complaint

Mr and Mrs C complain that they were mis-sold a mortgage by an appointed representative of Legal & General Partnership Services Limited ("L & G").

background

Mr and Mrs C had a mortgage, on a discounted interest rate with a high street lender. In 2005 L & G recommended that they remortgage with another high street lender. In remortgaging Mr and Mrs C paid an early repayment charge ("ERC") of around £800 to their old lender. They took a new discounted rate for a two year period, and consolidated some debt. Mr and Mrs C's representative now says L & G's recommendation was unsuitable for them. In particular, L & G should have advised them to stay with their existing lender. There was no pressing need to consolidate the debt. And they were wrongly advised to increase the mortgage term.

L & G said it recommended a suitable mortgage. It met Mr and Mrs C's objectives to reduce payments and consolidate debt. They had made an informed decision to pay the ERC, and it didn't advise them to extend the mortgage term.

Our adjudicator considered part of L & G's mortgage recommendation was suitable. But she didn't consider it should have advised Mr and Mrs C to consolidate debt. They could have paid it within 4 years, or less with overpayments. And instead L & G advised them to spread it over the 23 year mortgage term. This vastly increased the cost to them. She recommended that L & G compensate Mr and Mrs C for the increased cost of repaying the debt with the mortgage.

L & G didn't accept the adjudicator's findings. It said Mr and Mrs C's existing unsecured lending was over longer terms than the adjudicator said in her opinion letter. The mortgage costs were higher than disclosed to the adviser, and it questioned the surplus shown on the personal mortgage analysis documents. And based on income multiples at the time, it was unlikely the new lender would have offered a mortgage without consolidation of the debt.

Mr and Mrs C's representative agreed with the adjudicator's findings about consolidation. But they asked me to review the mortgage suitability, payment of the ERC and extension of the mortgage term.

my findings

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

cold calling

L & G says it didn't cold call Mr and Mrs C, and their representative says it did. I don't consider this issue to be central to my findings. Mr and Mrs C decided to accept the advice. I need to decide if the mortgage recommendation was suitable for them.

mortgage recommendation – new discounted rate

In July 2005 when L & G advised them, Mr and Mrs C's existing mortgage was at a discounted rate of 5.4%. They had to pay an early repayment charge of £800 to redeem the mortgage early. The new mortgage was also a discounted rate, giving a starting rate of 4.95% (which had increased to 5.00% at offer stage). At this time, and given the costs of remortgaging, I think the right advice would be to wait until the end of the discounted period. The benefits of the very slightly lower discounted rate were very much outweighed by the costs of changing mortgage and paying the ERC.

But I see that Mr and Mrs C set out, in a handwritten letter, that L & G strongly recommended they wait until after the ERC period ended. And it was at their own insistence that they went ahead to maximise savings immediately. So I don't uphold this part of the complaint.

income and expenditure

Mr and Mrs C's income was, in my view, sufficient to support both their mortgage and their unsecured loans. They had a surplus of income over expenditure. There is some disagreement about how much additional income they had. But they were maintaining the mortgage and loan payments.

L & G challenges the figures that its own adviser completed, suggesting their expenditure was underestimated. I'm not sure this assists L & G. If the information its adviser recorded was incorrect then this calls into question the basis on which the advice was given. And Mr and Mrs C's representative says L & G failed to take into account the guaranteed tax credit income the couple were receiving at the time.

L & G says Mr and Mrs C understated the amount outstanding on their mortgage. But the balance actually outstanding (£47,955) at the stated interest rate (5.4%) meant that the monthly payment of around £300 over a 23 term was correct. And this figure of £300 was used in the income and expenditure section of the analysis form.

debt consolidation

L & G suggests that debt consolidation was the highest priority for Mr and Mrs C. And so they chose to remortgage to relieve the financial pressure of their debts.

I accept L & G's point that the loans were over a longer term than 4 years as the adjudicator indicated in her opinion. But they were all under 5 years, and were short term borrowing. The car loan, taken in March 2005 at 10% interest, had 58 months remaining. The consolidation loan, taken in February 2005 at 18%, had 33 months remaining. The smaller holiday loan, taken in April 2005 at 10%, had 23 months remaining.

But Mr and Mrs C had taken out those three loans only months before for specific reasons. On their stated income and expenditure, they were able to afford the payments. The mortgage record of suitability said they wanted one monthly payment to give them the discipline to repay. But they were reducing the loan balances simply by making the monthly payments. I have concerns about the advice to consolidate new debt taken over 5, 3, and 2 years respectively over the mortgage term of 23 years. I don't accept there was a pressing need to do so here. I'm not persuaded the advantages outweighed the disadvantages.

L & G makes the point that Mr and Mrs C had just consolidated some debt, and had borrowed to go on holiday. It says this means they must have been spending more than they earned. But their stated income and expenditure doesn't show this – and three lenders had just been willing to lend to them so it suggests to me that affordability wasn't an issue for them. And I'm not persuaded that Mr and Mrs C were so dissatisfied with their existing mortgage lender that they wouldn't remain with it. In my view, the questions on the personal mortgage analysis form about this were designed to induce feelings of dissatisfaction rather than record it.

I can see it might have been welcome for Mr and Mrs C to have one single payment. And they chose not to consolidate a credit card debt. L & G says that had they not consolidated debt they couldn't have got a new mortgage. But this doesn't mean, of itself, that the advice to consolidate debt was correct where I don't find there was a pressing need to do so.

mortgage term

I consider the mortgage term was clear in the recommendation and said it was in line with existing arrangements. The personal mortgage analysis document said it was 23 years – the term recommended. And this is in line with the monthly payments they were making. So I don't conclude that L & G advised Mr and Mrs C to extend it.

summary and redress

In summary, I uphold this complaint in part. I don't consider the advantages of consolidation outweighed the disadvantages for Mr and Mrs C. So I order L & G to compensate Mr and Mrs C for the difference between the amount they'd have repaid for the unsecured lending had it remained outside the mortgage and the amount they've actually paid with the mortgage.

Mr and Mrs C's representative says they repaid the mortgage in 2007, when they took a mortgage with a new lender. They will need to provide further information about the mortgage arrangements to L & G for it to settle the complaint. I can't require them to do so but I hope they will, to facilitate the settlement.

my final decision

My decision is that I uphold this complaint. I order Legal & General Partnership Services Limited to:

1. Calculate the total interest and capital payments Mr and Mrs C have made for the unsecured borrowing consolidated with the 2005 remortgage between completion of the mortgage and the date of settlement;

2. Calculate the amount of the unsecured borrowing remaining on the mortgage balance;

3. Add the figures at 2 and 3 together and deduct the amount it would have cost Mr and Mrs C to pay off the unsecured loans unconsolidated;

4. Pay the result as a lump sum to Mr and Mrs C.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs C to accept or reject my decision before12 January 2015.

Amanda Maycock
ombudsman