

complaint

Mr and Mrs J complain, via their representatives, that their interest-only mortgage with AWD Home Finance Limited (AWD), represented by Legal & General Partnership Services Limited (L&G), was unsuitable and lost them the opportunity to make an arrangement with their unsecured creditors. They say they now have no way of repaying the mortgage and it has effectively guaranteed they will have to sell their home.

Mr and Mrs J's representatives said that the advice given to Mr and Mrs J was in breach of the mortgage rules in that it was unaffordable and increased their costs over the period of the mortgage. They said the re-mortgage increased the risk of losing their home as it secured previously unsecured debt and switched their repayments to an interest-only basis.

my provisional conclusions and the responses

The adjudicator did not recommend that the complaint be upheld. I agreed, but issued a provisional decision in order to give the parties further opportunity to comment if they wished. I set out the background to the complaint within my provisional decision, which is attached to this final decision.

In my provisional decision I considered the advice about re-mortgaging Mr and Mrs J received and the key point of the complaint that they were not advised, contrary to the mortgage rules, as to whether it would be more appropriate in their circumstances to reach a payment arrangement with their creditors, rather than secure their debt to their mortgage.

I said that I could find no evidence of advice given to Mr and Mrs J on this point but that in the light of their financial crisis and other circumstances, the potential lack of advice about a payment arrangement did not render the overall advice unsuitable for their needs. I did not agree with the representatives that the advice from AWD meant they would necessarily lose their home.

Mr and Mrs J's representatives have responded at length and said they understood the central point of the provisional decision to be that the rule breach doesn't matter, but questioned our approach under the law and the framework within which we work.

Mr and Mrs J's representatives said that AWD's adviser was under an obligation to give suitable advice and communicate it clearly and fairly. The lack of consideration of any negotiation with creditors meant their conduct was negligent and the question to be addressed is whether any loss occurred.

Mr and Mrs J's representatives said the main purpose of the rules is to stop people getting in a worse situation and securing unsecured debt where that might lead to bigger problems. They said the provisional decision just expressed an opinion that an alternative payment arrangement was unrealistic, with no supporting evidence.

The representatives said they had worked their clients' finances through a debt charity plan and this demonstrated that a payment arrangement was achievable. They said their clients would have undertaken a debt management plan had they been properly advised to consult someone who could help. They said this is a key piece of evidence and if it were to be discounted a further provisional decision would be justified.

L&G made no further comment.

my final decision

I have considered all the available evidence and arguments again to decide what is fair and reasonable in the circumstances of this complaint. It is not our role to comment on legal case law, or other complaints to this service, and I have not done so. I do not consider that a further provisional decision is required.

I agree with the representatives that our judgment in reaching a decision on the merits of a complaint remains what is set out within the legislation that creates our service, namely what we consider to be fair and reasonable in all of the circumstances of the complaint, including consideration of the law and industry practice.

Having looked again at the mortgage records, the mortgage rules and the further representations, I remain of the view that the overall advice Mr and Mrs J received does not appear to be unsuitable given their very difficult circumstances at the time. This is for the reasons I have given in my provisional decision and is expanded upon below in order to deal with the main points raised by Mr and Mrs J's representatives. In reaching this conclusion I have borne in mind that Mr and Mrs J were in their 50s, on a basic income of £17,500 and held unsecured debts of almost £40,000.

From Mr and Mrs J and their representatives' descriptions, their debt problems when they re-mortgaged were out of control. From the business records it would appear they had reached similar crisis points before. They said that their previous re-mortgage had been unsatisfactory as it left an amount outside the mortgage which was unaffordable to them. Shortly before dealing with AWD they rejected a further re-mortgage as it would have failed to include all of their debt. The re-mortgage arranged by AWD allowed them to relieve the immediate pressure of their debts and repay them over a longer period at a lower interest rate.

The re-mortgage represented a substantial saving on Mr and Mrs J's monthly outgoings and their representatives said the new payments were affordable to them. From what I have seen I consider it more likely than not that Mr and Mrs J were aware of the other options that might be available to them and that the course of action they agreed with AWD was not unreasonable in the circumstances.

Mr and Mrs J's representatives did not agree and said that a debt management plan would have been a viable option, and forwarded an example based on Mr and Mrs J's finances. I have looked at the plan and note that it states that it is an example of what might be possible if the creditors agree, but that there is no guarantee of this.

The adjudicator said that a payment arrangement would have damaged Mr and Mrs J's credit rating, particularly as their mortgage account was up to date and not in arrears. I think this was one factor that made re-mortgaging a more attractive option to Mr and Mrs J, but more important was their very difficult circumstances, the savings they would make and their previous inclination to consolidation their debts to their mortgage. For these reasons I am not of the view that Mr and Mrs J would have done anything differently if they had been advised by AWD about the possibility of a payment arrangement.

Consideration of a payment arrangement is a requirement of the mortgage rules, where there have been payment difficulties, and I am critical of AWD's adviser for failing to document anything about this. However, AWD has made an assessment of Mr and Mrs J's

needs and I consider that overall its advice met those needs and was not unsuitable given the gravity of their situation.

I also remain of the view that AWD made Mr and Mrs J aware that the re-mortgage was on an interest-only basis and that they would need to repay the loan at the end of the term, including the fees they were charged. I can see there was a discussion between AWD's adviser and Mr and Mrs J about the repayment of the loan, and Mr J wrote to say that this would be by downsizing their property. I do not doubt what Mr and Mrs J's representatives say about the lack of means of repayment, but can see that AWD demonstrated their intention to repay the mortgage which is the requirement within the mortgage rules.

In conclusion, I am not of the view that Mr and Mrs J would have acted differently had AWD advised them to explore a payment plan, and I do not consider its overall advice to have been unsuitable in their circumstances.

My final decision is that I do not uphold the complaint and do not require Legal & General Partnership Services Limited to pay any compensation.

Andrew Fraser
ombudsman