

complaint

Mr and Mrs J complain they were mis-sold a mortgage by a representative of Legal & General Partnership Services Limited (L&G). And they're unhappy about the early repayment charge (ERC) they paid when they remortgaged.

background

When Mr and Mrs J agreed to go through a remortgage application with L&G, they had around 17 years left on a mortgage with a fixed interest rate of 6.19% that would run for another 10 months or so.

Mr and Mrs J wanted to remortgage so they could repay all their debts before Mr J stopped working. And they wanted to pay off some debt as they were having money problems. On the advice of L&G, they took out a mortgage with a different lender that had a 3 year fixed rate of 7.44%. They borrowed extra to clear some debt and took out the new mortgage over 12 years. This meant Mr and Mrs J reduced the term of their mortgage and debt more in line with Mr J's planned retirement date. And they had some extra spending money each month.

L&G didn't uphold the complaint on the basis that (briefly):

- the new mortgage had a higher interest rate than Mr and Mrs J were paying on their existing deal, but it was lower than the rate they were paying for a secured loan they were able to consolidate – and considerably lower than they were paying on some other loans
- Mr and Mrs J's new monthly mortgage repayments during the fixed rate period were less than they'd been paying towards their mortgage and debts previously (by around £110)
- by consolidating Mr and Mrs J's debts to the mortgage, L&G enabled them to reduce their mortgage term by four years and eight months
- at the same time Mr and Mrs J made some savings and their disposable monthly income increased by £40
- even taking into account the ERC Mr and Mrs J would still make savings in the longer term compared to staying as they were. And their difficult financial circumstances meant that postponing the remortgage would've made things more difficult and expensive for Mr and Mrs J.

R complained this wasn't a good deal for Mr and Mrs J overall and asked us to look into their complaint. Our adjudicator recommended upholding the complaint in part.

In summary, she agreed that Mr and Mrs J had been in a difficult financial position, so the remortgage was necessary. And she didn't think Mr and Mrs J would've been able to secure a lower rate *and* reduce the term of the mortgage in their financial position. So she couldn't say that moving to a higher interest rate was unreasonable in their circumstances.

But, in her opinion, if they'd waited until the ERC period had finished, Mr and Mrs J would've been in a better position. Based on L&G's figures, our adjudicator worked out that

Mr and Mrs J saved £1705.07 by remortgaging. But the ERC they paid left Mr and Mrs J worse off by £2628.03 overall.

Our adjudicator acknowledged that Mr and Mrs J might've struggled to manage their overdraft over the 10 months when the ERC still applied. She agreed it was quite likely Mr and Mrs J would've continued to incur charges. But she thought that, in 10 months, it was highly unlikely that Mr and Mrs J would've incurred charges of £2628.03 or increased their debt by more than this. So, despite their money situation, it wasn't necessary for Mr and Mrs J to remortgage when they did. And they'd have benefitted more if they'd waited 10 months until the ERC was no longer payable.

Also, our adjudicator felt that by paying their debts outside the mortgage for those 10 months, Mr and Mrs J would've reduced the balances on their other debt. So their remortgage balance after 10 months would've been lower, especially because the ERC wouldn't have been applied. This would've meant that the remortgage term could've been reduced more to bring it even closer to Mr J's retirement age. So our adjudicator recommended that L&G should refund the ERC, along with any associated broker fees, plus interest.

R says Mr and Mrs J are happy to settle on this basis. L&G disagrees with our adjudicator's view. It says Mr and Mrs J couldn't wait a further 10 months before remortgaging. They needed to act immediately and weren't in a position to wait until the ERC expired. If they'd waited and their credit rating deteriorated further, it's unlikely they'd have been able to get a new mortgage.

L&G has asked for an ombudsman review, so this complaint has been passed to me.

my findings

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

The crux of this complaint turns on the timing of L&G's remortgage advice. I don't know what would've happened if Mr and Mrs J had waited until the end of the ERC period before trying to remortgage. Based on the information I've seen, I must decide what I think is most likely.

Mr and Mrs J's credit file was already substantially compromised by their payment history when L&G secured the remortgage deal it advised them to take out. I think it's fair to say that in another 10 months, it's unlikely that Mr and Mrs J's financial circumstances would've got worse to the extent that L&G wouldn't have been able to get them a mortgage – either at all or on affordable terms it could recommend. I can't say what would've happened to the balances on Mr and Mrs J's other debt which included credit cards and an overdraft. But even if those had increased, payments made towards their existing mortgage and loans would've helped bring these balances down.

By that time, the ERC wouldn't have been payable – so this would've been a substantial saving. And the remortgage term could've been reduced more in line with Mr and Mrs J's future plans.

I agree with our adjudicator that, looked at overall, the available information doesn't show there was any need for Mr and Mrs J to remortgage when they did - or that it was in their interests to do this. Mr and Mrs J would've been better off overall waiting to remortgage

when they didn't have to pay the ERC. And if L&G had given them suitable advice about this they probably wouldn't have remortgaged when they did.

my final decision

I uphold this complaint and I order Legal & General Partnership Services Limited to pay Mr and Mrs J as follows:

- reimburse the ERC including interest that's been incurred on this amount
- refund the amount of the broker fee/charges charged in respect of the ERC, as well as 8% simple interest per annum if paid up front, or at the mortgage rate if added to the mortgage balance
- if L&G considers it has to deduct tax from the interest element of my award, it should send Mr and Mrs J a tax deduction certificate when it pays them. They can then use that certificate to try to reclaim the tax if they're entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask R on behalf of Mr and Mrs J to accept or reject my decision before 13 May 2016.

Susan Webb
ombudsman