complaint

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

background

Acting on the recommendation of L&G's adviser, Mr and Mrs B re-mortgaged. They changed their repayment mortgage to interest only, consolidated debt and added fees and charges to the balance. They had to pay an early repayment charge ("ERC") to their existing lender.

Mr and Mrs B's representative said that this was an unsuitable recommendation. It said they had no need to re-mortgage, had no repayment vehicle and didn't need to consolidate debt. L&G said that they needed to reduce their outgoings in the short term because of family circumstances.

Our adjudicator said that the complaint should be upheld. She said that there was no over-riding need to re-mortgage and that Mr and Mrs B's financial situation was likely to improve. Although the recommendation reduced their outgoings it did so in a way that increased overall costs and the risks weren't adequately explained.

Having considered matters carefully, I reached a different conclusion from the adjudicator, and so I decided to issue a provisional decision. This allows all parties the chance to make further comments before I make my final decision.

my provisional decision

In my provisional decision, I said:

> I think it likely that Mr and Mrs B were in some financial difficulties. Mrs B had been on maternity leave and so they had reduced income, and the nature of her employment was such that it would take some time to go back up following her return to work. They'd taken a payment holiday on their existing mortgage. Although the client review shows that they had a small surplus when their existing mortgage was taken into account, I don't think this tells the whole story.
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> At the same time, I think they were taking steps to improve their situation. They'd consolidated a lot of credit card debt into an unsecured loan. They'd taken a payment holiday on their mortgage. This recommendation – to switch, temporarily, to an interest only mortgage to keep their costs down while Mrs B's income went back up and they got their finances back under control – seems to me to be consistent with everything else they were doing. And they signed a note confirming their intentions.
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> So I don't think the recommendation was unsuitable. Mr and Mrs B wanted to reduce their outgoings until their position improved – and the switch to interest only did that. Waiting over a year until the ERC expired wouldn't have helped in the short term. Making overpayments and then switching back to repayment terms at the end of the fixed rate period was, in the circumstances, a reasonable strategy.
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> But I don't think the debt consolidation was suitable. Mr and Mrs B had recently consolidated all their debt onto an unsecured personal loan with a relatively low interest rate. Their new mortgage was a mortgage offered by a particular lender,

which allowed loans up to 125% of the property value, consisting of a secured loan at 95% and up to a further 30% as an unsecured loan.

Mr and Mrs B took the unsecured loan option, borrowing £30,000 – which included the £21,000 consolidation loan they further consolidated. But it was a term of the loan agreement that if they ever moved the main secured element – either moved lender, or moved product with the same lender – the interest rate on the unsecured element would go up by 5%. That would take it from slightly below the previous loan rate to well above it.

This was, it seems to me, incompatible with the long term plan. The long term plan was to switch back to repayment terms at the end of the mortgage fixed rate – which would trigger the 5% increase on the unsecured element. The only way to stop that happening was to keep the main mortgage on interest only terms on the lender's standard variable rate. The unsecured loan was unlikely to be included in any future re-mortgage because of the amount by which it exceeded the loan to value.

The switch to interest only, without also consolidating the debt, would have achieved the objective of significantly reducing outgoings. Adding the debt reduced them still further – but at the cost of either frustrating the long term repayment strategy, or making it much more expensive to achieve. I therefore don't think consolidating the debt was suitable, and so I intend to uphold this complaint, though to a lesser extent than was recommended by the adjudicator.

In its final response, L&G say that this element of the borrowing was unregulated and so it isn't responsible for the advice given. I don't agree with that. The recommended mortgage was one which included, as an integral part, access to a linked unsecured loan. Advice to take out the unsecured loan element as part of the mortgage package was part and parcel of the advice to take the mortgage itself. I'm therefore satisfied that this is a matter that we can consider and one for which L&G is responsible.

the responses to my provisional decision

L&G agreed to make redress on the basis I set out, subject to Mr and Mrs B providing the information I requested, which they have now done.

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 light of the responses to it. Having done so, I see no reason to depart from my provisional decision. Mr and Mrs B have given the adjudicator their loan statements, and these can now be passed on to L&G to allow the redress calculation to be done.

my final decision

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

- calculate the amount Mr and Mrs B have paid, in interest and capital repayments to that part of the unsecured loan that represents the consolidated debt;

- calculate the amount of the consolidated debt still outstanding on the unsecured loan;
- calculate how much it would have cost Mr and Mrs B to repay the debt had they not consolidated it;
- add together the first two figures, deduct the third, and pay Mr and Mrs B the result as a lump sum.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 29 June 2015.

Simon Pugh
ombudsman