Financial Ombudsman Service

complaint

Mr and Mrs E complain about advice given to them by AWD Home Finance, a mortgage broker and appointed representative of Legal & General Partnership Services Limited. They say it mis-sold a mortgage and other products to them. A claims management company (CMC) brings this complaint on behalf of Mr and Mrs E. It asks that L&G refunds fees and pays compensation for Mr and Mrs E's financial loss and inconvenience.

background

Mr and Mrs E took advice from the broker in 2005. The CMC says the advice given by the broker wasn't suitable. It says Mr and Mrs E didn't want or need to re-mortgage and had to pay an early repayment charge to do so. It says they were cold called by the broker against their wishes.

The CMC says Mr and Mrs E had no need to consolidate unsecured debts and the brokers' advice to do this was unsuitable. The CMA says Mr and Mrs E should have been advised to take a further advance from their existing lender.

The CMC also says that Mr and Mrs E paid a solicitor to act on their behalf even though some lenders offered this free of charge. And they were coerced into using the services of a particular solicitor.

Our adjudicator didn't recommend that the complaint should be upheld, saying:

- the broker's records say that Mr and Mrs E wanted to consolidate debts and borrow an additional £5,000 for home improvements. They wanted one manageable monthly payment. The mortgage recommended by the broker achieved these aims.
- Mr and Mrs E were aware of the ERC payable to their previous lender and chose to go ahead.
- There was no evidence of a discussion about Mr and Mrs E asking their existing lender for a further advance or whether this was available.
- Mr and Mrs E made monthly payments for their mortgage, loan and credit cards of about £1,054. The budget planner completed by the broker showed they had £15 left each month after meeting their expenses. Mr and Mrs E wanted to borrow an additional £5,000. After taking out the new mortgage (including the additional borrowing) their monthly debt repayments were £758.
- consolidating the unsecured debts meant they were repaid over a longer period. The suitability letter said this could result in more interest being paid. The consolidation allowed Mr and Mrs E to achieve their aims – to borrow an additional £5,000 and have one manageable payment.
- the lender didn't offer free legal services. So Mr and Mrs E had to pay for this. The broker might have recommended a solicitor, but there was no evidence Mr and Mrs E were coerced into using a particular solicitor. Mr and Mrs E agreed to pay the solicitors fee.

- the broker applied a legal administration fee, which was for assistance with the legal work. Mr and Mrs E agreed to this.

The CMC responded on behalf of Mr and Mrs E. In summary, it said Mr and Mrs E's aims could have been achieved by taking a further advance from their existing lender. They would have avoided having to pay the ERC and other costs of re-mortgaging. The CMC said the broker used the idea of one manageable payment as a sales tactic, and failed to explain the costs of consolidating debts. It said the broker received £2,650 from Mr and Mrs E, over £8,000 in commission and a legal administration fee of £290 and this was its motivation for recommending the re-mortgage.

The CMC had raised concerns that the broker received commission for recommending a particular conveyancer. Since the complaint came to us, L&G made an offer to resolve this, which the CMC accepted on Mr and Mrs E's behalf.

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.

The broker recommended the mortgage to Mr and Mrs E. So it had to take reasonable steps to ensure the mortgage was suitable for them, including gathering information to establish their needs and circumstances. L&G provided copies of documents from that time, including a client review and suitability letter.

The CMC says several aspects of the broker's advice were unsuitable. I've looked at the specific aspects here and at the recommendation as a whole.

applying to their existing lender for a further advance:
There's nothing to suggest the broker asked Mr and Mrs E if they'd applied to their existing lender for a further advance or discussed it with them. A further advance from their existing lender would have avoided much of the costs involved in re-mortgaging. However, I must also take into account that I can't be sure now this would have been available.

