Financial Ombudsman Service

complaint

Mr and Mrs A through their representative M complain that the appointed representative of Legal & General Partnership Services Limited, W, mis-sold them a mortgage in 2008. They want compensation.

background

Mr and Mrs A took advice from W in 2008 about remortgaging their property. M said that the mortgage A recommended wasn't suitable, despite the lower monthly payments. It complained that the debt consolidation advice wasn't suitable either and the information provided wasn't clear enough.

Legal & General said the previous mortgage had a fixed interest rate period which was about to end when Mr and Mrs A met W, so it wasn't unreasonable to look for a new mortgage. The new mortgage was a base rate tracker, and likely to be cheaper than the previous lender's standard variable interest rate. Legal & General pointed out that Mr and Mrs A were spending more than they earned when they met W and couldn't afford their previous mortgage. It accepted one of the debts had a slightly lower interest rate than the mortgage W recommended and was incorrectly described in the advice given by W, but said all the debts needed to be consolidated to meet Mr and Mrs A's needs. It also didn't think that Mr and Mrs A would've acted differently if the description had been correct.

M complained to us. The adjudicator's view was that Mr and Mrs A didn't have any disposable income after paying the monthly debts and expenses before remortgaging. As a result of the remortgage, they had a disposable income of £150 per month so their financial position was improved. She said debt consolidation was suitable in their case as otherwise they would've been spending more than they earned. The adjudicator noted Mr and Mrs A wanted to borrow money for home improvement and for their children. She thought the mortgage was suitable as it met the needs of Mr and Mrs A and improved their financial position.

M disagreed. It said Mr and Mrs A were paying their debts prior to the remortgage and the adjudicator had wrongly calculated the disposable income after the remortgage. M said the failure to tell Mr and Mrs A that included within the debt consolidation was a loan with an interest rate 0.19% cheaper than the new mortgage was mis-leading and negligent. It wasn't happy that Legal & General said Mr and Mrs A would've gone ahead with the remortgage regardless of whether the position was correctly explained to them.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. My role isn't to punish businesses for making mistakes, but to ensure consumers are put back into the position that they should've been if the mistake hadn't been made.

Legal & General accepts that one of the loans included in the debt consolidation had a slightly lower interest rate than the mortgage recommended by W. It was also due to end much earlier than the mortgage, so overall the interest paid over time would be higher. I agree this wasn't set out in the advice given by W. But I don't think that this was misleading or negligent. W wasn't a debt adviser and was looking at Mr and Mrs A's overall financial position.

Taking a wider view, debt consolidation was suitable. From the evidence available to me from the time W advised, Mr and Mrs A were spending more than they earned and both the interest rate for their mortgage at the time and one credit debt were about to increase significantly. It was sensible to get a new fixed interest rate mortgage but to do so, their debt position needed to be dealt with. W explained in a document signed by Mr and Mrs A that debt consolidation would cost more overall, but would reduce their monthly payments. That's wasn't unfair or unreasonable advice. I also think it's more likely than not that Mr and Mrs A would've gone ahead with the debt consolidation if the point about the cheaper loan had been made given their overall financial position.

The mortgage recommended was suitable in my view. It met their needs as it enabled Mr and Mrs A to consolidate their debts, fix their interest rate payments for the future and borrow the additional money that they wanted. And as the new mortgage was a tracker, when interest rate dropped in 2009 the monthly mortgage payment reduced by almost £300 per month. Mr and Mrs A had the benefit of a fixed interest rate with the advantage of getting a lower rate when available. W also recommended the shortest term possible for the mortgage which was affordable and considered whether it would be affordable in the future.

In all the circumstances, I can't say the mortgage or debt consolidation advice wasn't suitable.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 3 May 2017.

Claire Sharp
ombudsman