

complaint

Mr and Mrs Q complain that Legal & General Partnership Services Limited mis-sold them a mortgage. The complaint is brought on their behalf by a claims management company.

background

When Mr and Mrs Q sought advice from Legal & General, it recommended they borrowed enough money to repay their existing debts and it arranged a five year fixed rate mortgage. The adjudicator recommended that the complaint should be upheld. She concluded that debt consolidation was not suitable for Mr and Mrs Q. She recommended Legal & General refund:

- all mortgage set up fees and charges, plus interest.
- the early repayment charge (ERC) on Mr and Mrs Q's existing mortgage, plus interest.
- the additional amount Mr and Mrs Q would pay over the term of the mortgage for the debts that were consolidated.

Legal & General responded to say that the advice to consolidate debt was not wrong. It said Mr and Mrs Q wanted to reduce their monthly outgoings, were happy to pay the ERC, were spending all their monthly income on day to day living costs and that Mr Q's overtime and bonus could not be relied upon.

The claims management company responded on Mr and Mrs Q's behalf to say that it agreed with the adjudicator's conclusions, but that any award by this service should be based on the assumption that Mr and Mrs Q would not have remortgaged if they had been given suitable advice.

my provisional decision

I thought the complaint should be upheld, but I thought the redress should be different to that recommended by the adjudicator.

Mr and Mrs Q's existing fixed rate mortgage had been in place for around a year when they sought advice from Legal & General. The adviser recorded, and Mr and Mrs Q agreed, that they wanted to fix their mortgage rate for five years, that they wanted the mortgage over a longer term so that they could keep their monthly mortgage payments lower, and that they wanted one manageable monthly payment for all their debts. I thought that they understood they would have to pay an ERC of around £500 on their existing mortgage and that they would pay more overall because of the longer term.

But, whilst Mr and Mrs Q understood this, I found that the adviser was responsible for ensuring that his recommendation was suitable. I didn't think the advice was suitable for Mr and Mrs Q. I said this because:

- Mr and Mrs Q were advised to remortgage away from their existing provider where they were on a fixed rate of 5.85% until 31 December 2008. Their remortgage was at a higher rate (6.09%) and they had to pay an ERC of £529. Whilst I accepted interest rates were uncertain at the time and the remortgage fixed the rate for five years, the fixed rate period and the ERC on their existing mortgage were only in place for a further 11 months – and it seemed to me it would have been better to re-mortgage then.

- The adviser recorded that Mr and Mrs Q had a monthly surplus income, after their existing mortgage payment, of around £500. This took into account holiday and leisure spending, so I didn't understand why Legal & General were now saying that Mr and Mrs Q were spending all of their income on day to day living expenses.
- Legal & General said the income figure was not guaranteed because it included overtime and a bonus. But I thought it seemed to have decided at the time that the overtime and bonus was fairly reliable – as it took it into account when it decided the new mortgage was affordable.
- Mr and Mrs Q may well have said they wanted to reduce their monthly outgoings. But, based on the income and expenditure figures recorded, there was no evidence of any financial difficulties. They were not in arrears with their existing mortgage or debts and, as noted above, they had a monthly income surplus. I noted they were only repaying the minimum monthly amount on both of their credit cards, but this didn't mean it was suitable for them to consolidate their debt. Their existing debts (two credit cards and one loan) only amounted to £3,500 and they were meeting the monthly repayments. Although the interest rates were relatively high when compared to the fixed rate mortgage, the loan term was due to expire in a year and they appeared to have had the means to repay their credit cards within a relatively short period if they increased their monthly repayments. I accepted debt consolidation meant overall a reduced monthly payment – but in Mr and Mrs Q's circumstances, I didn't think this benefit outweighed the costs. They had to pay the ERC, initial costs and fees on the new mortgage of around £1,900 and a higher fixed rate of interest on the new mortgage over a longer term.

I decided that If Mr and Mrs Q had received suitable advice, they wouldn't have remortgaged. So I thought, in addition to the redress recommended by the adjudicator, Legal & General should pay the difference between the existing lender's fixed rate, up to 31 December 2008, and its standard variable rate up to the end of the remortgage fixed rate period and the higher rate they paid.

Legal & General agreed with my provisional decision.

The claims management company, on behalf of Mr and Mrs Q, responded to say that it agreed with my conclusions, but disagreed with the end date for the calculation of redress. It said it was wrong to assume that Mr and Mrs Q could remortgage in 2013 and that there is potential for ongoing loss.

my findings

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

I have considered in particular the claims management company's comments about the end date for the calculation of redress. But I think it is reasonable to assume that Mr and Mrs Q were able to remortgage at the end of the fixed rate term without incurring an early repayment charge and it is fair that this date is used as the end date for redress.

Neither Mr and Mrs Q nor Legal & General has provided any other fresh information or evidence in response to my provisional decision. I therefore find no basis to depart from my earlier conclusions.

my final decision

My final decision is that I uphold this complaint. In full and final settlement, I order Legal & General Partnership Services Limited to:

1. Refund all fees and charges paid by Mr and Mrs Q to set up the mortgage, plus interest at the new mortgage rate for fees added to the loan, or 8% simple interest for fees paid up front.
2. Pay Mr and Mrs Q the early repayment charge, plus interest at the new mortgage rate.
3. Pay Mr and Mrs Q redress for the consolidated debt by:
 - Calculating the amount Mr and Mrs Q have paid to date in capital and interest payments in respect of the consolidated debt;
 - Calculating how much remains on their mortgage balance in respect of the consolidated debt;
 - Calculating how much Mr and Mrs Q would have paid to clear the debt had it not been consolidated; and
 - Adding together the first and second figures, deducting the third and paying the result as a lump sum.
4. Pay the difference between the remortgage fixed rate of 6.09% and the existing lender's fixed rate of 5.85% on the mortgage balance for the period from the date the remortgage completed to 31 December 2008.
5. Pay the difference between the remortgage fixed rate of 6.09% and the existing lender's standard variable rate on the mortgage balance for the period from 1 January 2009 to the date the remortgage fixed rate term expired.

The calculations in 4 and 5 above should be completed comparing the old mortgage with the new balance after the fees, ERC and consolidated debt adjustments have been refunded.

Should Legal & General consider that it needs to deduct income tax from any 8% interest element of the final award, it should give Mr and Mrs Q the necessary certificate.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs Q to accept or reject my decision before 22 June 2015.

Elizabeth Dawes
ombudsman