Financial Ombudsman Service

complaint

Ms W complains that Legal & General Partnership Services Limited ("LGPS") mis-sold her a mortgage.

background

Ms W met with the LGPS representative in April 2005 to discuss her mortgage arrangements. Ms W wanted to re-mortgage to raise some further funds and to consolidate debt.

LGPS's representative recommended a two year fixed product on a repayment basis over a term of 25 years. LGPS also recommended Ms W consolidate her existing debt of over £13,000 within her loan amount. Acting on the recommendation of LGPS, Ms W re-mortgaged. She consolidated her debt and took out some further borrowing. She fixed her interest rate for two years and added fees and charges to the loan balance - including an early repayment charge (ERC) paid to end her old mortgage.

She is represented by a third party and says this advice was unsuitable. She shouldn't have consolidated her debt and should have been advised to wait until the end of the ERC period before she re- mortgaged.

Our adjudicator upheld this complaint. She said that Ms W wanted to raise some more funds to finish her extension and to consolidate three credit card debts and one loan. However, she didn't think that she should have incurred the penalty charge when she did. Ms W only had four months left to run on the mortgage. The savings she made by consolidating debt at the point she did meant that the savings didn't outweigh the penalty incurred. So she said it wasn't the right advice to consolidate the debt at the point she did. She thought Ms W should have been advised to wait until her penalty period with her existing lender had expired before re-mortgaging as she ended up financially disadvantaged.

LGPS didn't agree that the advice to re-mortgage was unsuitable. It said that Ms W had funds following her re-mortgage to finish the improvements on her house and her monthly payments reduced. And it said her existing arrangements didn't leave her with much money left at the end of the month. By re-mortgaging her monthly payments towards debt reduced. It asked for an ombudsman to review the case.

In my provisional decision of October 2015, I set out why I didn't intend to uphold this complaint. This is an extract from that provisional decision below.

> "This was an advised sale. So LGPS needed to make sure that it was a suitable product for Ms W. It also had to make sure it provided Ms W with clear, fair and not misleading information so she could decide whether or not she should take out the mortgage. I can see there was a meeting between the LGPS where the mortgage products were discussed in detail. The paperwork sets out LGPS's recommendations and I think it's likely that these documents reflect the conversation that took place at the time of the sale. The section headed *"Debt consolidation"* sets out the recommendation to consolidate various existing debt. This section states that *"I have been able to determine that although the interest rate charged will be lower, the overall cost of repaying these liabilities is likely to increase as the term is longer."*

It goes on to state that Ms W indicated *"that regardless of the potential increase in the overall cost, you wish to proceed with this arrangement, as having one manageable payment is more important to you and by having one-arrangement forces the discipline to repay."*

Further the section notes that the debt on one particular card would be cleared in a few months' time. *"However you have stated that you wish to clear all outstanding debts within the new mortgage balance……"* and I can also see that it was discussed that if any existing liabilities are consolidated within the mortgage arrangements they are secured against Ms W's property.

The last section of *"my recommendations"* –other relevant information, notes that an early redemption penalty of approximately £1995 has to be repaid within the new package. Ms W has signed this information. I am not persuaded in itself this would be enough to say that she was given suitable advice but I can also see that she has signed a note to say that she understood that she had to pay an early repayment charge in order to redeem her existing mortgage and that if she waited until after this date there would be no penalty to pay whatsoever. The note continues *"however, I wish to complete my mortgage now rather than wait in order to benefit from the immediate monthly savings and the capital raised."* This note has been signed and dated by Ms W. I can also see the "*personal mortgage analysis"* document which indicates that Ms W wanted to complete an extension which was estimated to cost more than £6000 and that she wanted to carry this work out *"now".* The mortgage section sets out the early repayment charge and that this penalty would no longer be relevant by October 2005 (about four months after the mortgage completed).

By re-mortgaging when she did Ms W increased her disposable income and I think she had a need to reduce her outgoings at the time. Her costs were going up and I can see that she was in overdraft- she didn't have much disposable income if any.

Had she waited she would have avoided paying the ERC- the cost of which outweighed the savings on the mortgage. But I can see she also wanted to raise capital and wanted to make monthly savings.

I am therefore satisfied that Ms W wanted to take out the re-mortgage sooner and not wait until the later date when she wouldn't be liable to pay the early repayment charge. So I don't intend to uphold this case in relation the early repayment charge.

Next I have looked at whether I think LGPS gave suitable advice for Ms W to consolidate her existing debt. I can see that she was making minimum repayments on each of the debts she consolidated. At section 10, headed "loans" of the mortgage analysis document- Ms W's loans and her revolving credit are set out. The form has been completed indicating that she had consolidated debt before, that she had been made fully aware of the potential implications of securing debt on her property.

I note that some of the debt was small but overall I'm satisfied whilst this was expensive to do she had a need to make savings and reduce her monthly outgoings, so I can't say this wasn't suitable for her at the time.

On balance I don't think going ahead in Ms W's circumstances was unsuitable so I don't intend to uphold this complaint."

I then invited Ms W and LGPS to provide me with any further information that they wanted me to consider before I made my final 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.

