

complaint

Mr T complains that the mortgage recommended by Legal & General Partnership Services Limited was unsuitable. He is represented in his complaint by a third party.

background

Mr T's mortgage with his previous lender was repaid partly on a repayment basis, and partly on interest-only. He also had a number of credit card debts, an overdraft and an unsecured loan. He consulted Legal & General about a re-mortgage, and increased his borrowing to consolidate his unsecured debts. The mortgage term was also increased. Mr T considers the mortgage recommended by Legal & General was unsuitable, in summary, for the following reasons:

1. It was not appropriate to consolidate debt and increase the mortgage term.
2. Affordability was not properly assessed.
3. The amount of fees and their overall impact on the loan was not explained.

our adjudicator's view

The adjudicator did not recommend the complaint should be upheld. He was satisfied that the client review included details of Mr T's circumstances and requirements, and that Legal & General's recommendations were in line with these. He considered Mr T wanted to reduce his interest-only borrowing in light of the projected proceeds from his endowment policies. The adjudicator was also satisfied that the mortgage was affordable, and that the risks associated with debt consolidation had been explained to Mr T.

On behalf of Mr T, his representative responded to say, in summary, that they did not agree with the adjudicator's conclusions, and did not consider the following points had been addressed:

1. Legal & General's advice was the result of a cold call.
2. Debt consolidation was not appropriate in light of Mr T's circumstances.
3. The implications of extending the mortgage term had not been properly explained.

They considered, in summary, that Legal & General had failed in its duty of care to Mr T, and that he had been financially disadvantaged as a result.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr T, his representative, and to Legal & General on 1 May 2014. I summarise my findings:

- On balance I was satisfied that Mr T wanted the security of knowing what his monthly repayments would be. I therefore accepted that reducing outgoings was not the overall driver behind Mr T's re-mortgage.

- I also accepted that once fees were taken into consideration, the initial savings he made were not quite as much as Mr T might have been led to believe. Overall, however, on balance I was satisfied that Mr T did make a saving on his monthly payments, at least during the first three years.
- I was satisfied that Mr T could afford the mortgage, and was not persuaded that it was wrongly sold on grounds of affordability.
- I was not persuaded that consolidation of Mr T's credit card debts and overdraft was inappropriate.
- In connection with the unsecured loan, however, I was inclined to agree with Mr T's representative that consolidating that particular debt did not make financial sense.
- In the circumstances, therefore, I considered it would have been reasonable for Legal & General to explore in greater detail with Mr T whether he could repay his unsecured loan by alternative means, and avoid consolidation. From the available evidence, I considered it unlikely that it took those steps.
- Regarding the origin of the mortgage advice, and the circumstances in which Mr T was required to sign the documents, I could not safely conclude that Legal & General behaved unreasonably in connection with the information it provided.
- I was also satisfied that the recommendation document clearly explained that a greater amount of interest would be payable due to the term extension of the mortgage.
- Overall, therefore, on balance I was satisfied that the mortgage was affordable to Mr T. In addition, I did not consider it was unreasonable for the credit card debts and overdraft to be consolidated.
- However, I was not persuaded that it was appropriate to consolidate Mr T's unsecured loan.

Subject to any further representations by Mr T, his representative, or Legal & General, my provisional decision was that Legal & General should compensate Mr T so that he is put back into the position he would have been in if that debt had not been consolidated.

On behalf of Mr T, his representative responded to say that he accepted my provisional decision.

Legal & General responded to say, in summary, that it considered Mr T's surplus monthly income at the time the mortgage was rearranged was limited. It also considered his monthly outgoings would have been higher if his debts had not been consolidated and the mortgage term extended.

Legal & General was also concerned that Mr T might be overcompensated if redress is calculated to the end of the mortgage term. On reflection, I could see that this is a possibility - because we do not know what future interest rates will be, or at what point the mortgage will be fully repaid. I sent my revised provisional conclusions about redress to the parties on 30 June 2014. I considered a fair outcome was for Legal & General to assess redress based on the capital position of the loan in relation to the mortgage – assuming that the consolidated debt was included in the capital and interest part of the mortgage.

I considered Legal & General should:

1. To date of settlement, calculate how much Mr T has paid in total (capital and interest) towards the part of his mortgage that is made up of the consolidated loan.
2. Deduct from this figure the amount Mr T would have paid in total towards the loan if it had not been consolidated.
3. Pay the difference to Mr T.
4. Taking into account the payments that Mr T has made towards the capital balance of his mortgage up to date of settlement and that a proportionate amount was paid to the part of the mortgage that is made up of the consolidated loan, calculate what the remaining balance of the consolidated loan is – and pay that amount to Mr T.

This calculation of redress is different to that set out in my original provisional decision. If the calculation in (3) results in a negative figure (if the amount he has paid towards the mortgage is less than he would have paid towards the loan) I considered it should be deducted from the calculation in (4). I invited the parties to submit any further representations they wanted to make, before I issued my final decision.

On behalf of Mr T, his representative responded to say that they agreed with my revised provisional conclusions in connection with redress. They asked for confirmation that Mr T would be entitled to statutory interest on the redress payable.

Legal & General responded to say that it considered my revised provisional conclusions on redress were fair.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence and the wider surrounding circumstances.

Whilst I note all that Legal & General has said about Mr T's financial situation when the mortgage was rearranged, I remain of the view that in the circumstances, it would have been reasonable for it to explore with him the possibility of repaying his unsecured loan without consolidation of the debt. As I consider it unlikely, on balance, that Legal & General took those steps, I am satisfied that it should compensate him in recognition of the increased cost of paying the debt.

I am therefore satisfied that Legal & General should pay compensation to Mr T, in line with the calculation set out in my revised provisional findings on redress. If Mr T has paid more to the part of the mortgage that is made up of the consolidated loan than he would have done if the loan had run its term, then statutory interest should apply to the excess he has paid.

my final decision

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

1. To date of settlement, calculate how much Mr T has paid in total (capital and interest) towards the part of his mortgage that is made up of the consolidated loan.
2. Deduct from this figure the amount Mr T would have paid in total towards the loan if it had not been consolidated.
3. Pay the difference to Mr T.
4. Taking into account the payments that Mr T has made towards the capital balance of his mortgage up to date of settlement, and that a proportionate amount was paid to the part of the mortgage that is made up of the consolidated loan, calculate what the remaining balance of the consolidated loan is – and pay that amount to Mr T.

If the calculation in (3) results in a negative figure (if the amount he has paid towards the mortgage is less than he would have paid towards the loan) it should be deducted from the calculation in (4).

If the calculation in (3) results in a positive figure (if the amount he has paid towards the mortgage is more than he would have paid towards the loan), Legal & General should pay interest on that amount at an annual rate of 8% simple, from the date the amount paid by Mr T towards the mortgage exceeded the amount he would have if the loan had run its term, to the date of settlement.

If Legal & General considers it has to deduct tax from the interest element of my award, it should send Mr T a tax deduction certificate when making payment. He can then use that certificate to try to reclaim the tax, if he is entitled to do so.

Caroline Stirling
ombudsman