

complaint

This complaint is about a mortgage arranged for Mr W and the late Mrs W by an adviser connected with Legal & General Partnership Services Limited (L&G).

Mr W feels L&G didn't provide suitable advice about debt consolidation and as a result he's been financially disadvantaged and had to sell his home. To resolve this complaint, he'd like compensation.

Mr W is represented by a third party I'll call 'R'.

background

On the advice of L&G's adviser Mr and Mrs W took out a new mortgage that allowed them to borrow enough to pay off some debt they had at the time. This included some unsecured credit card debt, a county court judgement and a short term secured loan.

R complained this wasn't a good deal for Mr and Mrs W overall. It said their existing secured debts were affordable as things stood at the time. And, in another 30 months their secured loan would've been fully repaid releasing some £347 a month for them to put towards other debts and improve their financial situation. It said Mr and Mrs W clearly had money problems at the time – but the question of how *unsecured* debt was to be repaid was really a matter for separate negotiation. It wasn't good advice to include this in a mortgage secured on their home. Especially as the new mortgage was at a higher rate of interest than they were paying on their existing mortgage – and they moved from a repayment mortgage to interest only terms.

Unfortunately, after Mrs W died, Mr W found he had to sell his home. He didn't get enough money to clear the outstanding mortgage balance so he still owes the mortgage lender money.

Our adjudicator recommended upholding this complaint. He felt Mr and Mrs W hadn't needed to borrow to pay off unsecured debt or a loan with less than three years left to run. And it wasn't in their interest to consolidate unsecured debts, and a second charge with only a short term outstanding, into a secured mortgage over seven years and switch to interest only payments – so they weren't clearing the debt. He believed Mr and Mrs W had been financially disadvantaged by including these debts in their new mortgage.

Our adjudicator suggested L&G should pay Mr W compensation to cover financial loss incurred as a result, and £500 for trouble and upset, as well as refunding broker fees.

R says it supports the adjudicator's view and the arguments that underpin it. L&G doesn't agree. In summary, it says:

- our adjudicator failed to take fully into account the extent of Mr and Mrs W's credit card debt
- Mr and Mrs W had run up arrears on their existing mortgage
- if Mr and Mrs W's unsecured debt could've been included within their existing debt management plan, then that would've happened already

- Mrs W's death was a major factor in Mr W not being able to keep up the mortgage repayments
- a £500 payment for trouble and upset isn't justified given that the implications of switching to an interest only mortgage were fully explained in the mortgage paperwork signed by Mr W.

L&G doesn't agree that any compensation is payable in these circumstances and has asked for an ombudsman to review what's happened. So this complaint has been passed to me.

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 agree with our adjudicator. Here's why I say this.

I've taken into account that the new mortgage L&G recommended did give Mr and Mrs W more spare cash than they had before they remortgaged and consolidated their debt. But I'm not persuaded that, in their particular circumstances, borrowing extra money to consolidate debt was suitable advice. It put their home directly at unnecessary risk if they couldn't keep up the monthly repayments. They'd been managing to keep up minimum monthly repayments on their credit cards before remortgaging and I don't think there's any compelling evidence to suggest they wouldn't have been able to continue doing so. The balances weren't unmanageable in my view.

Similarly, recommending a mortgage which required the court judgement to be paid off wasn't suitable advice given that I can't see how it was in Mr and Mrs W's interests to consolidate this.

I don't find that it was suitable advice to recommend consolidating Mr and Mrs W's secured loan into an interest only mortgage – particularly as it had a relatively short time left to run. At the time, I think Mr and Mrs W could reasonably have expected to be able to pay this off without consolidation. They'd then have had significantly more money to spend each month.

Sadly, Mrs W's death left Mr W in a difficult financial position. But I'm looking at the situation as it was when L&G made its recommendation.

I acknowledge that L&G discussed debt consolidation with Mr and Mrs W. But I haven't seen enough information to satisfy me that, on balance, the costs and benefits of debt consolidation were explained in such a way that Mr and Mrs W properly understood the full implications of doing this.

I find that Mr and Mrs W would've been better off overall *not* consolidating debt into their new mortgage. And if L&G had given them suitable advice they wouldn't have done. I'm satisfied that L&G should've known this at the time, and that this conclusion hasn't just been reached with the benefit of hindsight.

And I agree with our adjudicator that in the particular circumstances of this case, where L&G's unsuitable advice is a significant contributory factor to Mr W having to sell the property, a £500 payment for trouble and upset is fair and reasonable.

fair redress

My approach is to aim to put Mr W, as far as possible, into the position he'd be in if debt hadn't been consolidated when he remortgaged.

So I think it's fair and reasonable that L&G should pay Mr W as directed below.

my final decision

I uphold this complaint and I order Legal & General Partnership Services Limited to pay Mr W as follows:

- (A) work out the amount paid towards the mortgage balance for the consolidated debt up to the date the property was sold;
- (B) calculate the amount of the consolidated debt still remaining on the mortgage balance at the date the property was sold and the consolidated mortgage balance partially redeemed;
- (C) work out how much would've been paid to clear the consolidated debt if it hadn't been consolidated; and
- (D) calculate (A) + (B) – (C) and pay this amount as a lump sum.
- (E) refund the amount of the broker fee/charges charged in respect of the consolidated debt, as well as 8% simple interest per annum if paid up front, or at the mortgage rate if added to the mortgage balance
- (F) if L&G considers it has to deduct tax from the interest element of my award, it should send Mr W a tax deduction certificate when it pays him. He can then use that certificate to try to reclaim the tax if he's entitled to do so.
- (G) pay Mr W £500 compensation for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask R on behalf of Mr W to accept or reject my decision before 12 May 2016.

Susan Webb
ombudsman