

The complaint

Mr C and Mrs C complain they weren't warned by Connells Limited that adding Mrs C to the mortgage Connells was securing for them, would attract a stamp duty charge, as Mrs C already owns a property. And the lawyers Connells recommended didn't warn them either.

What happened

Mr C and Mrs C are family members. This complaint covers the mortgage on their family home. This mortgage was previously in the name of Mr C and another family member, but as part of their financial planning, that person wanted to come off the family home mortgage. Mr C and Mrs C have told us that their family prefers two family members to be on the mortgage at any time. So, although Mrs C lives elsewhere, she agreed to be added to this mortgage.

Mr C and Mrs C said because Mrs C already owned a property, she incurred a stamp duty charge when taking part-ownership of the family home. Mrs C said she only found out around the time of completion that she would have to pay about £5,000 to take part-ownership of the house. Mr C and Mrs C said they weren't warned about that, and they felt strongly that Connells should have alerted them to this cost, during their discussions about the mortgage. Mr C and Mrs C said that Connells recommended the lawyer they used for conveyancing, and they felt that Connells therefore bore some responsibility for what the lawyer did too.

Mrs C said if she had been properly advised, she wouldn't have joined the mortgage at this time, she would have been added to the mortgage in a couple of years' time instead. She said she was upset at having to meet this cost at a time when she needed to help pay for medical treatment for a family member.

Connells didn't think it had done anything wrong. It said that its mortgage brokers would only ever give an overview of stamp duty, a solicitor would confirm whether that was payable or not. It didn't feel that its broker had failed in their duty of care.

Mrs C said that if she hadn't gone ahead with the mortgage, and put the new mortgage in place, Mr C would have been charged around £3,000 on the lender's standard variable rate ("SVR"). Mrs C said she bought her own property during the stamp duty holiday, so the payment of stamp duty didn't cross her mind when arranging this mortgage. She said when the broker referred to third party costs, she thought that meant solicitor's costs and an application fee, not stamp duty.

Our investigator didn't think this complaint should be upheld. She said our service won't look at the issues with Mr C and Mrs C's solicitors. Although they were recommended by Connells, the work the solicitors did for Mr C and Mrs C doesn't fall within the remit of our service, and Mr C and Mrs C have made a separate complaint elsewhere about this.

Our investigator said Connells took the view it was under no obligation to advise on stamp duty. She said it was up to Mr C and Mrs C's solicitor to advise them on how much they'd need to pay, but Connells was aware that Mrs C had another property, and it could have

mentioned that Mrs C may need to pay stamp duty. If Connells had mentioned that, this may have prompted Mr C and Mrs C to query that with their solicitor.

Our investigator didn't think Connells had to pay the stamp duty Mrs C had been charged, but she thought it could have done more to inform Mr C and Mrs C that they could incur that cost. So she thought Connells should pay Mr C and Mrs C £150 for the distress and inconvenience suffered.

Connells didn't agree. It said it provided a mortgage broking service. It's not a solicitor or conveyancer, and any implications for stamp duty sit with a trained conveyancer. Connells said if there was a loss, then Mr C and Mrs C should be discussing that with their lawyers. Connells said it wanted this complaint to be considered by an ombudsman.

Mr C and Mrs C said they wanted to see the documentation that Connells had sent our service. We shared this with them, and they said they still maintained that Connells couldn't provide full and proper mortgage advice without advising on associated costs. They thought Connells should be under a duty to advise on the other costs its clients were likely to incur. They also said Connells knew that Mrs C had an existing home, so it had the relevant information. And the solicitor they then worked with was recommended by Connells. That solicitor was blaming Connells, and Connells was blaming the solicitor. They said if Connells hadn't given an incorrect picture of the remortgage, by failing to mention stamp duty, they would not have gone ahead with the joint mortgage now.

Mr C and Mrs C also wanted their complaint to be considered by an ombudsman. So this case then came to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

Like our investigator, I don't think Connells is responsible for the legal advice that Mr C and Mrs C received from the conveyancing firm. So our service cannot consider what that firm did. I understand Mr C and Mrs C have a separate complaint under consideration elsewhere about this. I will confine my comments to the actions of their mortgage broker, Connells.

