complaint

Mrs D, who is represented by a solicitors' firm, complains that Legal and General Partnership Services Limited ("Legal & General") mis-sold her a mortgage.

background

I issued a provisional decision in this case on 11 March 2016. In that provisional decision, which is attached and forms part of this final decision, I indicated that I intended not to uphold this complaint and invited further comments.

Both parties confirmed receipt of my provisional decision. Legal & General had nothing to add. Mrs D's representative made a number of points that I was asked to consider.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having looked carefully again at the case, and all the additional points raised by Mrs D's representative, I am not persuaded to change my decision. However I would like Mrs D and her representative to know that I have considered all of the points that were raised, and I will deal with the key points below:

The Mortgage Record of Suitability of 22 June 2006 is very similar to that of 16 June 2006, save for the addition of the points raised in the letter of 19 June 2006. It is also clear that a number of potential scenarios were discussed between May and June. All, however, had a broadly similar aim, to reduce the amount of outgoings by consolidating debt into the new mortgage, and capital raising. The number of amendments suggests to me that Mrs D, along with the late Mr D, considered carefully how much they wanted to re-mortgage for and understood the benefits and drawbacks of doing so. I don't think they were simply encouraged to borrow as much as possible.

As I said in my provisional decision, this was, and remains, a finely balanced case. It is certainly arguable that the advice to consolidate debt was more expensive in the long-term. But when making my decision, I considered not just the long-term position, but also the short and medium term circumstances. I'm satisfied that Mr and Mrs D were significantly better off in the short and medium term as a result of the advice given.

I'm not persuaded that I should consider it was suitable advice to consolidate the loan and the higher rate credit card but not the lower rate credit card. If Mr and Mrs D hadn't consolidated that card, whilst it would doubtless have cost them less in the long-term, their overall monthly payments would've been higher. The mortgage rate was, in any event, substantially lower than the credit card rate, and I consider in this case that the lower monthly payment cannot be ignored. I quote from my provisional decision:

> "It is the case, I understand, that the overall amount they paid on the outstanding debts was more over the course of the mortgage. Although I also note the interest rate was substantially lower than on both one of the credit cards and the loan. The debt consolidation allowed Mr and Mrs D to reduce their monthly outgoings to a single payment. Whilst they weren't in financial difficulty in the sense that they were struggling to pay their mortgage, I don't think their situation was particularly

> comfortable either. The re-mortgage did give them substantially more disposable income each month and also had the benefit of providing them with a cash sum. In the short and medium term, it put them in a better position. And the mortgage appeared affordable and would be paid off before their planned retirement."

It is true to say that a substantial payment was made for payment protection insurance ("PPI"). But this was later refunded, putting Mrs D back in the position if she hadn't bought PPI. Although I am asked to consider the wider consequences of the PPI sale, from the history of this case, I am not persuaded that without the PPI, Mr and Mrs D would've chosen not to have consolidated some of their debt, or that it was unsuitable advice for them to do so.

So whilst I recognise that my decision will come as a disappointment to Mrs D, on balance I don't consider that the advice given was unsuitable and so I don't uphold this complaint.

my final decision

I don't uphold this complaint and make no award against Legal & General Partnership Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 31 May 2016.

Nigel Hamilton
ombudsman

copy of provisional decision

complaint

Mrs D, who is represented by a solicitors' firm, complains that Legal and General Partnership Services Limited ("Legal & General") mis-sold her a mortgage.

background

In 2006, Mrs D, along with the late Mr D, approached an appointed representative of Legal & General to assist them with a re-mortgage.

At the time, they had an outstanding mortgage balance with another lender of approximately £105,500. The re-mortgage was for around £165,000. In re-mortgaging, they repaid credit card debts amounting to £6,000 and a loan of around £10,500. The additional balance was made up of fees, charges by Legal & General's representative, a substantial early repayment charge ("ERC") and a payment made to Mr and Mrs D, I understand for the purposes of a holiday and a new car. There was also a large single premium payment protection insurance ("PPI") policy which I believe has been complained about previously and dealt with separately.

