M was self employed. Their net monthly income was £3,200. The fact find says their house was worth £145,000. It was valued at £130,000.

I am not persuaded the mortgage recommended by L&G was suitable. Mr and Mrs M had to pay an ERC of £2,400 to their existing lender. The interest rate on the new mortgage was higher than their existing mortgage and they paid fees and charges.

L&G says Mr and Mrs M had a pressing need to re-mortgage due to financial difficulties. I am not persuaded this was the case, for the following reasons.

- I am not persuaded Mr and Mrs M's mortgage balance increased in the 18 months before L&G recommended the re-mortgage. While the fact find suggests the mortgage was initially £92,000, having seen the mortgage offer I am satisfied it was about £94,000.*
- While Mr and Mrs M were sometimes late with credit card payments, they say this was due to Mr M's customers paying late. There is nothing to suggest they missed payments on their loans or mortgage.*
- The fact find says Mr and Mrs M's monthly income was £3,200. Their debt payments were £1,355 per month. While L&G says they needed to reduce their debt payments, the evidence does not support this.*

Overall, I am not persuaded that the recommendation to consolidate unsecured debts was suitable. I am also not persuaded L&G provided a KFI showing the costs of a mortgage without the debt consolidation or explained the costs of taking out the mortgage it recommended.

I have considered what compensation would be fair and reasonable. While I understand A's comments, I am not persuaded it is reasonable to refund the total cost of the consolidated debt. Mr and Mrs M had the benefit of the money and would have had to continue making payments had they maintained the loans and credit card balances. I do appreciate though the complexity of the calculation and the risk of disagreement. I also find that it would be fair and reasonable for L&G to compensate Mr and Mrs M for the higher interest rate on the mortgage it recommended. So, subject to any comments I receive from the parties, I intend to order L&G to:

- 1. Pay compensation equal to the ERC on Mr and Mrs M previous mortgage and refund all fees and charges related to taking out the mortgage it recommended. Where fees or costs were paid upfront (including the ERC), it should add interest at 8% simple from the date of payment to the date of settlement. Where fees or costs were added to the mortgage, interest at the mortgage rate to date of settlement should be added.*
- 2. (a) Calculate the amount of interest paid on £94,000 of the mortgage to the date of settlement.
(b) Calculate the amount of interest that Mr and Mrs M would have paid on this sum at the rate applied to their previous mortgage.
If the result of (a) is higher than (b), pay the difference to Mr and Mrs M.*

3. (a) Calculate the amount Mr and Mrs M paid to their mortgage account in capital and interest related to the £28,000 used for debt consolidation from taking out the mortgage to the date of settlement.
(b) Calculate the amount of consolidated debt still outstanding on Mr and Mrs M's mortgage balance.
(b) Calculate the amount they would have paid to their loan and credit card accounts over this period. In doing so, it should assume Mr and Mrs M made monthly payments at the same rate – that is, they paid £735 towards their unsecured debts each month until they were repaid.
(d) Pay the result of $(a + b) - c$ to Mr and Mrs M.

my findings

I have considered all the available evidence and arguments to decide what is 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.

Both Mr and Mrs M and L&G confirmed they had no further comments or evidence to add following my provisional decision.

In the circumstances, I see no reason to change my findings or my suggested award as set out in my provisional decision.

my final decision

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

1. Pay compensation equal to the ERC on Mr and Mrs M previous mortgage and refund all fees and charges related to taking out the mortgage it recommended. Where fees or costs were paid upfront (including the ERC), it should add interest at 8% simple from the date of payment to the date of settlement. Where fees or costs were added to the mortgage, interest at the mortgage rate to date of settlement should be added.
2. (a) Calculate the amount of interest paid on £94,000 of the mortgage to the date of settlement.
(b) Calculate the amount of interest that Mr and Mrs M would have paid on this sum at the rate applied to their previous mortgage.
If the result of (a) is higher than (b), pay the difference to Mr and Mrs M.
3. (a) Calculate the amount Mr and Mrs M paid to their mortgage account in capital and interest related to the £28,000 used for debt consolidation from taking out the mortgage to the date of settlement.
(b) Calculate the amount of the consolidated debt still outstanding on Mr and Mrs M's mortgage balance.
(c) Calculate the amount they would have paid to their loan and credit card accounts over this period. In doing so, it should assume Mr and Mrs M made monthly payments at the same rate – that is, they paid £735 towards their unsecured debts each month until they were repaid.
(d) Pay the result of $(a + b) - c$ to Mr and Mrs M.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 27 July 2015.

Ruth Stevenson
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