

complaint

Mr and Mrs H through their representative B complain that the appointed representative of Legal & General Partnership Services Limited, A, mis-sold them a mortgage in 2006. They want compensation.

background

Mr and Mrs H took advice from A, an appointed representative of Legal & General, in 2006 about getting a new mortgage. B said that the mortgage had been mis-sold as it unnecessarily included debt consolidation, was unsuitable and resulted in Mr and Mrs H owing more than the property was worth under the mortgage ("negative equity"). The mortgage recommended by A included a linked unsecured loan.

B complained to Legal and General. It said the mortgage was suitable as Mr and Mrs H wanted a fixed interest rate mortgage and to increase their disposable income. The new mortgage, together with the debt consolidation, was suitable as it reduced both the overall payment and interest paid each month. Other issues raised by B were dealt with, but don't form part of this complaint.

B complained to us. The adjudicator's view was that A hadn't acted unfairly or unreasonably when advising Mr and Mrs H. They had significant debts at a higher interest rate than the mortgage and loan recommended by A. It had explained that if they used a mortgage to repay the debts, more interest would be paid long term but the monthly payments would be lower. A also explained to Mr and Mrs H that they'd be borrowing more than the property was worth. The adjudicator noted the unsecured part of the loan from the mortgage lender didn't have to be paid when the property was sold, so technically Mr and Mrs H weren't put into negative equity. The adjudicator thought that given the circumstances, the mortgage was suitable as Mr and Mrs H got the benefit of fixed payments, lower monthly payments, a cheaper unsecured loan and money to improve their home.

B disagreed. It said Mr and Mrs H did have disposable income before they took advice, and the purchase of an insurance policy affected the advice given by A. In other words, B thought A was trying to ensure the policy was bought and advised about the mortgage in such a way to ensure the policy was affordable. B also noted that one of the loans included in the debt consolidation only had three years left to run, but was included in the remortgage as a slightly lower interest rate but for 23 years. It said the mortgage and unsecured loan put in place by A did cause negative equity.

The adjudicator pointed out Mr and Mrs H were only paying the minimum payment on their loans before remortgaging, and said the issue about the insurance policy had been previously dealt with. She still thought the mortgage was suitable.

my findings

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

I'm satisfied based on the evidence before me that the remortgage in 2006 was driven by Mr and Mrs H's wish to deal with their debts and borrow more money. The insurance policy wasn't related to this desire, and from the available evidence, I'm not satisfied that A deliberately structured its advice to get Mr and Mrs H to take out the policy. The monthly cost of the cost wasn't enough to affect the affordability of the mortgage. I note the sale of the policy has previously been dealt with.

A's advice was clearly designed to achieve the needs of Mr and Mrs H. But that doesn't mean the mortgage it recommended was suitable or that it was fair and reasonable to recommend debt consolidation. Simply because a consumer wants something, it doesn't mean it's suitable to recommend.

But Mr and Mrs H did have a considerable amount of debt compared to their income, and they weren't able to reduce the debts or pay more than the minimum amount for many of those debts. I think it was fair and reasonable for A to look at the overall situation, particularly as it wasn't a debt adviser. Taking the whole debt, A's advice did reduce Mr and Mrs H's monthly payments significantly, and as the new mortgage and linked loan was on a repayment basis, ensured more than the minimum payment would be made. Mr and Mrs H also had the extra borrowing to improve their home and an increased disposable income. A explained the impact of debt consolidation clearly to Mr and Mrs H; it was their choice to go ahead.

I thought about the linked unsecured loan and the fact that combined with the mortgage, Mr and Mrs H borrowed more than the property was worth. B is incorrect to say the property's in negative equity – the unsecured loan isn't secured on the property. It can continue even if the property is sold or mortgage repaid. I think it's likely that Mr and Mrs H owed more than the property was worth before the advice was given by A, so I can't say that their position was worsened. In fact, arguably it was improved as by remortgaging Mr and Mrs H were able to start repaying all of their debts and manage their financial position. And Mr and Mrs H were warned by A that they were borrowing more than the property's value, but they choose to go ahead and signed the document in which they were warned.

In all the circumstances, I can't say the mortgage recommended by A or the debt consolidation wasn't suitable. I'm not commenting on the sale of the insurance policy.

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 H to accept or reject my decision before 3 May 2017.

Claire Sharp
ombudsman