

my provisional conclusions and the responses to it

The background to this complaint was set out in my provisional decision of June 2013, a copy of which is attached and forms part of this final decision. Subject to any further submissions I proposed that The Money Group (Cornwall) Limited (TMG) should pay compensation to Mr and Mrs T, as follows:

- £4,250 fee together with interest incurred from the start of the re-mortgage to the date of settlement at the mortgage interest rate.
- £250 for their distress and inconvenience.

Mr and Mrs T's representatives said the redress did not go far enough. It said if a debt management plan had been agreed the interest would have been frozen and Mr and Mrs T would only have had to repay the capital, so the unnecessary interest should be refunded.

The representatives said the equity in Mr and Mrs T's house was put at risk by the consolidation of unnecessary debt, which included an extremely high fee charged by the broker. It said Mr and Mrs T's previous repayment mortgage was affordable, and a comparison should be made between this and the cost paid on the recommended mortgage, leading to a capital balance reduction to put them back to the position they would have been in had they remained on the repayment mortgage. It said Mr and Mrs T had no repayment vehicle and there should be a payment to make sure they do not lose their home at the end of the mortgage term.

TMG also disagreed with the provisional decision. It said the suggestion that Mr and Mrs T could reach a payment arrangement for their debts was not feasible as they had no ability to make higher payments. It said this was covered by the adviser at the time and it would not have been best advice for unsecured debt to remain outside the mortgage arrangement as this could have led to recovery action by the local authority.

TMG said the affordability and costs information in the provisional decision was inaccurate. Mr and Mrs T were paying £684 towards their remortgage and £13 towards their credit card, a total monthly payment of £697. Its recommendation led to a fixed payment of £514.75 for four years followed by an estimated payment of £604.86, saving £182.25 followed by £92.14 per month in the reversionary period.

TMG said the decrease in the base rate resulted in a payment of £280.44 per month in the reversionary period, saving £416.56 from the previous mortgage and lending commitments, with a potential saving of £28,742.88 over the life of the mortgage. It asked why the current payments are no longer affordable, particularly as Mr T is now in receipt of his state pension in addition to his declared wages.

TMG said a repayment mortgage would have been unaffordable, and this was noted by its adviser on a document signed by the customers. It said an assessment of retirement income was not necessary as Mrs T was already retired, and Mr T confirmed that he would be able to work until the age of 70, when the mortgage ended.

TMG is unclear about the meaning of my statement *"I consider the switch increased the risks of non-repayment to Mr and Mrs T"*. It said its documents are extremely clear that Mr and Mrs T were aware that they were switching to an interest only mortgage in order to ease their financial predicament. It said they were unable to approach their existing lender for a re-mortgage.

TMG has not commented on the fees that it charged to Mr and Mrs T, other than to say a refund is not justified.

my final decision

I have considered all the available evidence and arguments afresh to decide what is fair and reasonable in the circumstances of this complaint. I have carefully considered the further comments made by both parties and the additional documents provided by TMG. I confirm that I cannot consider the advice Mr and Mrs T received in 2002 as this is out of time.

The parties disagree on whether Mr and Mrs T's repayment mortgage remained affordable to them and whether alternative arrangements might have been available. TMG said it was not feasible for Mr and Mrs T to reach a payment arrangement and the local authority may have taken legal action. I have spoken to Mr and Mrs T's local authority who said it would have considered a payment arrangement for this level of debt and would have worked with the consumers to find a way of dealing with their difficulties without recourse to legal action.

I have reconsidered the Financial Conduct Authority's rules about advice to re-mortgage in order to repay debts where a business is aware the consumers have had payment difficulties. I do not accept that Mr and Mrs T's indebtedness of £1,700 was incapable of being dealt with by arrangements to pay, and I consider that this would have reduced the risk to them of losing their home. I do not consider that TMG met the regulatory requirement to assess whether it is more appropriate for the consumer to negotiate an arrangement with creditors rather than a mortgage, and I consider that the re-mortgage fees totalling £7,250 would have been better spent by Mr and Mrs T in payments towards their debts.

I have looked again at the affordability of the re-mortgage and Mr and Mrs T's expenditure. TMG said my figures are inaccurate. I have relied on TMG's adviser's 'Reasons for the Recommendation' which state that the re-mortgage will cost £589 per month, whereas TMG say this should have been £514 per month as per its key facts document. The figures are confusing but do not in any event provide the full picture. As I said in my provisional decision the re-mortgage appeared to be affordable, but this does not mean it represented best advice to Mr and Mrs T.

TMG make the point that the decline of interest rates made the mortgage even more affordable, but do not make the corollary point that a repayment mortgage would also have become more affordable, without the risks to Mr and Mrs T. However, this information was not available in 2008 and it was TMG's advice at that time I am concerned with. By the time Mr and Mrs T were able to benefit from reduced interest rate they were already in difficulty.