LGPS had nothing further to add. Ms W - through her representative - didn't agree with my provisional decision. In summary her representative said:

- There were three meetings between Ms W and LGPS's representative. The first meeting was the fact find meeting; it was at this meeting that the client review was completed. The representative then went away to find a recommendation, which was disclosed to Ms W during the second meeting. In most cases at the third meeting, the client would be presented with a series of documents to sign. No advice was offered at the third meeting and this is when the client signed the disclaimers. There were problems with the pre-completion record of suitability (which I referred to in my provisional decision) as the documents presented to Ms W at this meeting were deficient. These advice issues were presented to clients near completion without signposting any changes. Ms W asked that I re-consider how much weight I placed on the pre-completion record of suitability which was the basis of the advice given.

- The initial fact-find document (section 10) contained leading questions. In relation to taking out loans there was a question about repaying them at a more competitive rate with no qualification that the lower rate is likely to increase the liabilities overall cost by increasing its term. Question 6 and 7 were incitements to use mortgage funds to fund car purchases and this was inappropriate.

- In the revolving credit section clients are pushed towards consolidation by not presenting the costs of securing the debt into a long-term mortgage. There was inducement to borrow for an emergency fund which is what credit cards are for.

- I placed significant weight on Ms W's hand written and signed disclaimer as evidence she understood the early repayment charge and that incurring it was at her behest. This was not volunteered but was necessary for LGPS to complete. Ms W was presented with LGPS's script to copy. It was written in "sales speak." If clients didn't sign then completion was delayed. It would be different if there was evidence of advice not to incur the early repayment charge.

- Ms W had two accounts one in which she had used her overdraft limit and had slightly exceeded it on a few occasions. Her other account was usually in balance at the end of the month. This account had a £300.00 limit on it. So she did have a small buffer. So there was no justification of incurring the early repayment charge three months before it expired.

- There was no evidence that raising capital was so urgent that it required her to pay £2000.00 penalty with the early repayment charge.

- Ms W instructed LGPS to raise £6,700 capital but based on the completion statement she received over £12,000. The notes confirmed the solicitor repaid these debts.

> There were no documents to explain the capital. Ms W had use of the money but the lack of advice illustrates the deficiencies of the sale.

I have carefully re-considered all these points made but these don't change my view and I don't uphold this complaint.

I have looked again at the "mortgage record of suitability." Ms W asks me not to place so much weight on this document. But I think this reflects the conversation that was had at the time in this case. Whilst Ms W's representative refers me to decisions made by other ombudsman, each case has to be considered on its own merits. I am persuaded that even if Ms W was required to sign the documents at the third meeting and no discussion took place at that point, she had already had a discussion at the first and second meetings and had been advised at that point. And I don't think the advice was unsuitable in this case. I am satisfied that Ms W's circumstances meant that she wanted the security of knowing how much her monthly outgoings were, that she wanted to raise cash for her own use and she wanted to re-finance debt. Ms W didn't want to fix her mortgage for a longer term than two years. In that time she wanted to review her mortgage arrangements and so a longer fixed term was not chosen.

I am persuaded that LGPS advised Ms W that by taking out the mortgage it was recommending, she was told her overall cost of repaying the liabilities would increase. And I think Ms W understood this and in her circumstances she chose to take on this option as it meant she could manage her payments and make sure that she repaid her debts within one payment. I also think she understood the fact that any debts she consolidated were secured against her property.

Overall I am persuaded that LGPS did not just fill in tick boxes but it took into account Ms W's situation at the time. And I think LGPS recommended the product on the basis of Ms W's circumstances. Her monthly outgoings were going up. The mortgage which she took out left her with an increase in disposable income. Ms W's representative has referred me to various sections of the "Personal Mortgage Analysis Document." It says that this initial fact find document contains leading questions. It also said the questions were an incitement to use borrowing to fund car purchases. I don't think this is what happened in this case. I think Ms W chose not to raise cash for an emergency fund. But I am persuaded that Ms W wanted to raise capital to finish off her extension. I think her main priority was to raise capital. And I think she also wanted to decrease her debt.

I have looked at the Ms W's bank statements. The account with the £300 overdraft limit was just in credit but she had also asked for a three month payment holiday with her existing lender and had amassed credit card debt. Ms W had also used her overdraft limit on her other account with £1100 overdraft facility. As Ms W's representative said, on some occasions she had exceeded it. So I am persuaded that she didn't have very much money left at the end of each month and by re-mortgaging she increased her disposable income.

In relation to the early repayment charge although it may be the case that she had to sign the handwritten note so she could complete, I am satisfied that Ms W was keen to reduce her monthly outgoings and raise capital at that time rather than wait. I note that Ms W's representative has pointed out that this would have been produced at the third meeting when no advice was offered but I think these issues had already been discussed previously. I am persuaded it was a high priority for Ms W to keep her costs to a minimum and have cash for her own use. And I think on balance, she understood what she was signing.

I can't say why she took out more capital than she had originally asked for but I don't think that makes a difference to my decision. I think Ms W chose to take out the mortgage when she did to achieve her aims and I don't think that the advice was unsuitable. So I don't uphold this complaint.

my final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 4 January 2016.

Nicola Woolf
ombudsman