Our adjudicator thought the complaint should be upheld. Legal & General didn't agree, and so the case has been passed to me for a final decision to be made.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I am afraid I am going to disappoint Mrs D because I don't currently think her complaint should be upheld.

Mr and Mrs D had a low fixed interest rate with another lender. The ERC applied until 2010, meaning that if Mr and Mrs D re-mortgaged, they would have to pay that charge. Our adjudicator thought that the fixed rate of 2.29% also ended in July 2010. So having come to that conclusion, understandably, she considered that re-mortgaging to a higher rate of 4.84% was unsuitable advice. But having looked at the evidence available to me I don't agree that the low fixed rate was going to continue. Mr and Mrs D had approached Legal & General with a view to sourcing them a new mortgage. In the documentation, Legal & General's representative has noted that the fixed rate was to end in July 2006, and Mr and Mrs D had been informed by their lender that their mortgage payments were going to rise by £398 per month.

Although uncommon now, there were at the time some particularly low-rate deals on the market where the redemption penalty extended beyond the initial fixed rate period. Here it seems most likely to me that having previously had a very low interest rate, Mr and Mrs D were placed in the position of either paying their lender's higher Standard Variable Rate ("SVR") for four years or re-mortgaging and paying a large redemption penalty.

I have seen the mortgages available to Mr and Mrs D and it appears that the recommendation was for the cheapest rate available to them, of 4.84%. This was a five year fixed rate and I note that Mr and Mrs D had also said they wished to have a long term period of stability. I am confident the interest rate would've been less than the rate they would've paid with their existing lender.

So Mr and Mrs D had a choice to make. They could remain with their existing lender on the deal on the higher SVR, which would cost them more per month, and they'd have to also fund their loan and credit cards. Or they could re-mortgage, pay the ERC, pay off their other debts and make one payment each month, but owe more in the long-term.

I must note that it appears that when Legal & General gave the initial advice, it wasn't aware that the ERC applied. Because of the value of this ERC, around £7,500, this had the potential as to alter the advice given, and indeed whether the mortgage was suitable. I note however that this advice was corrected in writing before the mortgage offer was finalised, and the typed recommendation suggests that Mr and Mrs D still wanted to go ahead.

This is a finely balanced case. On the one hand, Mr and Mrs D owed around £50,000 more on their mortgage than they had done previously (once the refunded PPI has been removed.) And they only consolidated £16,500 of debt. The figures provided are inconsistent, because Legal & General's representative calculated that Mr and Mrs D were to take an initial £6,800 for a car and holiday, but the completion statement from the solicitors dealing with the transaction suggests the payment to them was over £21,000.

It is the case, I understand, that the overall amount they paid on the outstanding debts was more over the course of the mortgage. Although I also note the interest rate was substantially lower than on both one of the credit cards and the loan. The debt consolidation allowed Mr and Mrs D to reduce their monthly outgoings to a single payment. Whilst they weren't in financial difficulty in the sense that they were struggling to pay their mortgage, I don't think their situation was particularly comfortable either. The re-mortgage did give them substantially more disposable income each month and also had the benefit of providing them with a cash sum. In the short and medium term, it put them in a better position. And the mortgage appeared affordable and would be paid off before their planned retirement.

The advice that was provided was set out clearly. That doesn't of course by itself mean it was suitable advice, but I think Mr and Mrs D would've understood the implications of re-mortgaging and decided that it was their preferred option. It may well be that they were encouraged to borrow as much as possible, but I don't have sufficient evidence to come to that conclusion, notwithstanding they did borrow significantly more than they had previously.

I think that the advice was, on balance, suitable for their circumstances. It did increase debt in the long-term, but this is not the sole criteria I must apply. I need to look at Mr and Mrs D's situation as it was and what they needed from a mortgage. And here, the short and medium term benefits to their finances outweighed, in my view, the fact that they'd pay more over the long-term.

my provisional decision

Based on what I've seen so far, I don't intend to uphold this complaint.

I now invite all parties to provide me with any further evidence by 14 April 2016 after when I will issue my final decision.

Nigel Hamilton
ombudsman