

## The complaint

Mr M has complained about the service he received from a mortgage broker when he was buying a new build property under a help to buy (“HTB”) scheme.

The broker was an appointed representative of Connells Limited, so it is the company responsible for dealing with this complaint.

## What happened

Mr M was buying a new build property. He was funding the purchase through a HTB scheme, with the HTB provider funding 40% of the purchase price. The remainder of the deposit was to be from Mr M’s savings and a £10,000 gift from his mother.

An application was submitted to the mortgage lender in May 2022. That gave the following amounts:

Full market value	£360,000 (albeit the illustration issued the same day stated £362,000)
Purchase price	£217,200 (that is, if the correct full market value was £362,000 and after the 40% HTB contribution was removed)
Mortgage required	£153,200
Deposit (savings)	£64,000

A valuation was undertaken, and the surveyor said the market value was only £340,000. The broker and property developer both spoke to Mr M about applying to a different mortgage lender, but he said he wanted to appeal the valuation figure instead. Once Mr M had obtained the information needed for the appeal the broker submitted that to the lender, who passed it onto the surveyor.

On 1 September 2022 the surveyor increased their market valuation to £360,000 but wouldn’t agree to go to the £362,000 purchase price. Instead, on 7 September, the developer agreed to reduce the full purchase price to £360,000.

The mortgage lender issued a mortgage offer on 4 October 2022.

On 7 October the broker was told the offer was incorrect as whilst the full market value had been reduced to £360,000, the purchase price had remained at £217,200. As the HTB was set at 40% (meaning Mr M needed to purchase the other 60% of the property) the purchase price should have been reduced to £216,000 (that is, 60% of £360,000).

The mortgage lender was notified, and they said a revised offer would be issued. There were delays with that as the lender required updated paperwork, and the revised offer was issued on 26 October.

There was some back and forth between Mr M, the broker and the solicitor to get all the required paperwork together, including details of the gifted deposit Mr M was receiving from his mother.

On 24 November the mortgage lender contacted the broker. They said the solicitor had advised them that Mr M was receiving a gift of £10,000 from his mother and that needed to be keyed on the application in the deposit section as it currently said the entire deposit was from savings. They said they would also require a gifted deposit letter.

The application was amended on 28 November, and the letter was provided by Mr M's mother the following day.

On 2 December the broker contacted the mortgage lender to ask if a new offer would be issued, as if it was the broker said it could put Mr M outside affordability on his HTB due to the fact the lender's reversionary rate was now higher.

On 6 December the lender confirmed a new mortgage offer would need to be issued, but before that could be done they needed to speak to the surveyor as the original valuation was due to expire. The lender needed the surveyor to confirm the valuation would remain unchanged.

On 9 December the broker spoke to Mr M and said that he would need to increase his deposit by £10,000 (thus reducing the mortgage) to pass the revised HTB affordability check based on the mortgage lender's higher reversionary rate.

Mr M confirmed, on 13 December, that the extra £10,000 deposit would be a gift from his uncle and a confirmation of gifted deposit form was provided for that.

The mortgage broker updated the application to give the following amounts:

Full market value	£360,000
Purchase price	£216,000 (that is, after the 40% HTB contribution was removed)
Mortgage required	£142,500
Deposit (savings)	£53,500
Deposit (gifts)	£20,000

A revised mortgage offer was issued on 13 December and Mr M moved into the property on 21 December.

Unhappy with what had happened Mr M raised a complaint. He wasn't happy about the lack of support he received with the valuation appeal, and also that he'd needed to find an additional £10,000 due to a revised offer being issued causing the HTB to fail affordability.

Connells said it wouldn't have expected the broker to help Mr M with his valuation appeal, so it didn't uphold that part of the complaint. However, it said it could see the broker was aware before the application was submitted that £10,000 of the deposit was a gift from Mr M's mother whereas the application said all the deposit was from savings. For that reason Connells upheld that part of the complaint and offered Mr M £200 compensation for the distress and inconvenience that was caused to him. In addition, it said it would refund the £199 fee Mr M had paid to the broker, giving a total compensation package of £399.

