

complaint

Mr and Mrs T complain that they were mis-sold a mortgage by Legal & General Partnership Services Limited ("L&G").

background

Mr and Mrs T had a mortgage when they took advice from L&G. They also had credit cards, an unsecured loan and a substantial overdraft. Acting on advice from L&G, they re-mortgaged, consolidating all their debt to the mortgage balance and increasing the remaining term.

Mr and Mrs T's representative complained that the mortgage advice was unsuitable. It said that Mr and Mrs T should have been advised to remain with their existing lender, should not have consolidated their debt and should not have extended the term. It said, based on the fact find taken at the time, that Mr and Mrs T were not financially stretched and didn't need to re-mortgage.

L&G said that the monthly surplus of income over expenditure recorded in the fact find was unlikely to be correct, bearing in mind the nature of the unsecured debt that Mr and Mrs T had. It said that it was more likely that they were in financial difficulties and needed to reduce their outgoings, and so the recommendation – which did reduce them – was suitable.

Our adjudicator didn't recommend upholding the complaint, and so it comes to me for a decision to be made.

my findings

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

I'm concerned by L&G's response to this complaint, in which it says that the figures recorded in the fact find aren't correct and that Mr and Mrs T's financial position was in fact much worse. The fact find was the basis on which its adviser made the recommendation, especially with regard to affordability. I would have expected the adviser to ensure that it was done accurately.

I agree with Mr and Mrs T's representative that – taking the fact find at face value – there doesn't appear to have been any need for this re-mortgage. Mr and Mrs T took a mortgage with around five years remaining, and a loan with around four years remaining, both of which they could apparently afford to pay, and consolidated them into a new mortgage over nine years. On the face of it, this doesn't look like suitable advice.

However, I'm persuaded that taking the fact find at face value doesn't go far enough. I agree with L&G that it is likely that Mr and Mrs T's financial position was rather worse than that set out, and so I find, on the balance of probabilities, that it was. I say this because it is recorded that the personal loan was taken out for debt consolidation just a few months before the advice, yet they had run up a further £3,000 of credit card debts since. And they had a substantial overdraft which wasn't reducing. This is not reflective of a healthy monthly surplus of income over expenditure.

And so it seems to me that, while the foundation of the advice – the income and expenditure figures taken in the fact find – was incorrect, the outcome that resulted was suitable. Mr and Mrs T were running up debt and needed to reduce their expenditure. This mortgage allowed them to achieve that and reach their retirement on a debt-free basis – provided they didn't take on more debt in the meantime.

So while I agree that the adviser failed to give appropriate advice on the basis of the facts as he found them to be, the result was a suitable recommendation on the basis of the facts as I have found that they actually were. So Mr and Mrs T haven't suffered a loss as a result. That is why I don't uphold this complaint.

my final decision

For the reasons I have given, my final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs T to accept or reject my decision before 13 March 2015.

Simon Pugh
ombudsman