Financial Ombudsman Service

complaint

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

background

Mr and Mrs C, acting on a recommendation from L&G, re-mortgaged. In doing so, they changed lender, incurred an early repayment charge ("ERC"), consolidated some unsecured debt, extended the term of the mortgage and raised some capital.

Mr and Mrs C's representative complains that the recommendation was unsuitable, because there was no need to re-mortgage at this point and incur the ERC, because debt consolidation wasn't appropriate and too much capital was raised. L&G accepts that too much capital was raised but doesn't consider Mr and Mrs C have suffered a loss as a result. Overall, it considers the recommendation to have been suitable, and our adjudicator agreed.

The case therefore came to me for a decision to be made. Because I took a different view of it to the adjudicator, I issued a provisional decision allowing the parties to comment before I reach my final decision.

my provisional decision

In my provisional decision, I said:

> I can't see that debt consolidation was appropriate in this case. According to the client review, Mr and Mrs C had a comfortable monthly surplus so had no need to reduce their outgoings. Two debts were consolidated. One was a short term furniture loan on a 0% interest rate. And the other was a personal loan taken out the month before to consolidate debt. I can't see any reason why it was necessary to consolidate again so soon. By doing so, Mr and Mrs C would pay at least double the amount of interest over the length of the term – more, if interest rates rise – for little benefit.
>
> I find the evidence about capital raising contradictory. The mortgage analysis says that Mr and Mrs C's purpose in seeking advice was to save money, not raise capital, though it notes that at some future point they would like to add a conservatory, at a cost of £10,000. The record of suitability says that they wanted £5,000, for (unspecified) home improvements. Their representative says that they didn't want capital at all, but that it was urged on them by the adviser.
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> It seems to me to be most likely that they wanted to raise £5,000 for home improvements, as that is what appears on the signed suitability record, which therefore is most likely to capture their contemporaneous requirements. In the event, L&G arranged a mortgage that raised much more than this.
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> I can't see that there was any urgency to the capital raising. There is no suggestion that the home improvements had to be carried out immediately and couldn't be postponed. And it appears to me that postponement would have been the most suitable option – as that would have avoided the need to pay a substantial ERC.

It therefore seems to me that the right advice in this case was firstly not to proceed at all but to wait until the end of the ERC period; and secondly not to re-consolidate the recently consolidated debt (or include the 0% loan). I can't see that this advice was given. I'm therefore minded to find that this was not a suitable recommendation and that this mortgage should not have been arranged at this time.

In order to put Mr and Mrs C back in the position they would have been in, as far as is possible, L&G should refund all the fees and charges paid to set up the mortgage, and should make redress for the unnecessarily consolidated debt. The ERC should also be refunded.

the responses to my provisional decision

Mr and Mrs C's representative accepted my provisional decision. L&G didn't respond to it.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from the conclusions I reached in my provisional decision.

my final decision

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

- Calculate the amount Mr and Mrs C have paid in capital and interest payments in respect of the consolidated debt;

- Calculate, as at the date of settlement, the amount of the outstanding mortgage balance represented by the consolidated debt;

- Calculate the amount Mr and Mrs C would have paid to settle the two loans had they not been consolidated;

- Add together the first two figures, deduct the third and pay the result as a lump sum to Mr and Mrs C;

- Refund all broker, lender and valuation fees paid to set up this mortgage, and the early repayment charge, adding interest at the mortgage rate for any fees added to the loan and interest at 8% simple for any fees paid up front.

I make no award in respect of the unnecessary capital raising since the terms of the mortgage offer allowed Mr and Mrs C to pay it back without penalty at any time.

If L&G considers that it should deduct income tax from the 8% interest element of my award, it should give Mr and Mrs C the necessary certificate.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs C to accept or reject my decision before 18 December 2014.

Simon Pugh
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