

complaint

Miss F complains that Legal & General Partnership Services Limited mis-sold her a mortgage. The complaint is brought on her behalf by a claims management company.

background

Following her meeting with Legal & General, Miss F agreed a two year fixed rate mortgage. This was a remortgage which included borrowing for debt consolidation and for Miss F to buy a car.

The adjudicator recommended that the complaint should be upheld. She concluded the advice Miss F received was unsuitable and that Legal & General should refund the early repayment charge (ERC), fees plus interest and to re-work the mortgage as if the debt had not been consolidated.

Legal & General responded to say, in summary, that:

- Miss F was spending all of her disposable income so there was no scope for her increasing her monthly expenditure. So it would not have been appropriate for Miss F to obtain a car loan.
- The fees incurred would still have incurred when Miss F's existing fixed rate expired and she remortgaged.
- It was suitable advice to re-mortgage and consolidate debt, enabling Miss F to borrow the extra money she wanted whilst reducing her monthly expenditure.

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 am unable to conclude that the advice Miss F received was suitable.

Miss F wanted to reduce her monthly expenditure and to borrow more money to fund a car purchase. I can see that Miss F's bank account was overdrawn and that she was generally spending all of her income and sometimes more each month. But, a few days before she met with the representative from Legal & General she had arranged a loan to consolidate her existing debts. There hadn't been the opportunity to see how this had improved her monthly finances and I can't conclude that it was appropriate to consolidate again, and over a longer period secured on her home, so soon after arranging the loan.

It seems from the income and expenditure recorded at the time, that Miss F did have a surplus of disposable income – although because her bank account had a relatively unchanging overdraft it would appear she chose to spend that income. But, as I said above, there had not been enough time since she had arranged the consolidated loan to understand the impact of that loan on her monthly financial position. And I think it is both possible and probable that Miss F could have afforded a car loan and that this would have been more suitable.

Miss F had to pay an ERC on her existing mortgage of £1,000. The new mortgage was at the same interest rate and she incurred fees for arranging the new mortgage which were added to the borrowing. Legal & General says Miss F knew how much she had to pay and that she agreed this by signing the “mortgage record of suitability”. But the fact that Miss F understood she would incur these fees did not make it suitable advice.

Miss F incurred various fees and charges when she remortgaged and I think these should be refunded and the mortgage should be re-worked as if the debt had not been consolidated. Legal & General says Miss F would have incurred fees anyway when her existing fixed rate mortgage ended – but she may have chosen to remain on her provider’s variable rate and I think the fees she did incur should be refunded.

my final decision

My final decision is that I uphold this complaint. In full and final settlement Legal & General Partnership Services Limited should:

1. Refund the early repayment charge incurred on Miss F’s existing mortgage.
2. Refund the set up fees and charges and broker fees and charges, as well as 8% simple interest per annum if paid up front, or at the mortgage rate if added to the mortgage balance.
3. Work out the amount paid to date in capital and interest payments for the consolidated debt;
4. Calculate how much remains on Miss F’s mortgage balance in respect of the consolidated debt;
5. Work out how much would have been paid to clear the debt if it had not been consolidated; and
6. Add together the figure obtained in 3 and 4, first and second figures, take away the figure obtained in 5, and then pay the result as a lump sum.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss F to accept or reject my decision before 17 August 2015.

Elizabeth Dawes
ombudsman