

## **The complaint**

This complaint is about a new interest rate product Miss B and Mr B asked Connells Limited to arrange on their mortgage. Connells didn't carry out the task on time, leaving Miss B and Mr B with substantially higher mortgage costs for five years.

## **What happened**

The broad circumstances of this complaint are known to Miss B and Mr B and Connells. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here.

Our decisions are published, and it's important that I don't include any information that might result in Miss B and Mr B being identified. Instead I'll give a brief summary in my own words, rounding the figures, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Miss B and Mr B have a mortgage with a lender I'll call T. The mortgage was on a fixed rate of 1.44%, which was due to expire at the end of November 2022. The terms of that agreement were that if they left it before 30 November 2022, Miss B and Mr B would incur an early repayment charge (ERC) of around £3,200.

In August 2022, Connells arranged for T to issue an offer for a new five-year deal at 3.29%. This offer had an expiry date of 2 November 2022, so Miss B and Mr B would have paid an ERC if they'd taken it up. In September 2022, T introduced a policy allowing borrowers to pre-book a new deal up to three months ahead of taking it up. At this point, T's five year fixed rate deal was at 3.49%.

At the beginning of November 2022, Miss B and Mr B became aware that Connells hadn't taken any further action to confirm their new deal with T; the August offer had expired and Miss B and Mr B were facing the prospect of their mortgage going onto T's standard variable rate (SVR) from 1 December 2022.

When they complained; Connells said there was still time to take a new deal to avoid going on to SVR. However, T's five-year rates was now at 5.99%. Miss B and Mr B didn't think they could afford to pay that, and were reluctant to commit to it without knowing at that stage if Connells would offer redress. They eventually took a new five-year rate of 4.34%, in March 2023.

Connells did offer redress for its error; it agreed to pay the difference in interest between the 3.29% rate and the 4.34% over the five-year period. It also offered to compensate Miss B and Mr B for the three-month period they were on SVR, refund the £99 arrangement fee, and pay compensation of £500 for their time, trouble and upset. In total, the redress package on offer totalled just under £12,500. Miss B and Mr B accepted it without prejudice and continued with the complaint to this service.

Our investigator thought the settlement was a fair response on Connells' part. Miss B and Mr B asked for the complaint to be reviewed by an ombudsman. They say that at the end of the five years on the 4.34% deal, their outstanding balance will be about £4,000 higher than it would have been on the 3.29% deal.

### **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us. It's for me to decide what the material issues are that will affect the eventual outcome. It's also my judgement on what evidence I need to see and consider, in order to reach a fair decision.

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, these are my conclusions, and the reasons for them.

This is not a complaint where I have to decide fault; Connells has accepted it is responsible for Miss B and Mr B's financial position being worse than it should have been, and has paid redress for it. What that leaves for me to decide is whether Connells' settlement is fair, or whether the circumstances require that it do more to make Miss B and Mr B whole. Having carefully considered everything that both parties have said and provided, I believe the current settlement is fair. I'll explain why.

Firstly, it's entirely appropriate that Connells return the arrangement fee of £99, because Miss B and Mr B didn't receive the service the fee was intended to pay for. Meanwhile, the award of £500 compensation for distress and inconvenience is generally consistent with the level of award we generally make in broadly similar circumstances.

The bulk of the award from Connells is a lump sum to offset the extra interest Miss B and Mr B have had to pay, and will continue to pay, because their mortgage is fixed at 4.34% rather than 3.29% until 2028. It also covers the three-month period they were on SVR, so the question of whether Miss B and Mr B failed to mitigate the impact of Connells' error is moot.

What is also relevant here is that Connells used the 3.29% rate as the basis for its award, even though the offer at that rate would have expired *before* Miss B and Mr B's existing deal was due to end. In other words, Connells has assumed Miss B and Mr B would have switched to the 3.29% deal whilst still liable for an ERC on their current deal, but hasn't deducted that ERC from its award.

That leaves the sticking point for Miss B and Mr B, which is an argument, based on calculations they have carried out themselves, that at the end of the five years on the 4.34% deal, their outstanding balance will be about £4,000 higher than it would have been on the 3.29% deal.

It's not my role to audit the calculations forensically, but on first glance, it's not apparent to me that the December 2022 starting balance in the tab for the 3.29% calculation includes the

ERC Miss B and Mr B would have paid in order for the mortgage to have gone onto that rate. If it does not, then the calculation would need to be re-done, in one or other of two alternative methodologies.

Either the starting balance has to have been to be around £3,200 higher than it is, or the interest rate would have to be 3.49% (the rate that would have been available to pre-book in September 2022 to take effect from 1 December 2022) rather than 3.29%. In either case, the resulting progression of the capital reduction over the five years would be dramatically different.

There may or may not be other anomalies in the calculations Miss B and Mr B have submitted that might come to light if they were subject to forensic audit by a suitably-qualified professional. But just the one I have highlighted above is enough for me to conclude that the calculations cannot be relied on when I'm deciding the fairness or otherwise of Connells settlement.

If Miss B and Mr B have a real and substantive belief (based on something other than their own calculations) that they face a further loss on the capital position in 2028, it is open to them to arrange for the calculations to be audited by a suitably qualified and independent party.

The evidence of an audit could be used as the basis for a new complaint against Connells, but not as the basis for this one to be reopened. I make the latter point because Connells would need to be presented with the finished audit first, and be given the opportunity to consider and respond to it.

Miss B and Mr B would have to meet the cost of the audit, albeit if errors were found that were to their detriment, we would then expect Connells to reimburse any reasonable cost of the audit as well as taking any corrective action the audit revealed to be necessary. But as things stand, the available evidence doesn't give me reason to think that Connells should pay more redress than it has already.

### **My final decision**

My final decision is that I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr B to accept or reject my decision before 18 December 2023.

Jeff Parrington

**Ombudsman**