complaint

Mr U and Mr W through their solicitor B complain that A, an appointed representative of Legal & General Partnership Services Limited, gave unsuitable advice to pay unsecured debts using a mortgage ("consolidation") and caused them financial loss. They want compensation.

background

Mr U and Mr W were advised by A, an appointed representative of Legal & General in 2006 about remortgaging. They said that A advised them to take out a new mortgage and use some of the money to consolidate unsecured debts. B said this advice was unsuitable as the interest rate for one loan was barely higher than the interest charged by the new mortgage and an early repayment charge ("ERC") was charged by the old lender.

B complained to Legal & General. It said that A recommended a cheaper mortgage than the one in place at the time and said it should be in joint names to be affordable.
Legal & General said A told Mr U and Mr W that they'd have to pay an ERC if the old lender wasn't given a month's notice and not all the unsecured debts were consolidated. It noted that by consolidating the debts chosen, Mr U and Mr W's disposable income increased significantly. Legal & General was satisfied debt consolidation was explained to Mr U and Mr W by A and the advice given was suitable.

B complained to us. The investigator's view was that Legal & General wasn't at fault. She noted that both Mr U and Mr W signed documents saying they'd read the advice where debt consolidation was explained and the costs of doing it, and why not all the loans were included. The investigator said A also warned that by including debts only in the name of one of them, both Mr U and Mr W would become liable for the debt, but they chose to go ahead. She also said if the mortgage had been paid as Mr U and Mr W had planned, they'd have paid less interest.

B disagreed. It said giving information or warnings wasn't the same as giving advice and the mortgage recommendation document had a later date than the mortgage application. B also raised concerns about the identity of the person who visited Mr U and Mr W at their home to get documents signed, and felt the timing was designed to force consumers to sign in order to get the money they wanted. B felt the investigator had concentrated too much on Mr U and Mr W's failure to repay the mortgage as planned.

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 think explaining things to consumers and giving them warnings is part of giving them advice. But I also think that the advice given by A also including recommending a particular course of action and mortgage to them. I have to look at the overall advice given by A to Mr U and Mr W. There's no dispute that Mr U and Mr W were given advice in writing by A and signed documents to say they'd read it. There's no rule requiring the adviser to personally attend a consumer's home to get document signed and it's clear the advice was given before completion of the mortgage.

Consolidation of debt into a mortgage can cost consumers more in the long term as often they pay interest over a longer period. This can wipe out any savings from a lower interest rate. But the benefit can be to enable consumers to reduce their bills and have more spare money each month to be used as they see fit. It's open to the consumer to make that choice, provided it's properly explained and their needs and objectives are met by debt consolidation.

In Mr U and Mr W's case, I can see the debts that they chose to consolidate meant their disposable income was significantly increased and the new mortgage was affordable. This had the result of meaning Mr U and Mr W were able to repay their debts (and this wasn't the first time they'd gone through debt consolidation looking at the evidence), and increasing the money available for spending each month. The fact Mr U and Mr W didn't consolidate all their debts suggests to me that it's more likely than not they understood the advice given and made a choice.

Was the actual mortgage recommended suitable? There's no evidence another mortgage would've been cheaper and available. By remortgaging, Mr U and Mr W had to pay the old lender an ERC, but I can see the new lender contributed up to £700 towards the costs. And the ERC could've been avoided if notice had been given to the old lender as A advised Mr U and Mr W to do.

Having considered the evidence available to me, I don't think the mortgage was mis-sold. It was cheaper than the old mortgage and had the benefit both of a fixed rate period and the ability to overpay. This met the needs of Mr U and Mr W as set out in the advice document by A and signed by them, and increased their disposable income. The new mortgage had a cheaper interest rate than the debt paid off by the new mortgage, though I accept overall the interest paid may have been higher.

Consumers are free to make choices about what to do, as long as the consequences are properly explained to them and they aren't misled. I think the explanation in this case was clear and fair. I don't think it's unfair or reasonable to give consumers advice about their options and let them choose.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U and Mr W to accept or reject my decision before 4 January 2018.

Claire Sharp
ombudsman