

## **The complaint**

Mr and Mrs W complain that Connells Limited wrongly advised them they could use an existing mortgage offer to buy a different property. They said they ended up exceeding their monthly budget to buy the house, when they later found out this advice was wrong.

## **What happened**

Mr and Mrs W were moving house. They had a property in mind, and took mortgage advice from a broker working under the umbrella of Connells. They stressed it was very important for them to remain as close as possible to their budget of £1,200 per month. The mortgage their broker initially found for them was £1,240 per month, but they were then offered a little more for their house than they'd expected, so were able to get their repayments on their planned purchase down to under £1,200. They got a mortgage offer from the lender that Connells' broker recommended, with interest of 1.98% fixed for five years.

Mr and Mrs W said the people who were selling the house they initially wanted to buy were causing problems with their purchase. Mr and Mrs W had become increasingly frustrated with the delays and lack of progress. So they started looking at alternative properties. They found a new build property, which was £10,500 more, and discussed buying this instead, with their solicitors and with their mortgage broker. The purchase price was slightly higher, but Mr and Mrs W said this would take them back to repayments of around £1,240, which they were comfortable with.

Mr and Mrs W said it was an important factor in their decision to buy this house instead, that their broker had confirmed they could keep their existing mortgage, with a better interest rate than they would then have been able to secure if they'd reapplied. So they put down a cash deposit on the home they wanted to buy.

Mr and Mrs W said it was only when the property was valued that they found out their broker had made a mistake. He'd applied for a "green" mortgage on their first property. Those are available for properties with an Energy Performance Certificate ("EPC") rating of A or B. But their new purchase was still in the final stages of construction, so it didn't have a finalised EPC rating, and their lender wouldn't accept an anticipated rating, for a mortgage of this type. So they had to apply again, and by then rates had risen. They could only secure a five year fixed rate of 3.54%.

Mr and Mrs W said that things were compounded because they only found this out the day before their broker went on holiday. They said they were told that other lenders were more expensive, and would cause a delay with the purchase, so they had little option but to apply again with the same lender. They told us their buyers' mortgage offer was going to expire on 30th September 2022 and the buyers wouldn't be able to afford the purchase if they had to secure a new offer at increased rates. So Mr and Mrs W said they felt they had no choice but to go ahead at the higher rate.

Mr and Mrs W said their mortgage payments were now £1,435 per month, which was considerably over their budget. They said if they'd realised this was how much the property

would cost them, they would have dismissed it as an option. They said it wasn't possible to say what they would have done instead. They may have stuck with their first property, or found something else instead. But they said they wouldn't have chosen to go over their budget, out of their comfort zone, and reduce their disposable income so significantly.

Mr and Mrs W said Connells had admitted its broker didn't carry out the necessary checks, and gave them misleading advice, but it had only offered £600 in compensation. They said that didn't make up for repayments which were over £2,000 per year more than they had wanted to pay. They thought Connells should cover the additional payments for the five years of the fixed rate, and also pay them for a cashback offer of £350 which they lost too.

Connells said its broker should have checked with Mr and Mrs W's lender, to make sure its criteria were met before amending their mortgage application. Connells agreed that Mr and Mrs W's new build property wasn't eligible for the rate they'd previously secured. But Connells felt, because they weren't actually eligible for that rate on the house they'd bought, it shouldn't have to make up the difference between what they'd expected to pay, and what they are now paying, each month, for their mortgage.

Connells said it couldn't know what Mr and Mrs W would have done, if they'd been given different advice by its broker. It said it would like to say sorry, and pay £600 for the disappointment they'd experienced.

Our investigator didn't think Connells had to do more than it had offered. She agreed Connells had made mistakes. But she thought Mr and Mrs W would still have gone ahead with the purchase of the second property. And if they had tried to either keep their original purchase running, or buy a different house, she didn't think they would have been able to do this before their buyer's offer expired, or indeed their own offer expired. So she thought even if Connells had given Mr and Mrs W better advice, she didn't think they could have bought a property using the "green" mortgage offer they originally got.

Our investigator also said that the term of the mortgage requiring a particular EPC rating was clearly set out on their offer. And it wasn't Connells' fault that, when it asked, the lender wouldn't show any flexibility on this requirement. Our investigator said the compensation Connells had offered was fair.

Mr W replied, to say he wanted to see all of the correspondence that Connells had shared with our service. And he said the offered compensation hadn't been paid to them.

Our investigator sent the documents, and Mr W wrote again. He said the correspondence was incomplete, because Connells hadn't sent us records of its first conversation with them, and he didn't think Connells had sent our service the email where the broker confirmed they could use their pre-existing mortgage offer to buy a different house.

Our investigator replied, to say there was no dispute that Mr and Mrs W were given incorrect information. And she said Connells had shared with our service the emails between Mrs W and the broker, dated 20 and 21 July, where the broker advised the switch in properties wouldn't affect the rate or the offer as long as the Loan to Value remained the same. Connells hadn't withheld that from our service, and our investigator had sent it on to Mr and Mrs W. Our investigator still thought Connells' offer was fair.

Mr W said it appeared that the issue here wasn't whether misleading advice was given. It was the consequence of that misadvice and the financial impact that has had on them.

He said we were saying they would have gone ahead with the same purchase, but he was adamant they would not. They said they would not have given that house any further thought, if they'd realised what the repayments would be on a new mortgage, and that they would lose the cashback too. Mr W said we were wrong to tell him and Mrs W what they were thinking at the time, and he wanted to know how he could prove that they would have acted differently, had they been given the correct advice. He thought the records from the first meeting with the broker were important, as those showed how much emphasis they placed on being able to keep payments at or below £1,200 per month. Mr W also still thought Connells could be withholding information from our service.

