

complaint

Through a claims management company (CMC), Mr and Mrs S have complained that in 2007 they were mis-sold a mortgage by a representative of Legal & General Partnership Services Limited (L&G).

background

In April 2007, after taking advice from L&G, Mr and Mrs S remortgaged their property.

At the time, Mr and Mrs S were both aged 45 and had two dependent children. Mr S worked full-time and Mrs S part-time.

Their existing mortgage was for £148,000 on a part-repayment, part-interest-only basis over a term of 35 years. The mortgage was on a tracker rate, currently 5.34%, which was due to expire on 31 May 2007, reverting to Standard Variable Rate (SVR). Historic records show that their existing lender's SVR was 7.5% in May 2007. This would take the monthly mortgage repayments from £817 up to about £1,100 per month.

The existing mortgage ran until Mr and Mrs S were 77 years old. They were unhappy about this as they wanted to retire when they were 65.

There was also a sub-prime second charge secured loan of about £23,000 which had a monthly repayment of £265.

Mr and Mrs S also had two unsecured loans totalling about £17,000, with monthly repayments of around £350. One of the unsecured loans, taken out less than two years earlier, had been used for debt consolidation.

So in total, Mr and Mrs S's outgoings on their mortgage and debt commitments was around £1,425, but was about to increase (due to the mortgage reverting to SVR) to almost £1,700 per month.

The fact-find says that Mr and Mrs S were *"on the brink because they are currently just living within their means and from May their mortgage payments will go to the SVR which will probably mean that they will start using their savings to pay off their bills."*

(I note there are no details of any savings in the fact-find.)

Mr and Mrs S wanted the stability of a fixed rate mortgage as they were concerned about interest rate movement which had affected their repayments under the existing tracker mortgage. They also wanted a shorter term, to end when they were 65.

On the advice of L&G, Mr and Mrs S took out a mortgage and related unsecured loan. The mortgage was for £189,000 plus fees of £1,460 and an unsecured loan of £18,000.

£90,460 of the mortgage was on a repayment basis and £100,000 was on an interest-only basis. The mortgage was arranged over a term of 19 years (to end when Mr and Mrs S were 65) and was on a five-year fixed rate of 6.39%. There was an early repayment charge which applied if the mortgage was repaid during the fixed-rate period. There was also an incentive of £1,000 for help with legal costs.

The fact-find records that Mr and Mrs S were aware of the need to overpay that part of the interest-only mortgage which would not be covered by their existing endowment policy. It is also noted that at the end of the five-year fixed rate Mr and Mrs S intended to review their mortgage arrangements and switch to another product.

The monthly repayment was approximately £1,200 for the mortgage and £140 for the unsecured loan, a total of £1,340.

They also took out an Estate Planning Package costing £199.65, which was added to the mortgage. In addition, Mr and Mrs S took out mortgage protection insurance covering accident, sickness, redundancy and unemployment (ASU), with a total cost of £10,000. This covered a period of 84 months.

The remortgage completed on 5 June 2007. After payment of all loans, fees and disbursements, the balance of £6,137.84 was paid to Mr and Mrs S.

In 2012, when the five-year fixed rate ended, Mr and Mrs S remortgaged to a new lender on the advice of another mortgage broker. They took out a two-year fixed rate and have continued to fix their mortgage rate each time their existing product has expired.

Also in 2012 Mr and Mrs S complained to L&G about the sale of the ASU policies. In a final response letter dated 25 May 2012 L&G made an offer of redress to reimburse the premium, plus interest paid on them, as well as interest at 8%, a total of £13,872.19. L&G explained to Mr and Mrs S that they were free to pay the compensation off their mortgage, but if they didn't do so, they'd continue to pay interest. L&G offered to pay any ERC that might be incurred if the lump sum was paid off the mortgage. Mr and Mrs S accepted the compensation.

In 2018 the CMC instructed by Mr and Mrs S complained that the advice given by L&G in 2007 was unsuitable. The CMC said that adding the ASU premium to the mortgage took it over the a 100% loan-to-value ratio (LTV), that consolidating the largest unsecured loan was unsuitable and that adding the cost of the Wills package to the mortgage was also unsuitable.

L&G didn't uphold the complaint about the ASU policy. It explained that it wasn't this that caused the mortgage to exceed the 100% LTV. L&G said Mr and Mrs S weren't able to pay any fees up front and so these would always have needed to be added to the mortgage in any event, thus taking the mortgage over 100% LTV and limiting the available lenders.

L&G also didn't uphold the complaint about consolidating the larger unsecured loan. That's because of the interest rate on that loan and the length of time it still had to run. In order to reduce Mr and Mrs S's living costs and bring the mortgage within their retirement date, all the unsecured debt had to be consolidated, as it would not have been affordable

But L&G did agree that the Wills package shouldn't have been added to the mortgage. It offered to refund the fee of £199.65, plus a payment for inconvenience of £150, a total of £349.65.

Unhappy with L&G's response, Mr and Mrs S complained to us. An investigator looked at the complaint. He noted that L&G didn't agree to us looking at the ASU policy, as it had issued a

final response in 2012 and redress had been accepted in full and final settlement of that issue. This was explained to the CMC.

But the investigator thought the mortgage advice was unsuitable. I will not repeat all the details of his reasoning and conclusions, because these were set out in a detailed letter dated 18 July 2019, a copy of which all parties have received.

But in summary he thought that consolidating the unsecured debt onto interest-only was unsuitable. He thought the mortgage should have been set up as £178,460 on a repayment basis over a term of 23 years (taking it up to the age of 69) at 6.39% and £30,000 on interest-only over 23 years at 6.39%.

