complaint

Mr and Mrs R complain that an appointed representative of Legal & General Partnership Services Limited ("LGPS") provided unsuitable advice to them regarding their re-mortgage in 2006. Mr and Mrs R are represented by a claims management company ("CMC").

background

Mr and Mrs R met with LGPS' advisor in 2006. They discussed their financial situation as their current mortgage deal was coming to an end.

At the time of the review with the advisor Mr and Mrs R held a credit card with a balance of £6,500, attracting interest at 18%. They were making payments of £200 per month to the credit card company. In addition, they also had a personal loan that they'd taken to consolidate previous debts. This was for £3,500 over three years at 8.6% interest. The loan had been running for three months when Mr and Mrs R met with the advisor.

The client fact find indicated that neither of these debts was to be repaid as a result of the mortgage advice.

The advisor also noted that Mr and Mrs R's priorities for their mortgage were stability of payments and to be able to overpay. They also wished to release around £4,000 for home improvements. The advisor considered Mr and Mrs R's income and expenditure. He concluded they had disposable income each month of £977 after expenses and debt repayments.

L&G advisor recommended Mr and Mrs R re-mortgage over a 12-year term. He recommended that they take a fixed rate of interest of 5.29% for 5 years and to consolidate their existing debts into the mortgage.

Mr and Mrs R complained to LGPS. They say the advice to consolidate was unsuitable in the circumstances because they were meeting their commitments easily. Consolidating their debts meant they paid more interest than they would otherwise have done. They also say LGPS had a duty to advise rather than "just sell" and should have advised them to overpay the mortgage to mitigate the effect of the unsuitable consolidation advice.

However, LGPS says that Mr and Mrs R were aware of the costs of the mortgage with and without the debt consolidation. It argues that Mr and Mrs R did not want to service their debts separately as this would reduce their disposable income. LGPS also says that Mr and Mrs R wanted to overpay. The new mortgage would permit this. LGPS says that by overpaying they would reduce the amount of interest paid on the debts.

Our adjudicator's view was that the advice to consolidate the credit card debt was not unsuitable. She explained that the interest rate on the mortgage was substantially lower than that of the card. Although the mortgage would be paid over a longer term than the card, potentially increasing the overall costs, this could be offset by making overpayments.

However, her opinion on the consolidation of the loan was that it was unsuitable. This was because it was over a much shorter term and was still affordable for Mr and Mrs R alongside the new mortgage.

LGPS disagreed, asserting that their representative's advice was suitable

In my provisional decision I said,

> "I've noted the important considerations from the client review completed by LGPS' advisor. Mr and Mrs R did not tick the box to indicate that either of their debts was to be repaid. This leads me to conclude that they were not considering debt consolidation initially and that it was something that was raised by the advisor. There is also no indication of financial difficulty or that they were struggling to repay their debts. It appears in fact that Mr and Mr R had a healthy disposable income.
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> I've also looked at the advisor's recommendations, in particular where he talks about debt consolidation. He clearly recommends adding the sum of £10,000 to the mortgage to consolidate their existing debt. He also highlighted the fact that although the interest rate on the mortgage is lower than that applied to their existing debts, the longer term of the mortgage would likely mean that their overall costs will increase. The advisor justifies this by pointing out that Mr and Mrs R were happy with this arrangement as it was important to them to have "one manageable payment". This phrase to me suggests that the advisor is inferring that Mr and Mrs R were in some financial difficulty. This appears to be, from the information provided, far from the case.
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> I think then that the advice to consolidate Mr and Mrs R's debts into the mortgage was not suitable. This was because it was likely that they would incur greater interest costs on the debt as a result of this advice. Mr and Mrs R had a healthy amount of disposable income. There was no financial need to consolidate their loans into the mortgage. It appears to me to be something that they had not originally intended to do.
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> LGPS say that Mr and Mrs R wanted to increase their disposable income and their recommendation achieved that. I see no evidence of that wish or need on the client fact find. I think that most people would have the same wish whatever their circumstances. However the desire to increase disposable income cannot be at any cost. It was the advisor's duty to warn Mr and Mrs R against taking actions that would likely be financially detrimental to them. LGPS point out that Mr and Mrs R were made aware of the likely additional interests cost in consolidating their debts. However it is not enough to simply point out the consequences of their poor advice and then hide behind that disclosure. My conclusion of course would be different if Mr and Mrs R were struggling to meet their repayments and there was a clear need to reduce their outgoings. In such a case, the short term gain of lower repayments may well justify the long term increased costs of the consolidation.
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> I've also considered LGPS' assertion that any increase in overall costs to Mr and Mrs R could have been countered by making overpayments to the mortgage. LGPS' unsuitable advice cannot be negated by suggesting that the recipients had the facility to make over payments to counter the additional costs that they will face as a consequence. If the advisor's plan was that Mr and Mrs R should make overpayments to the mortgage to reduce interest costs then he should have recommended it and stressed its importance. He didn't.
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> Moreover, the assertion that Mr and Mrs R could have made overpayments to the mortgage is at odds with their claim that they wanted to increase their disposable

income. Making overpayments would result in reducing their disposable income. LGPS cannot argue both points. It is also worth remembering that, although the mortgage allowed them to make overpayments, so did their credit card and without the set up costs and fees of a mortgage.

