

complaint

Miss S complains that Legal & General Partnership Services Limited mis-sold a mortgage to her. Miss S is represented by a solicitor.

background

Miss S took out a mortgage in 2007. She applied for a joint mortgage with her partner. During the application process, her partner lost his job. She says Legal & General advised her to proceed on her own. It recommended a 25 year interest only mortgage of about £70,000.

Miss S says the mortgage recommended by Legal & General was not suitable as:

- It did not take her change in circumstances during the application process into account. It did not assess whether the mortgage was affordable on her income alone.
- It did not assess whether the mortgage was affordable if circumstances changed – such as an increase in interest rates. Miss S's relationship broke up and her mortgage account fell into arrears.
- It recommended an interest only mortgage but did not offer guidance on repayment vehicles.
- It recommended a sub-prime lender when she had a good credit record and cheaper options were available.
- It did not explain the cost of adding fees to the mortgage.

The adjudicator recommended that the complaint should be upheld. She said:

- At the time, Miss S was a newly discharged bankrupt hoping to buy a shared ownership property. The choice of lenders and products was limited. Miss S wanted certainty of payments. The adjudicator said the product recommended by Legal & General was suitable.
- The recommendation was unclear about the reasons for an interest only mortgage. It assumed Miss S would be able to obtain a better interest rate after about two years. This was not certain. There wasn't a great difference in monthly payments between an interest only and repayment mortgage. A repayment mortgage would have been affordable. The advice to take out an interest only mortgage without a repayment vehicle just postponed repayment of the mortgage. This was not in Miss S's best interests.
- Legal & General had advised Miss S to change to a repayment mortgage after two years. It was not responsible for Miss S not doing so.
- The advice given to Miss S to make the application on her own was sparse and did not take the change in her personal circumstances and finances into account.

The adjudicator said while the mortgage product was suitable, Legal & General's advice had not been fair or suitable. She said Legal & General should refund its brokers fee, plus interest, and pay two years' underfunding of the mortgage (that is, the additional amount she

would have paid had she taken out a repayment mortgage instead of an interest only mortgage).

Miss S agreed. Legal & General did not agree. It said a repayment mortgage would not have been affordable. It said Miss S would not have enough income left after making mortgage payments and this did not take into account the cost of supporting her partner. Miss S needed a mortgage and its broker's fee would have payable whatever type of mortgage it recommended. So it did not agree this should be refunded.

my provisional findings

I issued a provisional decision in September 2015 as follows.

Legal & General recommended the mortgage. So it had to obtain all relevant information and ensure any mortgage it recommended was suitable for Miss S's needs and circumstances. Legal & General did a fact find with Miss S and her partner. When her partner left his job, Legal & General amended the fact find and sent it, with a new record of suitability, to Miss S.

There were limited mortgage products available due to Miss S's circumstances and the shared ownership property. So I don't think Legal & General made an error by recommending a product from a non-high street lender. The product recommended by Legal & General met Miss S's aims. She wanted the certainty of fixed payments.

Miss S's mortgage was in arrears within two years. She says the mortgage was only affordable with her partner's income. However, I am satisfied Legal & General assessed whether the mortgage was affordable on the basis of her sole income. On the basis of the information about Miss S's income and outgoings in the sales documents, I don't think Legal & General was unreasonable in saying the mortgage was affordable.

Miss S says the application form completed by Legal & General is incorrect as it did not mention her young child. It seems likely this would have been relevant when assessing whether the mortgage was affordable. But there is no mention of a dependent child in the fact find, budget planner or record of suitability. As there is nothing to suggest Legal & General knew Miss S had a dependent child, I am not persuaded it made an error by not taking this into account or not mentioning it on the application form.

I do have concerns about the advice given by Legal & General.

The dates of the amended fact find and record of suitability suggest they were sent to Miss S after the application to the lender and exchange of contracts for the house purchase. I don't think this gave Miss S time to consider the advice.

I don't think Legal & General's recommendation of an interest only mortgage was suitable without properly considering how it would be repaid.

The mortgage application says the loan will be repaid from investment income/vehicle. It says Miss S will have income to use for this. Legal & General's documents also refer to an endowment policy. I have seen nothing to suggest Legal

& General discussed this with Miss S. This is not consistent with the record of suitability which says Miss S should change to a repayment mortgage.

Legal & General recommended Miss S change to a repayment mortgage after a couple of years when it expected she would be able to get a better interest rate. While two years of regular mortgage payments and distance from her bankruptcy might improve Miss S's credit record, there was no guarantee a better interest rate would be available. Also, I don't think the information used by Legal & General shows a repayment mortgage was not affordable at the time.

Overall, I don't think Legal & General properly considered whether a repayment mortgage was affordable or advised Miss S about repayment of the mortgage. Its recommendation unnecessarily delayed Miss S starting to repay the mortgage.

That said, Miss S did not review her mortgage after two years as Legal & General recommended. She could not maintain payments and her mortgage fell into arrears. It is unlikely she would have maintained payments for a repayment mortgage. So I think any compensation should be limited to the period during which she maintained payments.

Legal & General says its brokers' fee was payable regardless of the type of mortgage it recommended. But I don't think it is reasonable for Miss S to pay Legal & General for advice that was not suitable. So I find it fair and reasonable to require Legal & General to refund its brokers fee, with interest.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Legal & General did not comment on my provisional decision.

Miss S agreed with my findings but asked that I reconsider the compensation. Miss S said the complaint was complicated and she needed help with it. She agreed to pay a representative on a contingency fee basis. So the compensation needed to help her sort out her situation and cover her legal fees.

Miss S also asked that the compensation be paid to her rather than paid into her mortgage account, so she can choose how the money is used. She thinks it is unlikely her mortgage payments will reduce if the money is paid into her mortgage account. As she will have to pay her legal fees, she will be in a worse financial position.

We are a free and informal service and consumers should not need specialist advice or representation to bring a complaint to us. I don't think the nature or complexity of this complaint meant specialist help was needed. In the circumstances, I don't think it would be fair and reasonable to require Legal & General to pay Miss S's legal costs.

The purpose of my award is to put Miss S in the position she would have been in had Legal & General's advice been better. That is, she would have made some capital repayments to

her mortgage account. So, while I appreciate Miss S would prefer to choose how to spend the money, I still think the compensation should be paid to Miss S's mortgage account.

my final decision

My decision is that I uphold this complaint. In settlement of it, I order Legal & General Partnership Services Limited to:

1. Refund its brokers fee, plus interest at 8% simple from the date of payment to the date it is refunded.

HM Revenue & Customs may require Legal & General to take off tax from this interest. If that happens, Legal & General must give Miss S a certificate showing how much tax it's taken off if she asks for one.

2. Calculate and pay into Miss S's mortgage account:

(a) the difference between the monthly payments Miss S would have made had she taken out a repayment mortgage and the monthly payments she actually made for each month from the date the loan was taken out (26 January 2007) to the day following the first missed payment (1 August 2008), plus

(b) the interest applied to Miss S's mortgage account on the result of the calculations in (a) (from the date of each monthly payment to the date the compensation is paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 16 November 2015.

Ruth Stevenson
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