

## **complaint**

Mr and Mrs S complain that the appointed representatives of Legal & General Partnership Limited (L&G) mis-sold them a mortgage. Mr and Mrs S would like the fees and charges to be refunded.

## **background**

Mr and Mrs S re-mortgaged in 2006 through a recommendation from an L&G appointed representative. The recommendation was to consolidate their debts in a new mortgage and to pay an early repayment charge ("ERC") to exit their existing mortgage. The ERC on their present mortgage product was £1,755 and became payable if the existing mortgage was redeemed by 22 December 2006. The remortgage completed in March 2006.

The client review recorded that Mr and Mrs S had the following debts:

- A credit card with a balance of £4,000 on which Mr and Mrs S were paying £220 per month.
- A credit card with a balance of £1,900 per month and interest at 18.9% on which Mr and Mrs S were paying £100 per month.
- A credit card with a balance of £500 with interest charged at 29.89% on which Mr and Mrs S were paying £30 per month.
- A credit card with a balance of £300 with interest charged at 21% pa on which Mr and Mrs S were paying £20 per month
- Mr S had an overdraft facility with a balance of £1,200 and interest at 16% which he was repaying at £20 per month.
- Mrs S had an overdraft facility with a balance of £500 and interest at 16% which she was repaying at £20 per month

There were also a number of fees to pay. Along with the mortgage L&G sold Mr and Mrs S a wills package. L&G offered to refund the mortgage interest Mr and Mrs S paid or would pay on the money raised to purchase the will (£464.13) until 27 March 2027 which is the date the mortgage is to be repaid.

Our adjudicator examined the sales process and issued his view. He didn't believe that the mortgage recommended was unsuitable or that the legal and legal administration fees were unfair. He also felt that L&G's offer in respect of the wills package was fair. But he expressed the following concerns:

- He felt that Mr and Mrs S shouldn't have been advised to incur an ERC ; and
- Although our adjudicator thought that some of the debt consolidation was appropriate, he felt that consolidating the low balance credit cards (of £500 and £300) and overdrafts was unfair.

So, overall, our adjudicator recommended that this complaint should be upheld and set out a process to calculate the redress for the inappropriate ERC and debt consolidation.

L&G disagreed. In respect of the ERC, overdrafts and credit cards, it felt that Mr and Mrs S wanted to make immediate savings and so incurring the ERC was justified.

## **my findings**

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

In 2006, L&G recommended a re-mortgage to Mr and Mrs S part of which raised money for them, part paid off debts, part repaid the existing mortgage and the remainder was for fees. Looking at the mortgage recommended, although the sourcing information highlights other deals, I believe that the deal with the chosen lender was the best available in the circumstances. I'm also satisfied that Mr and Mrs S were aware of and accepted the legal and legal administration fees to complete this mortgage and that these were properly charged.

I have issues with the extent of the debt consolidation and the payment of the ERC. The client review provides a snapshot of Mr and Mrs S and their family's finances in early 2006. After payment of their mortgage, living expenses and payments towards their unsecured debts they still had £321 per month excess income. They had reached the limits on their two largest credit cards. There is a note in the review that tries to explain why this is - apparently the credit card debts increased because of home improvements. The picture I have is not of a family drowning in debt but one that had issues with a number of credit cards and could do with consolidating the cards with the largest balances.

It clearly made sense to consolidate the credit cards with the high interest and high balances but as our adjudicator points out the consolidation of those with the new mortgage would have given a saving of £143.49 per month which would have meant the overdrafts could have been paid within 12 months rather than tied into a long term mortgage. Given the disposable income of Mr and Mrs S it also doesn't seem reasonable to tie in the low balance credit cards so that they are paying these over the lifetime of the mortgage.

The other issue is the payment of the ERC and whether it was good advice to drawdown the mortgage immediately or wait until the end of the year when there would be no ERC payable. L&G's view is that it was reasonable to advise Mr and Mrs S to pay the ERC in March 2006 to get the advantages of the new mortgage rather than waiting until December when they could have moved their mortgage without paying that charge. The ERC was £1,755. L&G says that as Mr and Mrs S were on their limits on two credit cards and approaching the limit on two overdrafts it meant that it was reasonable for the adviser to recommend that they access the new mortgage early.

L&G says that Mr and Mrs S were overspending. Mr and Mrs S both had overdrafts. Mr S's agreed limit was £1,500 and the balance was £1,200 expected to stay the same. Mrs S had an overdraft of £500 expected to rise to the agreed limit of £1,000. L&G's point is that the reality of the situation was that Mr and Mrs S were struggling financially and were worse off than appears on the client review which shows a surplus of £321. L&G says that taking out the new mortgage immediately was good advice as it moved Mr and Mrs S from overspending each month to a positive disposable income of £578.01.

But, clearly the overdrafts weren't at the limit and I've no history as to how they arose and whether it indicates continued overspending or not. This was a family with three children living at home and I would expect the overdraft at the beginning of the year, just after

Christmas, would be worse than the rest of the year so may indeed have reflected a once in a year situation. That I believe to be a reasonable expectation and so, I don't believe it was reasonable for L&G to have included these overdrafts in the debt consolidation.

As I say above, the picture I have is not of a heavily indebted couple who had urgent need of the debt consolidation. There were some advantages in the debt consolidation but L&G should have been more selective in the recommendation of what was to be included in it and not adopted the broad brush approach that it did. The payment of the ERC would have been a heavy payment to Mr and Mrs S and even more so as it became consolidated in the mortgage. Mr and Mrs S would certainly have benefited from the remortgage, so L&G was entitled to its fee for arranging it. But there clearly would have been more benefit in waiting until December and I believe that that is what L&G should have recommended.

On that basis, I intend to uphold this complaint. I don't believe that L&G provided suitable advice to include the low balance credit cards and overdraft in the debt consolidation and I believe that L&G should have recommended that Mr and Mrs S wait to remortgage until a time when they didn't have to pay an ERC. I set out how L&G should set this right below

In respect of the wills package that L&G sold, I don't consider that it was mis-sold to Mr and Mrs S as they may have benefited from making a will. But I believe that it was unsuitable advice to fund it through the mortgage. So I agree with the offer contained in L&G's letter of 20 December 2018 to refund the interest paid for this expenditure.

### **my final decision**

My decision is that I uphold this complaint and that Legal & General Partnership Services Limited should:

- Calculate the amount Mr and Mrs S have paid as part of the mortgage in respect of the two low balance credit cards and the two overdrafts to date.
- Calculate the amount of these debts still outstanding on their mortgage balance.
- Calculate the amount it would have cost to pay off the debts had they not been consolidated, assuming that the payment amounts and interest rates shown in the client review stayed the same.
- Add together the first two figures and deduct the third and pay the result as a lump sum to Mr and Mrs S.
- Calculate the ERC and the interest paid on it for the life of the mortgage.
- Pay this as a lump sum to Mr and Mrs S.
- Pay the offer made by L&G to Mr and Mrs S in its letter of 20 December 2018.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 11 July 2020.

Gerard McManus  
**ombudsman**