I do not accept that Mr T saying he would work until he was 70 meant '*an assessment of income in retirement was not necessary*'. It is a requirement of lenders to assess whether payments are affordable in retirement, and to assess how the re-mortgage to interest-only would be repaid at the end of the term.

The rules require lenders to consider whether a customer should have an interest-only or repayment mortgage based on the means by which a consumer will repay the capital at the end of the term. I am of the view that the sale of Mr and Mrs T's home was not a suitable vehicle for the repayment of the capital as this would leave them potentially homeless.

TMG's recommendation to re-mortgage increased Mr and Mrs T's borrowing by £14,317, of which £7,250 was fees. I remain of the view that TMG's fee of £4,250 was not cost effective for the potential savings they could make. For the reasons I have given I do not consider that Mr and Mrs T were properly advised and I confirm my provisional decision that the fees for the advice were unreasonable and should be refunded.

I have considered whether or not to increase the award and the points made by Mr and Mrs T's representatives. I do not agree that a payment arrangement would necessarily have frozen the interest though I agree that the consolidation of the debt may have been unnecessary and that alternative advice could have explored this.

I can see from the documents that Mr and Mrs T were aware of the risks of switching to an interest-only product and that they took a cash sum from the re-mortgage, and consequently I do not consider a capital reduction of the outstanding balance to be appropriate.

Overall I remain of the view that other options were available to Mr and Mrs T that should have been assessed and explored by TMG before recommending the re-mortgage. I do not consider the high level of fees charged to be justified by the advice given and consider these substantially increased their indebtedness.

I consider the advice to re-mortgage not to have been in Mr and Mrs T's best interests and I require The Money Group (Cornwall) Limited to refund its fee of £4,250 together with interest at the mortgage rate from the start of the re-mortgage to the date of settlement. I also require it to pay £250 to Mr and Mrs T for the distress and inconvenience they have suffered in dealing with their situation.

Andrew Fraser
ombudsman

copy of provisional decision

summary of complaint

Mr and Mrs T complain, via their representatives, about the mis-sale of their mortgage by their brokers, The Money Group (Cornwall) Limited (TMG) in 2002 and re-mortgage in 2008. They complain that:

- Their mortgage was redeemed in 2002 incurring an early repayment charge for which no suitability assessment was conducted.
- They were advised to switch to an interest-only mortgage in 2008 without being given a repayment mortgage option, with no repayment vehicle and no risk assessment.
- They are in negative equity and cannot repay the balance.
- They were advised to consolidate their debt with no assessment of suitability.
- No purpose was mentioned for the additional funds borrowed.
- Excessive fees were charged and added to the mortgage, leading to arrears.
- They were advised to borrow into retirement with no assessment of affordability.

Mr and Mrs T have also complained about payment insurance for the mortgage, and this is being dealt with separately.

our initial conclusions

The adjudicator did not recommend that the complaint be upheld. He said the 2002 complaint was time barred. He said the re-mortgage took place because Mr and Mrs T's existing mortgage was in arrears, they had other debts and a repayment product was no longer affordable. He said TMG warned Mr and Mrs T of the risks, and affordability was properly assessed.

The adjudicator said the mortgage fees were set out within the mortgage documents and agreement signed by Mr and Mrs T. They were added to the mortgage as Mr and Mrs T were unable to pay them at the time.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

This service considers complaints within the rules set for us by the Financial Conduct Authority. These state that complaints made more than six years after consumers ought reasonably to have become aware they had a complaint are out of time if the business objects. TMG has objected to the complaint concerning the 2002 mortgage and said it holds no records of the transaction.

I consider that Mr and Mrs T should reasonably have been aware in 2002 they had incurred an early repayment charge and therefore this is not a complaint that I can consider.

I have considered the overall suitability of the advice provided by TMG to Mr and Mrs T in 2008, and in order to do this I have looked carefully at their circumstances when they re-mortgaged and the supporting records from TMG. I have reached the provisional finding that the advice was not suitable for their needs and set out the reasons for this below.

debt consolidation

The 'Reasons For Recommendation' document states Mr and Mrs T's priorities as 'reduce overall outgoings', 'Fixed rate', 'clear some finances' and 'home improvements'. The documents signed by Mr and Mrs T set out their income and debts, and the implications of consolidating debts to a secured loan and moving to an interest-only product.

I am satisfied that Mr and Mrs T needed to reduce their unsecured debts and wanted to raise new capital to make home improvements. It appears the re-mortgage achieved this as it provided them with capital and a reduction in their monthly outgoings. However, their credit card debt was only £612 and council tax debt, £1,098 and consolidation removed other options for dealing with this which would not involve the security of their home.

