Financial Ombudsman Service

complaint

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

background

Mr and Mrs F met with an appointed representative of L&G in 2005 when the fixed rate period on their current mortgage was about to end. The product recommended by L&G was full repayment with a five year fixed interest rate, and it included debt consolidation.
Mr and Mrs F feel that both the product and the advice to consolidate were unsuitable.

The adjudicator considered that the complaint should succeed in part. She found that Mr and Mrs F's needs were to raise money for home improvements, and also to switch to full repayment as they were currently on part repayment and part interest-only. As the fixed rate period on their current mortgage was coming to an end, and the product recommended was full repayment with a fixed rate period, it was her opinion that the product offered was suitable for Mr and Mrs F's needs.

Mr and Mrs F had available funds of £659 per month after paying their debts and their current mortgage. So they actually had £1226 available for a new mortgage. The adjudicator calculated that monthly payments on the recommended mortgage without debt consolidation would have been about £916. This would have left Mr and Mrs F with a disposable income of £310 per month after paying their debts. This indicated that a repayment mortgage would have been affordable without debt consolidation.

Without consolidating their debts there would have been a significant decrease in the amount of disposable income Mr and Mrs F had, but the adjudicator did not agree that this was a primary concern as there was no evidence of Mr and Mrs F requesting their disposable income remain the same. Also as Mr and Mrs F wanted to switch to a full repayment mortgage, this would inevitably have had an impact on their disposable income and the adjudicator was satisfied that they would have been reasonably aware of this. Therefore it was her opinion that the advice to consolidate debts was unsuitable.

Mr and Mrs F's representative did not agree that the mortgage advice was suitable and L&G did not agree that the debt consolidation was unsuitable.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Product Suitability

Mr and Mrs F say that they did not require a new mortgage. But it does not follow from this that they were given an unsuitable recommendation.

The mortgage record of suitability said:

> *"The lender I have recommended has been sourced from a selected panel of lenders whose lending criteria match your needs and preferences. They offer a suitable product that meets your needs and preferences. In addition, they offered the least*

expensive option based on level of monthly payment, which you confirmed as your preference for consideration."

Mr and Mrs F both signed this document on each page. They also signed on each page a key facts document in which they confirmed:

"I/We … wish to instruct [L&G] to proceed and process our application with the new proposed lender on the terms stated above."

They were looking for a new mortgage product because the fixed rate period on their current mortgage was about to end. They wanted to switch to full repayment and also borrow more money for home improvements. I am not persuaded that the recommendation made by L&G was unsuitable for them, and in the personal mortgage analysis document which they signed as an accurate description of their circumstances and aspirations, they specifically instructed L&G to look for an alternative mortgage provider. It was open to them to compare this with whatever was available from their existing lender, whom they rated as "average".

Consolidation

L&G does not agree that Mr and Mrs F were able to afford the reduction in their disposable monthly income from £659 to £310. It points out that Mr and Mrs F were spending the £659 each month. A reduction in their available income of £349 would have had a significant impact on their standard of living. They had three dependent children and may have felt that maintaining their standard of living, so they could afford holidays etc., was a priority for them.

The personal mortgage analysis document does also reveal that although Mr and Mrs F liked to go on holiday annually, they would not be able to afford a holiday that year after switching to repayment. But I agree with the adjudicator that this shows they were prepared to make lifestyle changes. There is no evidence that they were looking to change to repayment with no reduction to their disposable income, or that they felt they were financially stretched.

Therefore in summary I agree with the recommendations of the adjudicator.

my final decision

My decision is that I uphold this complaint in part and order Legal & General Partnership Services Limited to:

- calculate the amount Mr and Mrs F have paid to date in capital and interest payments in respect of the consolidated debt;
- calculate how much remains on their mortgage balance in respect of the consolidated debt;
- calculate how much Mr and Mrs F would have paid to clear the debt had it not been consolidated; and
- add together the first and second figures, deduct the third and pay the result to Mr and Mrs F as a lump sum.

In addition to this, as the broker fee was charged at up to 1.95% on the total mortgage amount, the amount charged on the consolidated debts should be refunded together with 8% simple interest per annum if paid up front or at the mortgage rate if added to the mortgage.

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

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

Edward Callaghan
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