

## **complaint**

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

## **background**

Mr D and Miss E had an interest only mortgage, made up of several elements, some of which were on a fixed rate and some on the lender's standard variable rate. They also had two unsecured loans and a credit card debt. Acting on the advice of L&G, they re-mortgaged. They switched lender, retaining the mortgage as interest only, and consolidated the debt to it. They added fees and charges to the loan balance and incurred an early repayment charge ("ERC") from their existing lender, also added to the loan balance.

Mr D and Miss E's representative complained that the mortgage was mis-sold. It said it was unsuitable because their business was obtained by cold-calling; because the unsecured debt, by consolidating, was switched from being repaid to interest only; because the fees charged were excessive; and because an ERC was incurred only two months before it expired. It also says that no proper affordability check was done and no repayment vehicle was in place.

L&G said that the mortgage was suitable because it met Mr D and Miss E's needs and circumstances. Their previous loan was also interest only so it replicated their existing arrangements. Debt consolidation was suitable because they were over-spending each month and reducing their outgoings was their primary objective in taking advice.

Our adjudicator didn't think that the complaint should be upheld. As Mr D and Miss E's representative didn't agree, the case comes to me for a decision to be made. As I came to a different view to the adjudicator, in part, I decided to issue a provisional decision. This allows all parties one final opportunity to comment before I make my final decision.

## **my provisional decision**

In my provisional decision I said, in summary:

- Mr D and Miss E's main objective was to reduce their monthly outgoings, and the recommendation achieved that;
- While I had concerns about a recommendation to consolidate unsecured debt to an interest only mortgage – therefore stopping repaying the debt – I noted that Mr D and Miss E had decided to do that and had discussed doing so with their existing lender. I concluded that even if L&G had not recommended it, it was something they would have done anyway, and so they had not suffered any detriment.
- I noted that there was no consideration of a repayment strategy, but that the mortgage replicated Mr D and Miss E's previous interest only mortgage, so again I wasn't persuaded they were caused any detriment by the advice;
- I didn't consider adding fees and charges to the loan to be unsuitable in the circumstances;
- But I did think that they incurred an unnecessary ERC, because they could have waited three months until it expired – I was satisfied that, had that been so advised they could have afforded to have waited, and would have done so.

### **the responses to my provisional decision**

Neither party accepted my decision. Mr D and Miss E's representative said that L&G should have advised on alternative options, such as a part interest only part repayment mortgage, a second charge secured loan on a repayment basis over a longer term, or referral for debt management advice. Any of those options would have reduced Mr D and Miss E's outgoings. Had alternative advice been given, they would likely have followed it. Any other option would have left the debt on a repayment basis, meaning it would have reduced significantly by now.

L&G confirmed that the ERC paid was £263.31. It said that the recommendation reduced Mr D and Miss E's outgoings by around £300 per month, so they immediately recouped the cost of the ERC in savings made.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from my provisional decision.

Mr D and Miss E's main objective was to reduce their outgoings. Taking the mortgage on a part repayment basis would not have achieved that – at least, not to anything like the same extent. And when they had discussed raising further capital with their existing lender they had done so on an interest only basis – and the existing lender had refused further lending. Mr D and Miss E wanted to reduce their outgoings as far as possible by retaining their borrowing on interest only terms and had already tried and failed to do so. Taking part of the new mortgage on a repayment basis would not have met their objectives. And given the state of their finances and the previous lender's decision, it may not have been acceptable to a lender as being unaffordable.

Nor do I think that L&G, as a mortgage broker, was required to advise on or recommend second charge lending – which is a consumer credit, not mortgage related, regulated activity. And as Mr D and Miss E were maintaining their existing debts, a debt management plan – with the associated impact on their credit records – was not something that the broker was required to recommend they explore.

I remain of the view that, even if it was not the most suitable option available to them, the recommended mortgage including debt consolidation met Mr D and Miss E's objectives and – had different advice been given – they would still have gone ahead. So they have not suffered any detriment.

I also remain of the view that it would have been right to recommend waiting a short period until the ERC expired. I don't think L&G's argument is persuasive; it takes no account of the interest incurred on the ERC over the term of the mortgage.

### **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 refund the early repayment charge, to which should be added interest at the mortgage rate from date of completion to date of settlement.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D and Miss E to accept or reject my decision before 2 April 2015.

Simon Pugh  
**ombudsman**