Financial Ombudsman Service

complaint

Mr and Mrs M complain that they were mis-sold a mortgage by an appointed representative of Legal & General Partnership Services Limited (L&G).

background

Mr and Mrs M re-mortgaged through L&G, consolidating two loans and raising capital of some £35,000. They say through their representative that the advice to consolidate was unsuitable and that an offset mortgage should have been considered.

On their complaint to L&G it said they consolidated two unsecured loans costing £258.82 and £147.65 each month on interest rates of 7.7% and 6.7%. Whilst these were affordable outside the mortgage, it was Mr and Mrs M's intention to make regular overpayments to reduce the mortgage term as quickly as possible. They had previously consolidated debts within their last remortgage and made regular monthly overpayments of £1,200.

Consolidating the debts freed up additional disposable income which they could use to make overpayments on the mortgage. This meant they could repay the debts as quickly as they wanted and on a lower rate of interest, initially at 5.64%.

L&G said an offset mortgage wouldn't have benefited Mr and Mrs M any more than the recommended mortgage. They wanted £35,000 for personal use and L&G had recommended a mortgage with a drawdown facility. This meant a portion of the loan was in the mortgage account they could later withdraw, or draw down.

An offset mortgage would allow them to offset any savings against the mortgage balance meaning they wouldn't pay interest on this portion. But whilst the extra money was in the mortgage account for them to access, they didn't pay interest on it until they accessed it. So they hadn't been financially disadvantaged.

Mr and Mrs M brought their complaint to this service but our adjudicator didn't recommend it be upheld. She had considered Mr and Mrs M's wishes at the time of the sale and had also taken into account the documentation prepared at the time. In particular, L&G had provided a summary of the points discussed with Mr and Mrs M, which it called "Mortgage Record of Suitability". This said:

"You have consolidated within this variable rate mortgage debts, which are currently on a fixed rate, and appreciate that payments will vary in line with market fluctuations. You have been made aware that if any existing liabilities are consolidated within your mortgage arrangements they are secured against your property. This means that if payments are not maintained, your home may be repossessed by your lender"

"£14,376 of the loan amount I am recommending is for the purpose of consolidating existing liabilities. From the information you have provided, I have been able to determine that although the interest rate charged will be lower, the overall cost of repaying these liabilities is likely to increase as the term is longer. However, you have indicated that, regardless of the potential increase in overall cost, you wish to proceed with this arrangement because you want to repay the debt as soon as possible and having one manageable payment is more important to you and by having one arrangement forces the discipline to repay"

The adjudicator said that at the time of the advice Mr and Mrs M's monthly mortgage payment was £638, which with their unsecured debt payments totalled £1,043. In addition, they were looking to raise funds for personal use. Their monthly mortgage payment after the debt consolidation and the additional £35,000 was £783.69. This produced a saving of about £260 a month during the fixed rate period of the new mortgage.

The unsecured loans, although having a shorter term, were being charged at 7.7% and 6.7% making the remortgage a more attractive option at 5.64%. The adjudicator understood that Mr and Mrs M could afford to make the repayments on the mortgage and unsecured debts each month, but this didn't provide them with the lump sum they had asked for.

Mr and Mrs M's representative asked for an ombudsman to look at the case. They said adding the debt to the mortgage didn't achieve the objective of repaying the debt as soon as possible.

I took a different view of the complaint to the adjudicator. So I decided to issue a provisional decision, setting out my view of the case and inviting further comments. Both parties have now responded and so I issue my final decision.

my provisional decision

In my provisional decision, I said:

"I don't agree that that an offset mortgage should have been recommended. Mr and Mrs M would only pay interest on the capital when drawing it down. They had reasonable equity in their property even with the amount they were borrowing.

Consolidating unsecured debt into a mortgage increases the long term costs of repaying it. Nevertheless it can be a suitable choice because it reduces outgoings, and that can often be a paramount consideration.

But I've seen no evidence that it was here. Mr and Mrs M don't suggest that at the time of the advice they were struggling financially. The two loans were affordable alongside the new mortgage and their interest rates weren't significantly higher. They would have been paid off in about two years. Instead they entered into a deal which meant that they would have to repay far more. In the short term their monthly payments went down but if they had paid off the loans as they were on course to do, within two years that money would have been available for their overpayments anyway.

Further, they weren't in financial difficulties. They were able to make the repayments as they fell due, and all things being equal, that would have continued had they not consolidated the borrowing. They had a tracker mortgage and if interest rates had increased, as they could have done, that would have wiped out even the short term benefit they received from the lower monthly repayments.

Therefore I'm not persuaded that consolidating the two loans was suitable. But neither do I think that an offset mortgage would have benefited Mr and Mrs M any more than the recommended mortgage."

the responses to my provisional decision

Both parties responded to my provisional decision. Mr and Mrs M said they had nothing further to add.

L&G said Mr and Mrs M wanted to consolidate the loans so they could make overpayments and repay their debts as quickly as possible. They had used this method of overpaying consolidated debts in their last remortgage.

It would mean instead of making monthly loan repayments on rates of 6.7% and 7.7%, they would be making regular overpayments on their mortgage on the lower interest rate of 5.64%.

The recommended mortgage product was 'fully flexible' and allowed unlimited overpayments, as long as Mr and Mrs M didn't repay the mortgage in full within the first two years. This meant through overpayments the customers could clear their debts as quickly as they wanted as well as saving a significant amount in lower interest payments.

my findings

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

L&G enclosed a copy of its client review with its response to my provisional decision. It shows the following mortgage history:

1st mortgage	February 2002 over 15 years	£65,000
2nd mortgage	September 2004 over 20 years	£73,000*
3rd mortgage	December 2007 over 25 years	£125,300

*The December 2007 redemption statement shows £70,831.50, so only some £2,170 had been paid off in just over three years.

The previous remortgage for debt consolidation extended the overall term of the mortgage by five years and the intention to consolidate and overpay to clear the debts faster obviously didn't happen as over three years later Mr and Mrs M had only repaid £2,170 of the £8,000 which had been added to the mortgage debt.

In addition, each remortgage has extended the term of the entire debt by five years. This has made the payments more affordable, but unless Mr and Mrs M do start overpaying as they have said they will, the additional ten years on their borrowing will cost them rather a lot of money.

For these reasons I'm not minded to alter my provisional conclusions.

my final decision

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

1) calculate the amount Mr and Mrs M have paid to service the consolidated loans each month as part of their mortgage payments;
2) calculate the amount of the consolidated debt still outstanding on their mortgage balance;

3) calculate the amount it would have cost to pay off the debt had it not been consolidated, assuming that the payment amounts and interest rates stayed the same;

add together the first two figures, deduct the third and pay the result as a lump sum to Mr and Mrs M.

L&G should also refund any set up fees/broker fees/charges linked to the consolidation together with 8% simple interest per annum if paid up front, or at the mortgage rate if added to the mortgage balance.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs M to accept or reject my decision before 25 August 2018.

Edward Callaghan
ombudsman