

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

In 2005, Mr and Mrs M had a mortgage, and following a recommendation from L&G re-financed it with another lender. In doing so they paid an early repayment charge ("ERC") to their existing lender, consolidated some unsecured debt and added fees and charges to the loan.

Mr and Mrs M's representative complains that the recommendation was unsuitable, because the debt should not have been consolidated and they should not have incurred the ERC – they should have contacted their existing lender or waited until the end of the ERC period.

L&G says that the recommendation was suitable because it met Mr and Mrs M's objective of reducing their monthly payments. The ERC was explained to them and they decided that it was worth incurring to achieve the reduction in outgoings.

Our adjudicator considered the recommendation to have been suitable, and so the case comes to me for a decision to be made. Because I took a different view, I decided to issue a provisional decision allowing all parties to draw any last matters to my attention before I make my final decision. Both parties have responded, and so I am in a position to issue my final decision.

my provisional decision

In my provisional decision, I said:

I can see that in taking advice, Mr and Mrs M did want to reduce their outgoings – the opening of the mortgage planner records as much. Their existing mortgage had a monthly repayment of around £350, and their unsecured debt amounted to over £500 a month, leaving them with a monthly surplus of around £150 per month. So while they were not in financial difficulty or failing to meet their commitments, neither did they have a substantial cushion.

Following the recommendation, their mortgage payments increased by over £200, but their overall outgoings fell by £300. To that extent, the re-mortgage achieved the objective of reducing their outgoings.

However, I can see from the client review that that would have happened imminently anyway. Two of the consolidated debts were very small store card balances, on which Mr and Mrs M were paying £50 per month each – at that rate, one balance would have been cleared in two months and the other in six. Therefore, their financial situation would shortly have improved by £100 per month even had they done nothing.

Taking everything into consideration, I'm not persuaded that consolidation was necessary or suitable in this case. Had they not consolidated their financial position would have improved in any event. While that would be by a lesser increase than the consolidation achieved, it would still have almost doubled their surplus. Taking into

account the benefits of doing nothing and the costs of consolidation – both the increased interest, and the necessity of incurring an ERC to do so – I'm not persuaded that consolidation was the most suitable course.

That being the case, as a reduction in outgoings was Mr and Mrs M's main objective, there was no other reason to proceed with the re-mortgage at this time. I'm satisfied that they should have been advised to wait – wait a few months until their outgoings fell, and wait until 2007 when the ERC ended to take a new fixed rate.

I therefore intend to uphold this complaint, and to put Mr and Mrs M as far as possible in the position they would have been in had they been advised not to proceed.

I indicated that I intended to direct L&G to refund the set up fees, the ERC and the additional cost of the debt consolidation.

L&G accepted my view of the debt consolidation, but not of the ERC or the suitability of the re-mortgage as a whole. It said that they wanted a fixed rate to be certain of the maximum they would have to pay each month, an understandable wish as their existing variable rate had risen by 0.3% while they had been with the lender. Their budget was tight and so certainty was important to them.

Mr and Mrs M's representative accepted my provisional decision. But it also wanted me to direct the return of a fee paid to a third party for wills advice which was also added to the loan balance. It said that they wouldn't have taken the wills service without the mortgage, adding it to the loan wasn't suitable and wasn't disclosed and it benefitted the adviser.

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. But having done so, I'm not persuaded to depart from it.

L&G accepts that the debt consolidation wasn't suitable and shouldn't have happened. But it says that the mortgage should still have gone ahead so that Mr and Mrs M could have obtained a fixed rate.

Mr and Mrs M's existing variable rate was 4.85%, according to L&G. The new mortgage was fixed at 4.84% - just 0.01% lower. When the ERC and the various set up fees were added to the loan, their monthly mortgage payments would have increased.

According to the mortgage analysis, the main thing Mr and Mrs M wanted to achieve was not to fix as an end in itself, but to reduce their outgoings. But the mortgage payments increased (and would still have done so without debt consolidation). The only way to reduce their outgoings was to consolidate the debt, which – L&G agrees – was unsuitable because of the nature of the debt. I'm not persuaded that the transaction should have gone ahead without the debt consolidation, because that would have increased their outgoings – the opposite of what they wanted to do.

I'm also not persuaded to direct the refund of the wills service fee. This money was paid to a third party for a separate service. Mr and Mrs M have – I assume, their representative hasn't

said otherwise – had the benefit of that service. It may have been the case that, had they not re-mortgaged, they wouldn't have reviewed their wills at this time. But their representative hasn't said why it considers paying for the service out of the mortgage funds to have been unsuitable.

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:

- Refund all broker, legal, lender and valuation fees paid to set up the loan, adding interest at the mortgage rate for fees added to the loan and at 8% simple for fees paid up front;
- Refund the ERC plus interest at the mortgage rate;
- Make redress for the consolidated debt by:
 - Calculating the amount Mr and Mrs M have paid to date in capital and interest payments in respect of the consolidated debt;
 - Calculating how much remains on their mortgage balance in respect of the consolidated debt;
 - Calculating how much Mr and Mrs M would have paid to clear the debt had it not been consolidated; and
 - Adding together the first and second figures, deducting the third and paying the result as a lump sum.

Should L&G consider that it needs to deduct income tax from any 8% interest element of the final award, it should give Mr and Mrs M the necessary certificate.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 6 January 2015.

Simon Pugh
ombudsman