

## **complaint**

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

## **background**

In 2008 Mr and Mrs W were given advice about re-mortgaging by L&G's representative. They wanted to reduce their mortgage term to coincide with Mrs W's retirement. The advisor recommended a term of 11 years. The lender with the lowest total repayment by the end of the mortgage term was their existing one. But the advisor recommended a mortgage with an alternative lender with a two year tracker rate. The advisor also recommended consolidating two debts: i) a credit card debt at 0% interest for which Mr and Mrs W paid £200 monthly – the 0% rate was due to end soon; and, ii) an unsecured loan with 36 monthly repayments of £201 left.

Mr and Mrs W took out the recommended mortgage. It had two parts: i) a loan on an interest only basis which Mr and Mrs W planned to repay with an endowment policy; and, ii) a loan on a repayment basis which included the consolidated debts.

In 2015 Mr and Mrs W, via a representative, complained that they'd been mis-sold the mortgage on the basis that:

- The advisor should have recommended re-mortgaging with Mr and Mrs W's existing lender;
- It had been unsuitable to consolidate the debts;
- Mr and Mrs W hadn't known about L&G's fees and the legal fees. As this was a re-mortgage on an existing property these fees had been unnecessary.

L&G said that Mr and Mrs W had been unhappy with their existing lender and so the alternative lender was a suitable recommendation. Reducing the term of the mortgage meant higher monthly repayments. And Mr and Mrs W were also concerned about a shortfall from their endowment. And so consolidating their debts had also been suitable as it gave them a higher disposable income. Mr and Mrs W disagreed and brought their complaint to us.

The adjudicator decided that consolidating the credit card debt hadn't been suitable. But an alternative lender and consolidating the unsecured loan had been.

Mr and Mrs W's representative welcomed the decision about the debt consolidation but disagreed about Mr and Mrs W being unhappy with their existing lender. It says that L&G may have relied upon fact finding tools that encourage negative responses which is something that has been criticised in previous decisions of this service.

L&G also disagreed and said that consolidation of both debts had been suitable as it met Mr and Mrs W's need for a higher disposable income.

## **my provisional decision**

In my provisional decision, I said:

The fact finding questions used by the advisor are detailed in the case notes. Although it's different to the questionnaire, used by L&G in the past, which has been criticised by this service there are significant similarities. I think that the questions still encourage a negative response. Given this I don't think it'd be fair for me to rely on Mr and Mrs W's answers to these questions when considering the issue of whether they were genuinely unhappy with their existing lender. And so I have disregarded this document.

That being said, Mr and Mrs W's views about their existing lender are detailed elsewhere – namely the mortgage record of suitability ("MROS") and the notes associated with it entitled "MROS crib sheet". The "crib sheet" states that Mr and Mrs W were unhappy with their existing lender because they had spent "a number of hours" trying to speak to them and "gave up". It also states that their lender set up their existing mortgage without "sorting out" their endowment shortfall. Given that these are very specific reasons I think that it's highly likely that Mr and Mrs W told the advisor this. And so I think that it was reasonable for him to rely on what was a detailed explanation and to recommend the alternative lender.

The MROS and mortgage offer outlined L&G's fee and the legal fees. L&G's fee was also outlined in an "arrangement fee agreement". As Mr and Mrs W signed both the MROS and the fee agreement I think that they were, or certainly should have been, aware of these fees. It's acceptable practice for an advisor to charge a fee and the legal fees would have been necessary given that Mr and Mrs W were switching lenders.

In reaching these conclusions I have noted that the MROS signed by Mr and Mrs W was an amended version. The original version states Mr and Mrs W's dissatisfaction with their lender and the fees in identical terms and so it's consistent with the signed version.

And so the only remaining issue is the debt consolidation:

I accept that Mr and Mrs W wanted a higher disposable income to cover the mortgage repayments and any shortfall from their endowment. Consolidating the debts achieved this and so clearly met their needs and preferences. But that didn't necessarily make it a suitable recommendation.

I fully understand why Mr and Mrs W expressed a preference for a higher disposable income. But as far as I can see if they hadn't consolidated the debts they would have still managed quite well on the lower amount. In any event, given that both debts would have been fully repaid within three years the lower disposable income would have only been in the short term. Once repaid Mr and Mrs W would have had an extra £401 disposable income a month. This amount, over the remaining eight to nine years of the mortgage term, would have funded any shortfall in their endowment. And so there was no real need for a higher disposable income in the short term.

I accept that the advisor explained that consolidating would cost more in the long term and he calculated how much more Mr and Mrs W needed to repay – all of which was proper. But in the circumstances of this case, I think it would have been reasonable for him to have gone further and explained that although consolidating would provide a higher disposable income in the short term, they would make significant savings in the long term once the unsecured debts had been repaid. In my view the long term savings outweighed the short term benefit of consolidating.