I have listened to the calls Mr C and Mrs C had with Connells, and I haven't identified failures in the mortgage advice they received. And I note that Mr C and Mrs C haven't challenged the advice they received on the mortgage itself.

What Mr C and Mrs C have said is that Connells ought to have alerted them to the possible additional costs Mrs C would face because she already owned one property, when she was taking part-ownership of this property. I'm sorry to have to tell Mr C and Mrs C that I don't think Connells is responsible here for flagging to them the additional costs that are involved in any property transaction.

Whilst it may have been better service for Connells to raise the extra costs of owning a second property expressly as a consideration for Mr C and Mrs C, I do think Connells' core responsibility here is to provide appropriate advice on the mortgage Mr C and Mrs C wanted to take out. And I don't think that in all the circumstances of this case, I can say Connells has failed in that responsibility, solely because it didn't detail the other likely costs of a property transaction which are not related to the mortgage it was helping Mr C and Mrs C to secure. So I don't think it would be fair and reasonable to hold

Connells even partially responsible for Mr C and Mrs C apparently not realising, or being informed, that Mrs C would incur a stamp duty charge on this transaction, until the day that the transaction was due to complete.

I know that Mr C and Mrs C will be disappointed, but I don't think this complaint should be upheld.

I invited the parties to make any final points, if they wanted, before issuing my 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.

Connells has acknowledged receipt of the provisional decision in this case, but it hasn't responded. Only Mrs C replied.

Mrs C wrote to disagree. She said that Connells provides mortgage advice, and part of that will always require looking at the assets a buyer has when advising them on their mortgage capacity. She said that owning her own home already was a material point here, because it was part of assessing what mortgage capacity she had. So Mrs C said she didn't accept it could be maintained that Connells provided full and proper mortgage advice in this case.

Mrs C said I'd said Mr C and Mrs C hadn't challenged the advice they received on the mortgage itself, but Mrs C said that was wrong. She said they didn't receive full mortgage advice.

Mrs C said stamp duty isn't just an extra cost in buying, she argued it was intrinsically linked to the mortgage advice. She said her first property should have been a consideration, and even if it wasn't, she should have been told why not.

Mrs C repeated that both her broker and her solicitor had refused to accept responsibility for what had gone wrong here, which left her in severe difficulty.

Mrs C said my conclusions had inaccurately separated out the issues of stamp duty and a mortgage, and she said it wasn't clear why, when the issue of stamp duty arises in the acquisition of a property. She said that appropriate advice on a mortgage will always require advice on associated costs. She said Connells had mentioned a product fee, and solicitors costs, so it should have mentioned potential stamp duty costs. Mrs C said she had a legitimate expectation of being advised stamp duty could arise in her circumstances.

She said because Connells didn't mention stamp duty, but did mention other costs, it was not rational to conclude Connells did not have to advise on the costs associated with the mortgage. And she stressed she had disclosed she had another property at the outset.

I note Mrs C's arguments, and her strength of feeling on this matter, but I continue to take a different view. My view, as set out in my provisional decision, is that Connells is only responsible for advising on the mortgage Mr C and Mrs C wanted to secure. As part of that, Connells covered product costs, as they are part of the mortgage. And it did mention solicitor's costs, because it was recommending a solicitor to Mr C and Mrs C.

I mean no disrespect to Mrs C by responding to the arguments she has raised quite briefly, but there is core point to those arguments which I just don't agree with. Mrs C's argument is based on the premise that Connells' responsibilities here clearly extended well beyond advice on the mortgage itself, to discussing the wider costs involved in the acquisition of a

property, and in her particular case, flagging that her ownership of an existing property might have tax implications when she was being added to the deeds on this property too. But my provisional decision explains I don't think it would be fair and reasonable in this case to hold Connells responsible for that.

Mrs C has told us that the solicitors she used weren't accepting responsibility for advising her either. I can't comment on that, other than to say that this wouldn't change the position on whether it's fair and reasonable to hold Connells responsible for what went wrong here. My only jurisdiction is over the broker involved here, and it would not be appropriate for me to comment outside of our service's jurisdiction.

So I have considered Mrs C's further arguments, but I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 4 October 2024.

Esther Absalom-Gough
Ombudsman