The interest rate on Mr and Mrs E's previous mortgage was 5.19% and the mortgage term ended in mid 2034. The interest rate on the mortgage recommended by the broker was 4.24% and the mortgage term ended in 2030. So the interest rate for the mortgage recommended by the broker was lower and the mortgage was repayable over a shorter period, which likely means less interest would be payable over the life of the mortgage.

consolidating debts:
Mr and Mrs E wanted to consolidate debts, including an overdraft, credit card accounts and a personal loan with about four years of its term left. The broker's records don't say that Mr and Mrs E were struggling to maintain debt repayments. However, they had only £15 left each month after meeting their expenses, so they had little flexibility to deal with any increase in their outgoings.

The broker had to consider whether debt consolidation was suitable, taking into account the costs associated with increasing the period over which a debt is repaid and whether it's appropriate to secure a previously unsecured loan.

Mr and Mrs E made monthly payments for their mortgage, loan and credit cards of about £1,054. Mr and Mrs E wanted to borrow an additional £5,000. After taking out the new mortgage (including the additional borrowing) their monthly debt repayments were £758.

One of Mr and Mrs E's credit card accounts had a zero interest rate. The broker could have recommended that Mr and Mrs E borrow less and leave the credit card debt (about £3,500) in place. Whether this would have been better for them depends in part when the zero rate was due to end. Unfortunately, this information isn't now available.

The recommendation letter said that while the interest rate on the mortgage was lower, the overall cost of repaying the debts over a longer period was likely to increase. Mr and Mrs E said they wanted to proceed as they wanted one manageable payment. While the CMC now disputes this, there's nothing in the paperwork from that time to suggest this wasn't what they wanted. The mortgage paperwork said Mr and Mrs E had previously consolidated debts. And they'd been made aware of the implications of securing previously unsecured debt on their home.

the ERC:
L&G provided a copy of a handwritten note, signed by Mr and Mrs E, saying they knew about the ERC and wanted to complete the mortgage to secure the fixed rate and raise capital immediately.

other costs of re-mortgaging:
The CMC says Mr and Mrs E incurred costs of £12,000 in re-mortgaging. About £6,500 of this related to payment protection insurance which has been dealt with separately. Nonetheless, they incurred costs of about £5,600.

was the recommendation suitable?
I think there are problems with the advice here. In particular I don't think the brokers records show it considered whether it would be better for Mr and Mrs E to ask their existing lender for a further advance. But, on balance, I don't think I can fairly conclude that Mr and Mrs E are worse off as a result. It's not clear that Mr and Mrs E's existing lender would have offered a further advance that met Mr and Mrs E's aims. And the recommended mortgage had a lower interest rate and a shorter term than Mr and Mrs E's existing mortgage.

There were costs involved with the re-mortgage and debt consolidation. But, overall, I don't think the recommendation was unsuitable. It met Mr and Mrs E's aims – to raise money for home improvements and consolidate debts. Mr and Mrs E wanted to raise capital immediately and were prepared to pay their previous lender's ERC to do so. Mr and Mrs E's monthly outgoings reduced as a result of the re-mortgage. The amount of disposable income Mr and Mrs E had each month increased from £15 to about £300.

the legal costs
Mr and Mrs E paid just under £700 for the legal work involved in the re-mortgage. The legal costs included a legal and administration fee of just under £300, which was paid to the broker on completion. L&G has said this related to administrative work associated with the mortgage, such as searches, getting redemption figures and answering questions.

The broker charged separate fees for various parts of its service, but I think it was clear about that – and how it structured its fees was a matter for it to decide. I don't think Mr and Mrs E were misled about the costs involved. "Free legals" wasn't identified as a priority in their discussions with the broker, and I find nothing in the mortgage paperwork to suggest that the lender offered a free legal service with this particular mortgage deal.

While the broker recommended a particular conveyancer, it doesn't follow that Mr and Mrs E lost out as a result. They would always have had to pay any legal costs arising from the re-mortgage, whichever conveyancer they used. They had the option of using their own solicitor if they wanted or looking around for a better deal. The legal costs were paid from the mortgage proceeds, which is not unusual or unreasonable.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs E to accept or reject my decision 10 January 2020.

Ruth Stevenson
ombudsman