Financial Ombudsman Service

complaint

Mr and Mrs C through their representative M complain that an appointed representative of Legal & General Partnership Services Limited, A, mis-sold them a mortgage. They want compensation.

background

Mr and Mrs C took advice from A, an appointed representative of Legal & General, in 2006. They were advised to remortgage. M said the advice to consolidate debt (borrow more money under the mortgage to repay other debts) was unsuitable as Mr and Mrs C had savings which they could've used to repay the debt, and overlooked the charges claimed by the old mortgage when it was repaid early.

M complained to Legal & General. It said the mortgage recommended by A was suitable and met Mr and Mrs C's needs. Legal & General said Mr and Mrs C chose not to use their savings to repay the debts before meeting A; it didn't know if the money was accessible. But it pointed out that the debts owed were more than the value of the property and it was clear Mr and Mrs C were overspending. It said that the product recommended by A ensured Mr and Mrs C still held equity in their property and got an unsecured loan in addition.

Legal & General noted that new mortgage was a repayment mortgage; while Mr and Mrs C paid slightly more for their mortgage each month, it would be repaid in full by the end. The early repayment charge ("ERC") for the original mortgage wasn't known about until later in the process, but the new mortgage still met Mr and Mrs C's needs as they wanted to borrow more money and their current lender wouldn't do so. Legal & General paid compensation for issues not raised in the complaint made to this service.

M complained to us. The adjudicator's view was that Legal & General wasn't at fault. He said the remortgage significantly reduced Mr and Mrs C's monthly spending, which met their needs as they were spending more than they earned each month. The adjudicator didn't think the ERC paid meant that the new mortgage was unsuitable as Mr and Mrs C's needs were still met and it was their choice to do so, having been advised.

M disagreed. It said that the adjudicator had made factual errors and overestimated the amount of disposable income available to Mr and Mrs C after the remortgage. M said that the remortgage didn't address Mr and Mrs C's overspending, which was why they later changed the mortgage to interest only in 2010. The adjudicator said that it was clear that after the remortgage, the money available to Mr and Mrs C to spend as they wished each month increased. He also said Legal & General wasn't responsible for the change in the mortgage made in 2010. M said Mr and Mrs C were still overspending in 2006 and should've been advised to move the mortgage to part interest only.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Looking at the whole situation, I think A's advice was suitable and the mortgage wasn't mis-sold. Mr and Mrs C wanted to gain control over their financial affairs, having spent up to the limit of their credit cards and borrowed more than once from their current mortgage lender. The mortgage recommended by A meant Mr and Mrs C increased their monthly disposable income (which would've allowed them to repay the remaining debt if they so chose), reduced the interest rate for both their mortgage and the consolidated debt, and be certain of paying off the mortgage when it ended. The new mortgage met their needs.

I note M says a part interest only mortgage could've be recommended; but the test isn't whether other type of products might've been suitable (and I'm not persuaded a part interest only mortgage would've met the needs of consumers who clearly were struggling with their spending); the test is whether the product recommended was suitable.

I considered the ERC paid. Mr and Mrs C were aware of the ERC but wanted to proceed, given the overall benefits to them. It's unlikely that Mr and Mrs C could borrow more from their current lender, so they either paid the ERC or wait a significant period of time while their spending continued to exceed their income. I also reflected that the product recommended to Mr and Mrs C included an unsecured loan and meant Mr and Mrs C kept part of the equity in their property.

Overall, I'm satisfied that the product recommended was suitable. M says that Mr and Mrs C after the remortgage continued to overspend. But that was their choice, and not Legal & General's fault. A's recommendation at least gave Mr and Mrs C breathing room to take action, but A couldn't make Mr and Mrs C do so.

Mr and Mrs C were warned by A that debt consolidation was likely to mean that they paid more interest in the long run. But A told Mr and Mrs C about the risk, and they chose to go ahead. Consumers are perfectly entitled to make choices, provided they've been advised correctly. M said that Mr and Mrs C had savings available to repay the debt. But if the savings were available (as opposed to being unavailable), it isn't clear why Mr and Mrs C didn't use them to repay some of their debts, even before meeting A. I think it's more likely than not that A was told the savings weren't available, as otherwise it is more likely than not A would've recorded that the savings should be used first. M has provided no evidence that the savings were available.

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 and Mrs C to accept or reject my decision before 4 May 2018.

Claire Sharp
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