

complaint

Mr and Mrs C complain through their complaints management company ("CMC") that they got unsuitable advice from Legal & General Partnership Services Limited ("L&G") including to pay an early repayment charge ("ERC") when they remortgaged in 2008.

background

Mr and Mrs C remortgaged on the recommendation of an appointed representative of L&G in 2008. At that time, they had an existing repayment mortgage of £66,250 on which an ERC was payable if the mortgage redeemed before August 2008. The interest rate on the mortgage was 6.59% and the contractual monthly payments were £492.00. Mr and Mrs C also had two other loans and six credit cards with total balances of £22,585.00 outstanding, requiring monthly payments of £553.00. The L&G adviser produced a mortgage record of suitability ("MRoS") but was unable to source the recommended mortgage because of a reduction in the assumed property value.

The amended recommendation was to continue to pay the loans separately from the mortgage but to consolidate the credit cards into the mortgage and pay an ERC. The new mortgage had an initial interest rate of 9.15% pa. This meant that Mr and Mrs C were to make a new contractual monthly payment of £748.30 and continue to pay £341.00 towards the loans. Mr and Mrs C would have had to pay an ERC of £3,900.00 to their existing lender if they remortgage before August 2008. The adviser recommended that they remortgage immediately which they did in February 2008 thus incurring an ERC, the cost of which was added to the mortgage.

L&G believed that the adviser's recommendation was suitable. But there was also a wills package that the adviser recommended that Mr and Mrs C fund through the mortgage. L&G thought that this was unsuitable advice and in its letter of 22 November 2018, it offered to pay Mr and Mrs C for the interest they paid on this as part of the mortgage together with £150 for inconvenience.

our adjudicator's view

Our adjudicator noted that the recommendation allowed Mr and Mrs C to obtain a fixed rate scheme with a lender who would allow them to re-mortgage given their poor credit history. But he said that the result overall of the recommendation was to increase Mr and Mrs C's monthly outgoings and given that Mr and Mrs C wanted to reduce these, he felt that the advice to consolidate the debt was unsuitable as was the advice to pay the ERC. Our adjudicator recommended the following redress that L&G should:

- Calculate the amount Mr and Mrs C has paid to service the consolidated debt each month as part of their mortgage payments
- Calculate the amount of the consolidated debt 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 C
- Calculate the ERC and the interest paid on it for the life of the mortgage and pay this as a lump sum to Mr and Mrs C

- Pay the previous offer outlined for the complaint about the will service.

L&G disagreed saying in summary that the main reason for the remortgage was that Mr and Mrs C were missing mortgage payments in the previous year and so putting their house at risk if they continued with their outgoings. L&G says that Mr and Mrs C weren't in a healthy financial situation when they met the adviser and didn't have a disposable income of £186.42 per month as suggested in the client review.

My provisional findings

I issued a provisional decision in this complaint. I summarise my findings as follows. I said that I needed to address three areas

- Firstly, the advice to remortgage,
- Secondly the advice to consolidate the debts
- Thirdly the advice as to when to remortgage.

I noted that Mr and Mrs C's financial situation wasn't good before they took out this new mortgage. The client review recorded that they were arrears on their mortgage and arrears on their unsecured debts and had CCJs. On the other hand, the client review suggested that they had a healthy surplus each month. But I said I couldn't totally rely on the expenditure account in the client review as it gave no indication of where Mr and Mrs C's severe indebtedness came from.

I recorded that since our adjudicator issued his initial view L&G had supplied a mortgage statement from Mr and Mrs C's previous lender for 2007 which showed that the arrears at January 2008 were £1,523.18. So, I said that at that stage the account was three to four months in arrears. My view was that Mr and Mrs C were clearly in a very difficult situation and wanted a new lender and a fixed rate scheme with a chance for a fresh start. I noted that L&G seemed to have sourced the cheapest available product given Mr and Mrs C's credit history. So, I believed that given the arrears, if Mr and Mrs C hadn't remortgaged it was unlikely that they would still have been able to remain in their house where they still are ten years later. So, I said that that recommendation was suitable.

The second issue I had to deal with was whether the advice to consolidate the debt was suitable. I noted that because of an issue with the property valuation, not all of the debt could be consolidated, and Mr and Mrs C continued to pay the loans. Only the credit card debt, including two store cards with small balances, was consolidated which was £6,085.00. I said that according to the MRoS, consolidation of this debt would cost £15,151.00 over the lifetime of the mortgage. I noted that the problem with this partial debt consolidation was that it meant that Mr and Mrs C paid more - £1,089.30 per month - in total towards their debts after their mortgage than they did before which was £1045.00. So, I said that the benefit of debt consolidation, which was normally intended to reduce the monthly payments, was in fact lost but Mr and Mrs C still had the disadvantage of having to pay more over a longer period. So, I said that I didn't consider that the advice to consolidate the debts was suitable. I said that I intended providing redress to Mr and Mrs C for that and the redress should also include L&G repaying Mr and Mrs C the cost of the Brokers Fee referable to the debt consolidation as a proportion of the overall fee.

The other issue I dealt with was the advice to remortgage immediately rather than waiting until August when Mr and Mrs C could have avoided paying the ERC to their existing lender.

I noted that my view was different than our adjudicator who may not have been given the full picture at that time he issued his view.

I said that given what the level of arrears were, it wouldn't have been reasonable to advise Mr and Mrs C to delay re-mortgaging until August. By that stage the arrears may have increased, and it was a reasonable possibility that their existing lender may have issued legal action with the attendant costs. I believed that there was also the possibility that the proposed new lender may have withdrawn its product at that stage, either through commercial reasons or if Mr and Mrs C's financial situation worsened, leaving Mr and Mrs C without a fallback position. In the circumstances where their property was at risk, I believed that it was reasonable for L&G to recommend that the remortgage be completed at the earliest opportunity although this meant that Mr and Mrs C would have to pay the ERC. So, I didn't intend upholding that part of the complaint.

I also looked at the issue of the wills package. I said that I didn't consider that the recommendation that Mr and Mrs C take a wills package was unreasonable, but I agreed with L&G that the cost shouldn't have been added to the mortgage. So, I also agreed that the interest should be refunded, and Mr and Mrs C get compensation of £150 for their upset.

So, I said that for these reasons I intended to uphold this complaint in part, and I set out the proposed redress in my provisional decision. I invited the CMC and L&G to make further submissions or provide me with further evidence which I said I would consider before I came to a final decision.

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 note that L&G says it has no comments to make on my provisional decision. The CMC says that it agrees with our adjudicator's initial view but, beyond that, made no further comments on my provisional decision. I've reviewed that complaint again but am of the view that my provisional decision represents a fair outcome to this complaint. On that basis I uphold this complaint in part namely that the advice to consolidate debt was unsuitable but that a remortgage was appropriate advice as was the advice to pay an ERC. I also approve the redress set out in my provisional decision.

my final decision

My decision is that I uphold this complaint in part and require Legal & General Partnership Services Limited to:

- Calculate the amount Mr and Mrs C have paid to service the consolidated debt each month as part of their mortgage payments.
- Calculate the amount of the consolidated debt 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 C.

- Refund that part of the Brokers Fee referable to the amount of the debt consolidated as a proportion of the overall loan together with the mortgage interest Mr and Mrs C have paid on it from time to time.
- Pay the previous offer made in L&G 's letter of 22 November 2018 in respect of the complaint about the will service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 20 November 2020.

Gerard McManus
ombudsman