

complaint

Mr and Mrs Z complain that they were mis-sold a mortgage by an approved representative of Legal & General Partnership Services Ltd ("L&G").

background

Mr and Mrs Z had a mortgage. With about 18 months of their fixed rate period to go, they received advice from L&G. L&G recommended switching lender to a new five year fixed rate, with additional borrowing to consolidate debt.

Via their representative, Mr and Mrs Z now complain that that was an unsuitable recommendation. They consider that they should not have been advised to switch lender, incurring an early repayment charge ("ERC"), and that debt consolidation was not appropriate as it increased the cost of borrowing.

L&G says that the advice was suitable, that Mr and Mrs Z were fully informed and that it was their decision to proceed. Our adjudicator didn't recommend upholding the complaint, and so Mr and Mrs Z's representative wanted a final decision to be made. Because I was considering a different outcome to the adjudicator, I issued a provisional decision. In my provisional decision, I said:

I'm not persuaded that the recommended mortgage was suitable.

I say that for two principal reasons. In the first place, Mr and Mrs Z swapped a fixed rate loan with about 18 months left at 5.54% for a five year fixed rate loan at 5.79%. Although the new loan extended the fixed rate period, it did so at a slightly higher rate, so there were no short term savings. I'm not persuaded that there was any immediate imperative to re-mortgage at this point, and I'm minded to find that a more suitable recommendation would have been to wait a year or so and consider re-mortgaging at the end of the ERC period. I see no advantage to be gained at this point in switching that outweighs the disadvantage of the ERC and the higher interest rate. L&G says that Mr and Mrs Z were unhappy with their previous arrangements, but if that was the case they could have switched without penalty the following year.

I'm also minded to find that debt consolidation was not appropriate in this case. The consolidated debt was a car loan, with less than three years left to run. Although the interest rate was significantly higher than the mortgage interest rate, consolidation secured the loan to the property and substantially extended the term. Mr and Mrs Z appear to have been comfortably making the repayments to the car loan and not in any financial difficulty, and so I'm not persuaded that there was any need for them to consolidate this loan. It follows, therefore, that I don't consider the consolidation recommendation to be suitable.

L&G says that Mr and Mrs Z were told the costs of consolidation and were therefore placed in an informed position. That is the case, but that doesn't mean that the recommendation to proceed with consolidation was suitable. The burden on an adviser is not simply to place information before a consumer and allow them to make a choice; it is to make a suitable recommendation. And I am not persuaded that that is what happened here.

I therefore intend to uphold this complaint. If I do so, I will direct L&G to refund the ERC and the broker fees Mr and Mrs Z paid. It should also make redress for the consolidated debt.

the responses to my provisional decision

Mr and Mrs Z's representative did not respond. L&G did, and did not accept my proposed outcome.

It said that Mr and Mrs Z were sufficiently unhappy with their current arrangements that they wanted to proceed. It provided me with a questionnaire they had completed describing their current arrangements as "rubbish" and "terrible". It said that they had been recommended a product whose fixed rate term was too short and wanted a longer fix, which this recommendation achieved. L&G does not agree that they would have been prepared to have stayed with their existing lender until the end of the ERC period, because of the strength of their feelings as revealed by the questionnaire. And it says that their concerns about the length of the fixed rate term were valid because interest rates were on an upward trend at the time.

On the question of the debt consolidation, L&G agreed that there was no imperative to do so, but said that the consolidation was done at Mr and Mrs Z's specific request. They were advised of the costs of doing so, and chose to proceed.

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 have also considered again my provisional decision in the light of the response to it.

Having done so, I do not depart from my proposed conclusions. I recognise, as I said in my provisional decision, that Mr and Mrs Z were unhappy with their current mortgage arrangements.

However, I attach little or no weight to the questionnaire that L&G relies on to demonstrate the strength of their feeling. Having considered it, it appears to me to consist of a series of leading questions designed to bring about those very feelings. There are 17 questions, several of which ask whether the current lender has done things that no lender does. It appears to me to be a sales tool not an objective assessment, designed to induce feelings of dissatisfaction rather than measure them. The questionnaire also includes a section on existing debts and liabilities, and I cannot rule out the possibility that Mr and Mrs Z's decision to consolidate their debts was similarly influenced by that.

In any case, L&G agrees that there was no need to consolidate the debt and that it was, over the long term, more expensive to do so. It says that, nevertheless, Mr and Mrs Z decided to do so and that it was what they wanted. It "fails to see what more could have been expected" of the adviser.

Mr and Mrs Z may have been dissatisfied with their existing lender, but the costs of setting up a replacement loan, at a higher rate, were very considerable. They may have wanted to consolidate debt, but the costs of doing so, over the long term, were considerable. In my view, in both cases, the correct advice to have given was not to proceed. I see no evidence that that advice was given. If it had been given, and Mr and Mrs Z had decided to over-ride it and proceed anyway, my conclusion might have been different.

But, as I said in my provisional decision, the obligation on an adviser is not simply to present information; it is to advise on the most suitable course. And I see no evidence that that was done in this case.

my final decision

For the reasons I have given, my final decision is that I uphold this complaint and direct Legal & General Partnership Services Ltd to:

- Refund the ERC of £2,042.10, to which should be added interest at the mortgage rate running from inception to date of settlement;
- Refund all fees paid (broker, lender and legal), to which should be added interest at the mortgage rate for fees added to the loan and interest at 8% simple for fees paid up front;
- In respect of the consolidated debt:
 - Calculate the amount consolidated plus interest at the mortgage rate to date of settlement, and deduct from that the amount they would have had to pay unconsolidated (31 payments of £237 = £7,347)
 - At the date of settlement, calculate how much of the consolidated loan remains as part of the mortgage balance
 - Add the two figures together and pay that amount as a lump sum to Mr and Mrs Z.

If L&G considers it should deduct tax from the 8% interest elements of my award, it should provide Mr and Mrs Z with the necessary certificate.

Simon Pugh
ombudsman