DRN-4282036

The complaint

Mr and Mrs G have complained that, because of errors by Connells Limited in relation to a mortgage application, only one part of their capital repayment mortgage was switched to a fixed rate of 3.09% for ten years, when both parts of their mortgage should have been switched. The other part – a sub-account with a balance of £182,673 – was later switched to a 5.79% ten-year fixed rate.

Mr and Mrs G want Connells to reimburse them for their financial losses.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here.

In addition, Connells has already acknowledged it made a mistake and has agreed to pay compensation. Therefore I don't need to analyse the events in detail in order to determine whether or not Connells has done anything wrong; this isn't in dispute. All I need to decide is whether the compensation offered is sufficient or if there is anything more Connells needs to do to put things right.

Finally, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs G being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Connells has agreed to pay the difference between the interest payments at 3.09% and 5.79% over the term of the fixed rate as a lump sum. This equates to £32,125.20. Connells has also agreed to reimburse the administration fee of £99, and to pay compensation of £500.

Mr and Mrs G said this didn't go far enough, as the payment tables they found online suggested their losses would be much greater than this. They say the capital balance of the mortgage would be much greater at the end of ten years on the 5.79% rate than on the 3.09% rate.

Mr and Mrs G brought their complaint to our service. After considering what both parties had said and after looking at the calculations, the investigator was satisfied that Connells' proposed resolution was fair and reasonable. Mr and Mrs G didn't agree and asked for an ombudsman to review the complaint.

Mr and Mrs G say that Connells resolution will cause them financial disadvantage as they will not be able to make 10% overpayments every year and so have been financially disadvantaged. They have provided calculations from a popular website showing a mortgage of 5.79% over a 25.5-year term which they say shows their financial losses being £12,712.

As the matter is unresolved, it falls to me to issue a final decision.

What I've decided – and why

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

Where a business has made an error, we try, as much as is practicable, to put the consumer back in the position they'd have been in if the mistake hadn't been made. Balanced against that is that we would expect a consumer to take steps to mitigate their position if it is reasonable to do so.

It wasn't possible for Connells to source a mortgage at 3.09% for Mr and Mrs G for this sub-account. Instead Connells offered financial redress for the additional interest totalling £32.125.20. I have therefore considered whether this is fair and reasonable in all the circumstances.

The redress compensates Mr and Mrs G for the additional interest they'll pay as a result of one sub-account not being switched to the 3.09% rate. That is of course fair, and Connells has agreed to pay this as a lump sum in advance of most of the actual loss occurring. So this gives Mr and Mrs G options about how to use that lump sum to gain the best advantage over the term of the 10-year fixed rate.

I've noted what Mr and Mrs G have said about the implications of the redress on the capital balance of the mortgage. However, Mr and Mrs G's mortgage allows them to make an overpayment of up to 10% of the balance each year without incurring an early repayment charge. Therefore in the first year of the mortgage they could reduce the balance by about £18,000, which Mr and Mrs G acknowledge. But they have claimed that they would be out of pocket by £5,343.10 because of what they describe as a *"delta of funds"* .

However, Mr and Mrs G have not taken into consideration the effect on the mortgage of making an allowed lump sum payment of up to 10% of the balance in year 2 of the mortgage.

In relation to overpayments, Mr and Mrs G's lender states:

> *"An early repayment charge applies on some mortgages. You may have to pay an early repayment charge if, during your early repayment charge period, you repay more than a certain amount of your mortgage or switch to a new mortgage deal. You can make, each year, extra payments of up to 10% (some products have a higher limit) of the mortgage balance as at 1st January before a charge applies.*
>
> *You can pay part of your mortgage whenever you want. They are known as lump-sum overpayments. When you make a payment, your mortgage balance will be reduced on the day we receive the money, and you'll start to be charged less interest. Then, because your balance is lower, you can either:*
>
> - *Keep paying your current monthly payment so that you repay your mortgage sooner. However, when we next re-calculate your monthly payment, for example at an interest rate change, we will set the new monthly payment to a level that will*

repay your mortgage over the current mortgage term. Or

- *Ask us to re-calculate your monthly payment immediately, so that you get to reduce your monthly payments but still repay your loan by the end of the current mortgage term. Or*

- *If your mortgage is set up on a repayment basis, you can apply to change the remaining term. If you do this, you will need to speak to one of our Mortgage Advisors who will check that you can afford the monthly payments over the new term and advise you if this is right for you."*

Therefore in the second year, Mr and Mrs G could make a further capital reduction of about £14,000 and could then ask their lender to recalculate their monthly repayment on the reduced balance. Given this, taking into account their lender's policy on overpayments, I'm satisfied that Mr and Mrs G have the option of making two lump sum payments in years 1 and 2, then either keeping their repayments the same (thus reducing the mortgage balance each month by way of overpayment), or asking their lender to recalculate their monthly payments over the existing term.

Alternatively Mr and Mrs G have the option of making monthly overpayments. These would result in a recalculation of the monthly mortgage payment on the reduced balance, and so if monthly overpayments were made at the same level each month, the cumulative effect of them would increase over time as they would be paying off more capital.

I appreciate what Mr and Mrs G have said – that it is their prerogative whether to make overpayments or not. But they are also under a duty to mitigate their position and if they decide not to make any capital reductions – particularly where their lender provides the option of reducing their monthly repayments after doing so – I can't hold Connells responsible for this or order Connells to compensate Mr and Mrs G if they decide not to use the redress towards reduction of their mortgage.

Putting things right

In all the circumstances, having noted everything both parties have said, and taking note of the calculations provided by both Mr and Mrs G and Connells, I'm satisfied that the total redress offered by Connells of financial redress of £32,125.20, a refund of the £99 administration fee and compensation for distress and inconvenience of £500 is fair and reasonable.

My final decision

My final decision is that, in full and final settlement of this complaint, Connells Limited must pay Mr and Mrs G redress of £32,125.20, refund the £99 administration fee and pay compensation for distress and inconvenience of £500. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 9 January 2024.

Jan O'Leary
Ombudsman