I am persuaded that the consolidated debts would have been repaid by this time if they had remained unsecured; I am therefore likely to direct Legal & General Partnership Services Limited to:

- calculate the amount Mr and Mrs R have paid towards that part of the mortgage balance represented by the consolidated debts at the date of settlement. This is to include both interest at the rate applied to both from time to time and capital repayments.
- calculate the amount of the consolidated debt still remaining on the mortgage balance as at the date of settlement; and
- calculate the amount Mr and Mrs R would have paid to repay the debts had they not been consolidated taking account of the interest rate applied to the credit card and loan from time to time up to the date they would have been repaid.

LGPS are to add the first two figures together, deduct the third and pay the result to Mr and Mrs R.

I am also minded to direct that LGPS refund to Mr and Mrs R that part of the broker's fee that applied to the amount representing the consolidated debts. As this amount was added to the loan LGPS should refund the mortgage interest that accrued on this part of the debt."

Both Mr and Mrs R and LGPS submitted further information in response to my provisional decision.

Mr and Mrs R sent in documents they say were used by LGPS' advisors generally at the time of meeting with Mr and Mrs R. They say, in essence, that they were an aid for advisors and contained questions for clients, many of which were leading questions worded to generate additional sales for LGPS.

LGPS asked that I consider some further points that I'll summarise. It says that although Mr and Mrs R hadn't suggested they were considering debt consolidation on the "client review" they completed, this document just formed the basis for a subsequent conversation between them and its advisor when they met. So whilst Mr and Mrs R may not have been considering debt consolidation initially, LGPS' advisor applied his expertise having assessed their circumstances and objectives and put his recommendations to them in the suitability letter. It says that Mr and Mrs R were free to accept or reject this advice as they saw fit. It says that the fact Mr and Mrs R rejected LGPS' recommendation to take insurance was evidence that they knew they had such a free hand to make their own decision.

LGPS also made the point that Mr and Mrs R's level of debt suggested they were actually overspending and hence there was the need to reduce their outgoings by consolidating their debts.

findings

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

I've looked at the documents Mr and Mrs R sent me. They don't change my findings; they merely endorse what I have already concluded

Turning to LGPS' further submissions, whilst I agree that Mr and Mrs R seemed to be aware they had a free hand to either accept or decline the advisor's advice that doesn't absolve the advisor of his responsibility to actually advise. LGPS says that Mr and Mrs R's financial situation was worse than that evidenced by the information recorded on the fact find because of the level of debt they had built up. But the point is the advisor needed to *evidence* that he was recommending debt consolidation because Mr and Mrs R were overspending each month and to justify the increased cost of debt consolidation for this reason.

As it was the advisor indicated that Mr and Mrs R had a healthy level of disposable income, whether this was actually the case or not. Based upon this he should have said whether or not *he* thought debt consolidation was in Mr and Mrs R's best interests rather than justifying it because it's what they wanted. If Mr and Mrs R decided to consolidate their debts *against* his judgement that's not unreasonable but again, the fact they've done so needed to have been evidenced.

For these reasons having considered everything that both parties have said, I don't intend to depart from my provisional decision.

my final decision

My final decision is that I uphold this complaint. I therefore direct Legal & General Partnership Services Limited to:

- calculate the amount Mr and Mrs R have paid towards that part of the mortgage balance represented by the consolidated debts at the date of settlement. This is to include both interest at the rate applied to both from time to time and capital repayments.
- calculate the amount of the consolidated debt still remaining on the mortgage balance as at the date of settlement; and
- calculate the amount Mr and Mrs R would have paid to repay the debts had they not been consolidated taking account of the interest rate applied to the credit card and loan from time to time up to the date they would have been repaid.

LGPS are to add the first two figures together, deduct the third and pay the result to Mr and Mrs R.

I also direct LGPS to refund to Mr and Mrs R that part of the broker's fee that applied to the amount representing the consolidated debts. As this amount was added to the loan LGPS should refund the mortgage interest that accrued on this part of the debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 26 November 2015.

James Hargett
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