complaint

Mr F complains that he was mis-sold a mortgage by an appointed representative of Legal & General Partnership Services Limited.

background

Mr F had a mortgage. Acting on L&G's advice, he re-mortgaged, switching lender and consolidating some unsecured debt. This was only about ten months after he had taken out his previous mortgage so he also paid an early repayment charge (ERC). His representative says that this was unsuitable advice.

At first, our adjudicator recommended upholding the complaint. She said there was no need for Mr F to re-mortgage so soon. She noted that the fact find said that Mr F wanted to save money over the long term – and debt consolidation didn't achieve that. It saved short term outgoings, but cost more over the long term.

L&G said that the mortgage was suitable. It said that Mr F had a relatively low disposable income and debt consolidation improved his situation. It said consolidation was clearly explained so that Mr F could make the choice about whether to proceed. And it said that the ERC was justified – although it was around £3,000, Mr F would save £3,200 in lower interest and cashback over the fixed rate term.

Our adjudicator therefore agreed that the re-mortgage, and ERC, was suitable. But she still didn't think that debt consolidation was appropriate, and so L&G asked that an ombudsman review the complaint. As I took a different view, I issued a provisional decision inviting the parties to respond before I made my final decision.

my provisional decision

In my provisional decision I said:

> I agree that debt consolidation was not suitable in this case. It is clearly stated, at the start of the personal mortgage analysis, that Mr F wanted to save money over the long term. Debt consolidation generally has the opposite effect – it reduces short term outgoings, but increases costs over the long term.
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> The personal mortgage analysis was a standard document L&G's representative often used. Parts of it – such as the opening question on objectives – are a straightforward attempt to ascertain a customer's wishes. But other questions are not neutrally worded, and are fairly crude sales tools designed to produce a result rather than neutrally find out what a consumer wanted.
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> Even so, Mr F has answered the leading question about debt consolidation – question four of the "revolving credit" section – with the answer "no". He was not interested in clearing his debt as part of the re-mortgage.
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> Therefore, the recommendation didn't match Mr F's clearly stated preferences at the start of the process. L&G says that even so the consolidation recommendation was clearly explained so that he could decide whether to go ahead. I don't agree. Mr F wanted to reduce long term cost. The suitability record merely says that long term

costs *might* be more, but doesn't give any indication of by how much so that he could judge whether that was a price he wanted to pay.

If debt consolidation is unsuitable, the only remaining purpose of the mortgage is to switch to a lower interest rate to achieve savings. L&G said that this was done, because the lower interest rate and cashback outweighed the ERC Mr F paid. Our adjudicator was persuaded by that – but I'm not. To my mind, that only looks at part of the picture. The costs saved were very slightly more than the ERC paid. But Mr F didn't only pay an ERC to access those savings. He also paid broker fees, valuation fees, lender fees and legal fees. In total, he paid around £7,000 – plus interest – to access a saving of just over £3,000. I don't think that is good value.

the responses to my provisional decision

Mr F's representative didn't respond. L&G did, and didn't agree with my provisional decision. It said the recommendation resulted in lower monthly outgoings. That improved Mr F's financial position, and so was suitable. He could have used the increased disposable income to make overpayments to the mortgage and so repay the debts more quickly.

L&G said that although Mr F may have said in the personal mortgage analysis that he wasn't interested in consolidating debt, elsewhere he said that he was. It was optional and he didn't have to go ahead, but chose to do so having changed his mind. The reduction in interest rate and in his monthly outgoings achieved his preference for saving money.

Finally, L&G said that the adviser didn't have to give a costs comparison. He took the costs into account in making the recommendation and correctly explained that, over the long term, they might be more. As for the other costs Mr F paid, they were clearly explained to him and as he chose to proceed he must have felt them worth paying.

my findings

I have considered again all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also considered my provisional decision in the light of the responses to it. But I'm not persuaded to alter my view of this case.

I said in my provisional decision that I think that the personal mortgage analysis used by the broker wasn't an objective fact finding tool but a fairly crude sales tool, and so I attach less weight to any preferences expressed after that document has been used than those expressed at the start. I'm satisfied that Mr F's objective in seeking mortgage advice was to save costs over the longer term, not to reduce his immediate outgoings, and that he didn't want to consolidate debt. If he changed his mind about that, I think it most likely that was because of a sales process. I don't think, in that light, that the debt consolidation recommendation was suitable.

I accept that there isn't a strict regulatory requirement to give a costs illustration. But in my view it would be good practice to do so where a consumer has expressed a priority as being keeping overall costs down, but the result of the recommendation is likely to increase them. That is why I don't think Mr F was given enough information to decide, on a fair and informed basis, whether in fact he wanted to accept that long term increase.

I also remain of the view that the cost paid to achieve the re-mortgage significantly outweighed the savings achieved. I think that made the mortgage advice unsuitable – and it wasn't any less so because Mr F was told what the fees would be. The broker was required to make a suitable recommendation, not just to provide information to Mr F so that he could decide for himself – on the basis, as I said above, of incomplete information.

my final decision

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

- Calculate the amount Mr F has paid, in interest and capital, to service the debt consolidated to the mortgage (A);
- Calculate the amount of consolidated debt outstanding on the mortgage balance as at date of settlement (B);
- Calculate the amount it would have cost to repay the debts if they had been left unconsolidated (C);
- Calculate the total set-up costs of the mortgage – broker, legal, lender and valuation fees, plus the ERC (D);
- Calculate interest on D at the mortgage rate for costs added to the mortgage balance and at 8% simple for costs paid up front (E);
- Calculate the difference between the monthly payments each month on the old mortgage and the new mortgage (excluding the figures at A and D from the balance used for the new mortgage), running to the end of the fixed rate term on the new mortgage (F).

Legal & General Partnership Services Limited should pay to Mr F redress calculated as A + B – C + D + E – F – the cashback payable on the mortgage.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr F to accept or reject my decision before 6 August 2015.

Simon Pugh
ombudsman