

## **complaint**

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

## **background**

In 2006 L&G's representative recommended a two year fixed rate mortgage on a repayment basis to Mr and Mrs F. He also recommended consolidating two credit card debts and an unsecured loan. Mr and Mrs F took out the recommended mortgage. Various fees were added to the loan.

But in 2014 they complained to L&G, via a representative, that the advisor hadn't recommended the cheapest mortgage. L&G said that Mr and Mrs F wanted the lender's fee added to the loan. This meant the recommended lender was the cheapest as it had the lowest fee.

Mr and Mrs F brought their complaint to us. They also complained that consolidation hadn't been suitable. L&G say that Mr and Mrs F had wanted, and needed, to consolidate.

The adjudicator decided not to uphold the complaint. And so Mr and Mrs F asked for an ombudsman to make a final decision.

## **my provisional decision**

In my provisional decision, I said:

Mr and Mrs F had no suitable repayment vehicle and wanted the security of knowing what their monthly repayments were going to be. And so a fixed rate mortgage on a repayment basis was clearly suitable. But I don't think the recommended lender was the best option or that consolidation of the debts was suitable. The reasons for this are as follows.

### Recommended lender

I accept that Mr and Mrs F wanted the cheapest possible monthly repayments and to add the lender's fee to the loan. I also accept that there were mortgages with lower interest rates than the recommended lender but because of higher lender's fees they were more expensive options. But there were two mortgages with the same rate as the recommended lender that were offering £700 cashback. And so although the lender's fee for those mortgages was also higher the cashback meant they were in fact cheaper options.

### Debt consolidation

The mortgage record of suitability confirms that Mr and Mrs F were told that consolidating would increase the overall cost of the debts. But having one manageable payment was more important to them.

Mr and Mrs F were paying around £180 a month towards their debts. Their disposable income was enough to continue with those payments, and the new higher mortgage payments, without consolidating. And so there were no issues with affordability. This means that Mr and Mrs F, by consolidating, have secured debts against their home which they could have continued to pay from their monthly disposable income.

Two of the debts, if not all three, would have been repaid within five years. And so although Mr and Mrs F made savings in the short term, by consolidating they will end up paying more in the long term due to the additional interest payable until the end of their mortgage term.

For these reasons, although a manageable monthly payment was a marginal advantage that alone wasn't enough to outweigh the disadvantages of consolidating. I'm not persuaded that there was a great deal to be gained from having one direct debit per month rather than two or three when Mr and Mrs F's circumstances didn't justify consolidation.

As an aside, L&G has provided a bank statement for a one month period showing that Mr and Mrs F used their overdraft facility. This is only a snapshot of their banking activities. Plus there could be many reasons for why they used their overdraft facility during that period. And so I don't accept this as evidence that they were struggling financially and needed to consolidate.

### **the response to my provisional decision**

Mr and Mrs F, via their representative, agreed with my provisional decision.

But L&G disagreed and raised the following points.

- Whether Mr and Mrs F met the eligibility criteria for the £700 cashback;
- Mr and Mrs F had to use their overdraft facility to pay their monthly bills and expenses and so weren't in the financially stable position indicated by my provisional decision – a further bank statement from 2008 has been provided in support of this;
- My finding that the loans would have been repaid within five years is based on the assumption that Mr and Mrs F wouldn't have used their credit cards again in the future and increased the amount of debt;
- By signing the mortgage of record of suitability ("MROS") Mr and Mrs F understood, and agreed to, consolidating their debts.

### **my findings**

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

The whole point of the list of top sourced lenders ("the list") would have been to show Mr and Mrs F all of the products that they were eligible for. Plus the MROS states that the lending criteria of the lenders on the list matched Mr and Mrs F's needs and preferences. And so it seems to me that they were eligible for all of the products – including the cashback offers – on the list. If this wasn't in fact the case, the broker should have fully explained why he couldn't recommend the cheaper option. But the MROS doesn't show any such advice.

I have to consider whether the broker's advice – based on information known at that time – was correct or not. And so the further bank statement dated 2008 can't be used to validate the broker's recommendation to consolidate the debts back in 2006.

L&G say that I have assumed that the other bank statement referred to in my provisional decision shows that Mr and Mrs F used their overdraft facility as a "one off". This isn't the case. My provisional decision in fact said that the statement only provides a "snapshot" of

how Mr and Mrs F used their overdraft facility. And so it doesn't prove an ongoing reliance on that facility or other financial difficulties.

In relation to the debt consolidation, it's clear that the consolidated loans would have been repaid within five years – this is based on the evidence I have and isn't an assumption. Again, I have to consider whether the broker's recommendation was suitable based on the existing debts at that time – and not based on speculation of further debts in the future.

I accept that Mr and Mrs F signed the MROS. L&G suggest that this shows that they were aware of, and agreed to, consolidating. This may well be the case – but their agreement doesn't make an otherwise unsuitable recommendation acceptable.

For these reasons, and the reasons outlined in my provisional decision, I uphold this complaint.

### **my final decision**

For the reasons I have given, my final decision is that I uphold this complaint and direct Legal & General Partnership Services Limited to:

- Calculate the monthly payments to service the amount consolidated for the debts up to the date of settlement ("figure A").
- Calculate how much of the consolidated debts remain as part of the mortgage balance at the date of settlement ("figure B").
- Calculate how much it would have cost Mr and Mrs F to pay back the debts if they hadn't been consolidated ("figure C").
- Then add together figures A and B minus figure C and pay that amount as a lump sum to Mr and Mrs F.
- Calculate the difference between the lender fee Mr and Mrs F paid and the fee they would have paid for the cheaper mortgage option taking into account the £700 cashback. Then pay that amount, plus interest at the mortgage rate up to the date of settlement, to Mr and Mrs F as a lump sum.
- Repay Mr and Mrs F the proportion of the advisor's fee related to the higher mortgage balance for consolidating the debt, plus 8% annual simple interest if the fee was paid up front or interest at the mortgage rate if the fee was added to the mortgage up to the date of settlement.

If L&G considers it should deduct income tax from the 8% interest element of my award it may do so, but should give Mr and Mrs F the necessary certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 10 December 2015.

Sim Ozen  
**ombudsman**