

The complaint

Mr and Mrs B's complaint about Connells Limited (Connells) relates to the advice they received from them about taking a five-year fixed rate mortgage product (the mortgage) with Virgin Money. They feel the mortgage was grossly overpriced and that they should have been advised there were other mortgage products available on the market which had tapered early repayment charges (ERCs), not just a static flat ERC.

What happened

In May 2016 Mr and Mrs B obtained mortgage advice from Connells. This was Mr and Mrs B's first property purchase, and they wanted the cheapest mortgage product available. Connells advised that a two-year fixed rate mortgage from Virgin Money was suitable, and an offer was issued to Mr and Mrs B in May 2016.

As a result of a change to the purchase price and Mr and Mrs B evaluating the outcome of the Brexit vote, they decided not to proceed with that mortgage offer and asked Connells for more advice.

In August 2016 Connells advised Mr and Mrs B that a five-year fixed rate mortgage from Virgin Money which contained an ERC was suitable. This was not the cheapest mortgage product available, and Connells provided no further advice on alternative products.

In April 2020 Mr and Mrs B decided to move home and in so doing incurred an ERC of around £15,000.

Mr and Mrs B feel that as this was the first time they had ever had a mortgage they could not have been expected to know that a static ERC was the only type available on the market. They accept that they had received a Key Facts Illustration (KFI) document as well as the Mortgage Offer which had set out the amount of the ERC and how and when it might become payable. However, they argued that they were relying on the professional advice of Connells' mortgage adviser, and although they had reviewed the mortgage terms, they were unable to appreciate that the product was in fact unsuitable for them, until they decided to move in 2020.

Connells felt that the ERC had been clearly set out in the documentation Mr and Mrs B had received. As such they argued that the onus was on them to check that they were satisfied with the terms of the mortgage before proceeding with it. Connells further argued that Mr and Mrs B's Solicitor would also have been aware of the terms, and it would also have been their responsibility to explain it to them.

Mr and Mrs B were unhappy with Connells's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that Connells hadn't acted fairly or reasonably, and that they ought to carry out a remediation exercise to put Mr and Mrs B back into the position they would have been, had they proceeded with the cheapest suitable mortgage product, that being one from the West Bromwich Building Society (the West Brom).

Connells didn't agree and asked for the complaint to be passed to an Ombudsman 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.

My summary of what happened is brief and I know the parties went into a lot more detail. I'm going to focus on what I think are the key issues. Our rules allow me to do this, and it reflects the nature of our service as an informal alternative to the courts. So, if there's something I've not mentioned, it isn't because I've ignored it, it's because I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I've taken account of both sides' views and I've looked at the issues raised and considered all the available evidence. Where evidence is not complete, I think about what is more likely to have happened in the light of the evidence which is available.

When Mr and Mrs B initially received advice from Connells, they weren't at that stage looking to move or repay the mortgage. That advice was therefore appropriate in so far as it related to that product. That advice was for the cheapest two-year fixed rate product.

There hasn't been any evidence produced which would indicate Mr and Mrs B's requirements changed when they then decided to take out the Virgin Money five-year fixed rate product, and as our investigator has explained there were 17 other cheaper options available at that time. Further, Connells have not provided any evidence to justify why the Virgin Money product was advised as opposed to any of the other cheaper options.

On the balance of probabilities, I find that it is more likely than not that Mr and Mrs B would have chosen the cheapest option available if this had been offered. That is because that was their stated wish.

Our investigator has highlighted that for mortgage product with West Brom, the total five-year cost was £75,864. Contrasting that with the Virgin Money's mortgage product cost of £79,917, produces a significant and material difference, which I think it is likely that Mr and Mrs B would have preferred and chosen to proceed with if they had been given the choice. I cannot however be completely certain that Mr and Mrs B would have been offered a mortgage with West Brom because each lender has different qualifying criteria. However, once again, I think it is more likely than not that they would have received an offer, when I take into account that Virgin were prepared to make them an offer, and there is no other factor which could suggest that the West Brom wouldn't have viewed their application in similar favourable terms.

I have also taken into consideration that the ERCs with West Brom appear to be less than those with Virgin Money and on also on a tapered basis. This difference has had a financial impact upon Mr and Mrs B because when they repaid the Virgin Money mortgage it was more than it would have been had they taken a mortgage with West Brom.

Connells advice regarding the Virgin five-year fixed rate mortgage was in or around the 25 July 2016, which Connells have said was very close to the date of exchange of contracts on 28 July 2016. Completion of the purchase was on 8 August 2016 and although this timeline is very tight, the important factor here is that Mr and Mrs B had the power to delay both the exchange of contracts and completion if they had so wished. The West Brom or

indeed any other new lender might well have been able to produce a new mortgage offer within that extended time period. As Mr and Mrs B wanted the lowest cost I think it more likely than otherwise that they would have sought to delay exchange.

Putting things right

So, in my view Connells have not acted fairly or reasonably here and I'm upholding this complaint. I agree with our investigator's suggested redress, and the compensatory award for the distress and inconvenience caused to Mr and Mrs B.

My final decision

So, my final decision is that Connells Limited must;

1. put Mr and Mrs B into the position they would have been in had they proceeded with the West Brom mortgage, the details of which were set out in the sourcing information they provided.
2. to do that Connells must carry out a remediation exercise taking into account all initial fees, monthly payments and ERCs. Account must also be taken of cashback paid or payable and any other relevant financial features.
3. Added to the refunded payment to Mr and Mrs B shall be compensatory 8% simple interest from the date of the Virgin Money mortgage redemption to the date of payment.
4. pay Mr and Mrs B £250 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 28 November 2023.

Jonathan Willis
Ombudsman