The Financial Conduct Authority's rules say that where the purpose of the mortgage is to repay debts and the business knows that the consumers have experienced payment difficulties, it should assess whether it is more appropriate for the consumer to negotiate an arrangement with creditors rather than a mortgage. TMG has shown there were 'defaults' on Mr and Mrs T's unsecured debts, but I have seen nothing to suggest that it considered other options, such as an arrangement to pay the unsecured debts.

affordability

The Financial Conduct Authority's rules say that businesses must take into account affordability of the proposed loan, including any likely change to income.

TMG's affordability record shows that by switching from a repayment to an interest-only mortgage, Mr and Mrs T reduced their monthly outgoings by £108. It dismisses a repayment mortgage option as '*outside affordability for you*', but there is no separate assessment.

It appears that the mortgage was affordable during the fixed-rate period, but figures within the Key Facts document indicate that the savings would be all but wiped out after this when Mr and Mrs T would be 66 years old, should interest rates stay the same. TMG does not appear to have assessed Mr and Mrs T's income in retirement, relying on the sale of their home. From what I have seen it is clear that the mortgage is no longer affordable to Mr and Mrs T and the mortgage is now in arrears.

Mr and Mrs T's representatives said that a repayment mortgage remained affordable to them, but this was option was not offered. Their existing mortgage would have required Mr T to work until he was 76 and I cannot be certain that an alternative repayment option would have been suitable for them, however I would have expected to see some consideration of affordability to assist Mr and Mrs T in making comparisons.

lending into retirement

TMG recorded Mrs T as already retired and Mr T able to work until 70 years of age. It recommended a 10-year mortgage but then wrote to Mr and Mrs T to reduce the term to Mr T's 70th birthday to meet the lender's requirement.

Although the re-mortgage reduced the term of their previous repayment mortgage this gave no benefit in the repayment of the capital, and I have seen no evidence to show that the risks of borrowing into retirement were discussed with Mr and Mrs T. We would normally expect to see separate consideration of this, particularly as the re-mortgage switched them to interest-only.

switch to interest-only

The rules state that businesses must consider whether a customer should have an interest-only or repayment mortgage. One of the most important factors to consider is the means by which a consumer will repay the capital at the end of the term.

Mr and Mrs T's representatives said there is no repayment vehicle and they had not told TMG they would sell their home to repay the mortgage. I have noted that Mr and Mrs T signed documents confirming they will sell their home to repay the mortgage and TMG say it was entitled to rely on this information in considering repayment.

I have seen a warning to Mr and Mrs T that the switch means there will be no capital reduction of the borrowing. However, as they were nearing the end of their working lives repayment of the mortgage became dependent on the sale of their house which would potentially leave them homeless. I consider the switch increased the risks of non-repayment to Mr and Mrs T and should have caused TMG to ensure this was a suitable recommendation for their circumstances and alert them of the risks.

cost effectiveness

Over the four year period of the fixed rate the re-mortgage would have realised savings of £5,184. At the time of the mortgage, the reversion rate of interest four years hence was predicted to be higher, eroding potential future savings when Mr and Mrs T would both be retired. I am not convinced that TMG could have reached the view that the re-mortgage would save as much as the fees of £7,250 together with interest thereon.

I am not satisfied that the advice given by TMG was justified by the outcome for Mr and Mrs T. The re-mortgage increased their borrowing by £14,317, but more than half of this was fees (£7,250) to the broker and lender. TMG's fee of £4,250 was disclosed to Mr and Mrs T, but does not appear to be cost effective for the potential savings they would make.

conclusion

All of the above factors formed part of the advice to Mr and Mrs T and given their ages there was little time for them to overcome the disadvantages this posed. I have noted that Mr and Mrs T have had the use of the additional funds they borrowed, and noted their ages when the original repayment mortgage was due to conclude.

I am of the view that the high level of fees charged to Mr and Mrs T made the benefits of re-mortgaging disadvantageous, or at least negligible, and I consider that other options were available that should have been assessed and explored. Consequently I am of the view that the advice to re-mortgage was not in Mr and Mrs T's best interests and I am minded to require TMG to refund its fee of £4,250 together with interest at the mortgage rate. I am also minded to require it to pay £250 to Mr and Mrs T for the distress and inconvenience they have suffered in dealing with their situation.

I consider that Mr and Mrs T should seek an early opportunity to review their remaining mortgage liability with their lender and discuss means of putting payments on to a sustainable basis.

my provisional decision

My provisional decision is that I am minded to uphold the complaint and require The Money Group (Cornwall) Limited to repay Mr and Mrs T:

- £4,250 fee together with interest incurred from the start of the re-mortgage to the date of settlement at the mortgage interest rate.
- £250 for their distress and inconvenience.

The parties now have until 30 July 2013 to make any further submissions before I issue my final decision or further directions.

Andrew Fraser
ombudsman