Our investigator said that for her to ask Connells to reimburse the difference between the rate Mr and Mrs W were first offered, and the one they eventually purchase their home with, she would need to be satisfied that they'd most likely have purchased a suitable property, and that completion would have taken place before the original mortgage offer expired on 4 November 2022, if they'd got the right advice. Our investigator said that in this case, she just couldn't be sure of that.

The case then came to me for 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.

On 21 July Mr and Mrs W asked if their existing mortgage offer could be transferred to a new build property. I think it's clear from the information Connells has shared with us, that the advice they were then given was wrong. A mortgage like this one was only available for a new build property if it was from this lender's list of approved developers. So the broker ought to have asked Mr and Mrs W who the developer was, and on receipt of this information, he could have told them that they would not be able to transfer their existing offer to this new property.

Mr and Mrs W relied on the advice they were given, and reached a decision on 25 July 2022 to pull out of their planned purchase, and buy this property instead. I think Mr and Mrs W should have been told in July that they would need to get a new mortgage, if they wanted to go ahead with the purchase of this new build property. So I've thought about what they might have done, if they'd been told that.

Mr and Mrs W have said it's hard to say what they would have done, if they'd been given the right advice at this stage. However, they are adamant they would not have gone ahead with this purchase. Mr and Mrs W have told us they might have stuck with their existing purchase, or looked for a different property.

There's no guarantee that Mr and Mrs W would have been better off now, if they had stuck with their original planned purchase, in late July. They hadn't exchanged contracts on that property, and it appears that, by the end of July, they still didn't have any date to do so. I can see, from emails sent at the time and what Mr and Mrs W have said to us since, that they were convinced the problems they were experiencing with the sale, and the lack of progress or agreement on dates, were all warning signs the seller of this house was not ready to go ahead. And I can quite see why they reached that conclusion. It's also important to note that Mr and Mrs W knew their own buyer was going to be unable to buy if their mortgage offer expired, and that offer was due to expire fairly soon.

So it is difficult to say what would have happened, if Mr and Mrs W had stuck with their first option. But it doesn't seem to me to be more likely that the purchase of the property they were first interested in, would have gone ahead within in the time available on their original mortgage offer. And it may be worth noting that the publicly available records of the sale of the first property Mr and Mrs W were interested in, suggest that their seller secured a higher offer, and did not sell within Mr and Mrs W's timescale. That does make me think that the fears Mr and Mrs W expressed at the time about the first house they were interested in purchasing, may indeed have been well founded.

Mr and Mrs W also said they might have looked at another home. But I think that if they'd been given the right advice in late July, their options were still unfortunately quite limited. They had buyers whose mortgage offer expired at the end of September, and knew their sale would collapse if it wasn't completed by then. They were only able to use the mortgage offer they had for a house with an EPC rating of A or B, or a new build from this lender's list of approved developers, which would further reduce their available options. I note they haven't suggested there were alternative properties they might also have been interested in at the time. I think if there had been other options, within budget, meeting this lender's strict criteria for this mortgage, and available within their timescale, that might have been of interest to them, then Mr and Mrs W would have mentioned those properties to us.

Mr and Mrs W were adamant they would not have chosen to exceed their budget, and wanted us to take account of how important this budget was to them. I can see they have stressed this, at a number of points during their complaint. But I also have to bear in mind that, although they told their broker they had a budget of £1,200 per month, they almost immediately chose to go over that a little, for their first choice of property, and they knew they would be exceeding this budget again when they changed to purchasing what is now their new home, a new build house which they really liked.

So the question I have to ask is whether Mr and Mrs W would have been likely to take a decision to push their budget for a home they really wanted. If they'd been given better advice, would they have made the choice to go ahead with the purchase of their current property?

I know Mr and Mrs W are quite sure now that they would not have made the choice to purchase this property, which they said has stretched their budget. They said they only did this because they found out they couldn't use their existing mortgage not long before the purchase, when they felt they had few options. But I think they also chose to go ahead, at least in part, because it was a house they really liked, which they could envisage as their new home. And considering all the issues I've set out above, on balance, I do think the outcome was likely to be the same here. I think if they'd been properly advised, they would still have gone ahead with this purchase.

I think there is one final aspect to deal with here, about what would have happened if Mr and Mrs W had been given better advice in late July. If they'd realised they could not buy the new build property which is now their home, using the "green" mortgage they'd already secured, then Mr and Mrs W could have applied for a new mortgage right away, rather than in August. So I wanted to check whether Mr and Mrs W were worse off at all, because their current mortgage application wasn't made at the end of July.

I've asked Connells, and it has consulted Mr and Mrs W's lender to find out the rates available at the time. If Mr and Mrs W had applied at the end of July, then their mortgage offer would still have been at the same rate that Mr and Mrs W later secured, on 22 August.

For those reasons, I don't think Connells does have to pay the difference in costs between the mortgage offer they hoped to take up, and the one they eventually got. I do think that Mr and Mrs W have been left feeling as if they had little to no choice, and I think it's important to recognise how upsetting that is for them, even if I have concluded that it's a little more likely than not they would have made the same choices if they'd been properly advised. But I do think the payment of £600 that Connells offered recognises that, as well as the difficulties Mr and Mrs W then experienced securing their second mortgage offer (where I can see Connells did make mistakes, causing some delays and further work for Mr and Mrs B). So that's what I propose to award in this case.

### **My final decision**

My decision is that Connells Limited must pay Mr and Mrs W the amount of £600 which it previously offered for this complaint, unless it has already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 21 August 2023.

Esther Absalom-Gough

**Ombudsman**