On the available evidence, I consider it's more likely that if Mr and Mrs W had been advised about the short term benefits of consolidating in contrast to the long term savings of not doing so they wouldn't have wanted to consolidate either debt.

For all of these reasons I'm not persuaded that consolidation of either debt was suitable for Mr and Mrs W.

### **the response to my provisional decision**

Mr and Mrs W's representative objects on the basis that the advisor shouldn't have recommended the alternative lender. It raises the following points:

- Mr and Mrs W's existing lender wasn't entitled to advise them about their endowment shortfall and so their dissatisfaction with the lender was ill founded. The advisor would have known this and so should have told Mr and Mrs W that the existing lender had done nothing wrong.
- It accepts that "it is very likely" that Mr and Mrs W expressed some of the other concerns. But, again, the advisor should have provided impartial advice and explained why the existing lender couldn't have complied with Mr and Mrs W's requests.
- The reasons noted in the MROS "crib sheet" as to why Mr and Mrs W's were unhappy with their existing lender shouldn't have been taken into account given that those reasons were ill founded.
- Mr and Mrs W's concerns alone didn't justify the advice to move away from their existing lender especially given L&G's history of encouraging customers to change lenders. Plus those concerns were manufactured by L&G.

The representative also queries the relevance of my reference to the signing of the MROS and L&G's fees and the advisor's fees.

L&G has also objected to my decision. It says that the shorter mortgage term reduced Mr and Mrs W's disposable income. If they hadn't consolidated their loans that disposable income would have been even lower thereby impacting negatively on their standard of living. And so whilst they might have been able to cope with the lower amount it didn't mean that they wanted to. Advice that met clients' needs and preferences, whilst informing them of the costs and consequences, was suitable advice. The advisor correctly explained the implications of debt consolidation and made Mr and Mrs W fully aware of the consequences of that course of action. And so they made an informed 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've also considered again my provisional decision in light of the responses to it. I'm grateful for the prompt and efficient way both parties responded.

I think that the relevance of the MROS "crib sheet" has been confused somewhat. That evidence is relevant to whether or not Mr and Mrs W reasons for being unhappy with their existing lender were given freely. The reasons noted in the crib sheet are detailed and specific – as opposed to a "yes" or "no" answer generated by questions designed to encourage a negative response. It's for those reasons that I concluded that the crib sheet is evidence that Mr and Mrs W gave their reasons freely. And so the advisor was entitled to

rely on those reasons when making his recommendation to switch lenders. To that end the crib sheet is evidence in this case that I'm entitled to take into account.

Turning to whether or not Mr and Mrs W's reasons were valid, in particular their complaint about their endowment shortfall – even if the existing lender couldn't have advised on the endowment shortfall as suggested it may have been able to offer Mr and Mrs W other solutions such as a longer mortgage term. It wouldn't have been possible for the advisor, who had no affiliation with the existing lender, to know what options could have been offered to Mr and Mrs W. And so it'd be unfair to conclude that, having established the reasons why Mr and Mrs W were unhappy with their existing lender, the advisor had an additional duty to advise them on the validity of their reasons.

I fully accept L&G's comment that the advice given in relation to the consequence of consolidating the loans was entirely proper. But it was incomplete. The advisor should have also explained the consequences of not consolidating – namely the savings that Mr and Mrs W could have made in the long term. And so I can't be satisfied that Mr and Mrs W made a fully informed decision.

Of course there's always the possibility that Mr and Mrs W would have nevertheless chosen to consolidate their loans. But there's no way to establish that now and so I need to consider what would have been more likely. Given that Mr and Mrs W's disposable income if the loans hadn't been consolidated, although not what they were used to, would have still been a reasonable amount to live on, I don't think they would have chosen to consolidate had they been given full advice.

Overall, I'm not persuaded to change my opinion and my provisional findings stand.

As an aside, and for the purposes of clarification: my reference to the two versions of the MROS and the various fees was in response to the following: i) a letter from Mr and Mrs W stating that they'd been unaware of the fees; and, ii) the representative's request for a comparison of the information contained in the original and final versions of the MROS – it being suggested that the original was the version that Mr and Mrs W were shown and upon which the recommendation was based.

### **my final decision**

For the reasons I've given, my final decision is to uphold this complaint in part. I direct Legal & General Partnership Ltd to:

- Calculate the monthly payments to service the amount consolidated for both debts, including the interest paid, up to the date of settlement ("figure A").
- Calculate how much of the consolidated debts remain as part of the mortgage balance at the date of settlement ("figure B").
- Calculate how much it would have cost Mr and Mrs W to pay back the two debts if they hadn't been consolidated ("figure C").

- Then add together figures A and B minus figure C and pay that amount as a lump sum to Mr and Mrs W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 12 October 2015.

Sim Ozen  
**ombudsman**