He thought L&G needed to:

- calculate where the current mortgage balance was now during the 19-year term;
- calculate what it should have been if it had been set up as he thought over a 23-year term;
- give *“the capital amount to the consumer or reduce the mortgage balance to this level today”*
- pay the redress for the wills package.

The CMC didn't respond, but L&G disagreed and said it thought the mortgage advice was suitable. The investigator responded to say (incorrectly) that Mr and Mrs S had wanted their mortgage to end when they were 68, and so the recommendation for a mortgage ending when they were 65 was unsuitable.

Because L&G didn't agree to pay the redress the investigator thought it should, the complaint was referred to me for a final decision.

provisional findings

On 7 February 2020 I issued a provisional decision, in which I made the following findings.

L&G hasn't consented to us looking at the sale of the ASU policy, as it issued a final response in 2012 and Mr and Mrs S have been paid the full redress for this. As no complaint was made to us about the ASU within six months of the final response, I'm satisfied the Financial Ombudsman Service can't consider this part of the complaint.

Having reviewed the complaint about the mortgage advice, I have reached a different conclusion from the investigator. I don't think the mortgage was mis-sold. These are my reasons.

First I note that Mr and Mrs S were unhappy with their previous mortgage, which was due to end when they were 77 years old. They stated quite clearly that they wanted the mortgage to end when they were 65 (which was Mr S's stated retirement age and was also State Pension Age for someone aged 45 in 2007) and did not want it to run into retirement due to uncertainty of income.

So I disagree with the investigator that L&G should have arranged the mortgage to end when Mr and Mrs S were both 69. That is not what they wanted, nor would it

have been suitable. The mortgage that was arranged for them by L&G, had they kept it to its full term, was due to end when they were 65.

Mr and Mrs S had been on a tracker rate that was due to revert to SVR of 7.5%. On their stated income, this would, I find, have been unaffordable. They would also have been at the mercy of any future interest rate increases.

At the time, interest rates had been on an upward trend for some years. This was a concern for borrowers with variable interest rates such as trackers or for those on SVR. So I think the advice to fix the interest rate was sound, given the financial climate of the time. A five-year fix was not an unreasonable length of time.

Of course, nobody could have predicted the financial crash of 2008 or the fall in the Bank of England Base Rate to unprecedented levels over a long period of time. In hindsight, once interest rates began to fall, Mr and Mrs S may well have regretted fixing their rate for five years at 6.39%, but in April 2007 this was not, in my opinion, an unreasonable course of action.

I say this because their outgoings were at a point where future interest rate increases would have pushed Mr and Mrs S into financial hardship. And they were, in fact, facing an imminent interest rate increase on their main mortgage. So I'm satisfied Mr and Mrs S were in a position where they could not take any further increase in their repayments.

Mr and Mrs S already had £30,000 on an interest-only basis. But I don't think they could have afforded their new mortgage over a term ending when they were 65 with only £30,000 on an interest-only basis. That would have made their monthly payments around £1,520, which is more than they were already paying. In addition, there would have been the £18,000 unsecured loan, costing a further £160. This would have been more expensive than if they'd gone onto SVR.

The fact-find shows that Mr and Mrs S knew they needed to have a period of 'breathing space' with one payment for their debts which was lower than their current outgoings. The five-year fixed rate achieved that.

I'm satisfied Mr and Mrs S knew the implications of having part of their mortgage on interest-only. I also note that Mr and Mrs S said they'd review their mortgage arrangements at the end of the fixed-rate period – and they did so, moving to another lender and onto another fixed rate

Looking at Mr and Mrs S's situation, I'm satisfied they needed to reduce their outgoings and to have a fixed payment. The only option for them, I find, was the remortgage that was advised by L&G. Because they didn't have any available funds, they had to add fees to the loan (but also received a refund of £1,000 for fees from their new lender).

Given the LTV and the amount they needed to borrow, I'm satisfied that the lender sourced was the best option. This lender also provided an unsecured loan alongside the main mortgage, which enabled Mr and Mrs S to consolidate all their outstanding borrowing.

In all the circumstances, taking into account the lending climate of the time, interest rate increases and Mr and Mrs S's specific financial circumstances, I'm satisfied the mortgage advice was suitable.

I'm glad to note that L&G has acknowledged the Wills package was mis-sold and I agree with its offer of redress, a refund of the fee of £199.65, plus a payment for inconvenience of £150, a total of £349.65.

My provisional decision was that the complaint about the mortgage advice should not be upheld. I was satisfied the redress offered for the Wills package was fair.

response to my provisional findings

Neither party responded to the provisional decision by the due date. In the circumstances, I'm able to proceed with the final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've reviewed the file and looked again at the provisional decision. I've also reviewed our rules. Having done so, in the absence of any further evidence or arguments from either party I see no reason to depart from the conclusions reached in my provisional decision, which are set out above.

For the same reasons as those given in my provisional decision of 7 February 2020, I'm satisfied that the mortgage advice was suitable. I'm also satisfied that the offer of redress for the sale of the Wills package – a payment of £349.65 – is fair and reasonable.

In addition, I'm satisfied we can't look at the complaint about the sale of the ASU policy, as it wasn't made within six months of the final response letter dated 25 May 2012. There are no exceptional circumstances that would allow me to disregard the time limit.

my final decision

My decision is as follows:

- Because the complaint about the ASU policy wasn't made within six months of the final response letter – and there are no exceptional circumstances to explain the delay – I'm satisfied the Financial Ombudsman Service can't consider this part of the complaint.
- I don't uphold the complaint about the mortgage advice.
- I'm satisfied that the redress offered by Legal & General Partnership Services Limited of £349.65 for the mis-sale of the Wills package is fair and reasonable.

I make no other order or award and simply leave it to Mr and Mrs S to decide if they want to accept the £349.65 in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 25 March 2020.

Jan O'Leary
ombudsman