Mr M didn't agree. He said the mortgage lender had told him the broker was responsible for the valuation appeal, and the information he'd obtained for it was publicly available so the broker could have obtained it.

Connells responded to say it didn't agree the responsibility of a valuation appeal sat with the broker. It said it had made an offer to Mr M and if he didn't believe it was appropriate then he should let Connells know what he was expecting to be offered.

Mr M responded to say that the offer didn't reflect the impact on him and his family. He said his uncle was now £10,000 out of pocket and he was unable to repay him. And if his family hadn't helped him then he would have lost the property and an £18,000 deposit. In addition he said he would have incurred around £3,000 in legal fees for the failed purchase and he would have been left homeless as he'd given notice on his rental property. Mr M said he had to take time out of work to try to resolve things, and he said the compensation should be:

- £10,000 for the extra deposit required
- £500 for his time and stress
- £199 fee to be refunded.

Connells didn't fully agree, albeit it increased its offer of compensation. It said it wouldn't cover the £10,000 because that money hadn't been lost. It said it was money that Mr M would instead owe on the mortgage (and would be paying interest on). However it did increase its offer in recognition of the distress and inconvenience caused to £700 as well as refunding the £199 broker fee. That gave a total compensation package of £899.

Mr M referred the complaint to our service. He said Connells should put him and his family back in the same financial situation they would have been in, saying that was the £10,000 extra deposit as well as £500 for his time and stress and a refund of the £199 fee. He said:

*"This extra £10,000 was originally on the value of the mortgage so that I could pay it off over a long period, but now I have had to get it from a relative. Whilst I agree that the mortgage monthly repayments are less (roughly £40 less) I cannot repay them to an equivalent amount (as that is the purpose of a mortgage, pay large debt over decades)."*

Our Investigator explained that, under our rules, we can only consider the loss to Mr M. She said we couldn't consider any losses incurred by Mr M's uncle as the uncle wasn't the broker's customer.

Mr M said that if we couldn't consider his uncle's loss then could we instead consider the situation as if he had not intervened and everything had fallen through, which would have been the loss of the deposit and the legal fees.

Our Investigator said Connell's offer was fair and she didn't recommend it needed to do anything more. She said:

- We can't consider Mr M's uncle's loss as he isn't the customer of the broker.
- Mr M hadn't incurred a financial loss as he would instead be paying a higher mortgage payment each month had nothing gone wrong and his mortgage had remained £10,000 higher.
- Mr M's uncle told the mortgage lender the funds were a gift so Mr M wouldn't be paying them back.
- Mr M's mortgage and property purchase had completed so we couldn't award compensation based on a hypothetical situation that it instead hadn't completed.

Mr M didn't agree and said he wanted the case passed to an ombudsman to decide. He said he should be placed back in the position he would have been in had nothing gone wrong, and to do so he would accept being given a £10,000 loan over a 40-year term on the same interest rate as he had agreed with the mortgage lender.

As part of her preparations to pass the case forward for a decision our Investigator confirmed to Mr M that we couldn't award him the outcome he wanted because Connells isn't a lender, so it can't lend him money. And we couldn't tell the mortgage lender to do

something as it wasn't party to this complaint. She gave Mr M two weeks to make any final submissions on that basis, but nothing further was received.

### **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.

There's little I can add to what our Investigator has already said as she's covered matters so comprehensively already.

I understand Mr M would have liked Connells to obtain all the information that was needed for the valuation appeal but, whilst it is something a broker might do, it isn't something that they must do. The broker (and developer) both suggested that Mr M look for an alternative mortgage provider, it was Mr M that instead wanted to appeal the valuation. As the valuation appeal wasn't recommended by the broker I wouldn't expect it to get involved in obtaining the information that was needed.

In relation to the need for a late re-offer, Connells has already accepted the broker made a mistake so I don't need to make a finding on that.

As our Investigator explained we can only consider any financial loss caused to the customer of the business. Here that was Mr M. We can't consider the fact his uncle is out of pocket as part of deciding this complaint.

We also can't consider this complaint on the basis of what might have happened had Mr M not been able to raise the additional £10,000 deposit that was needed. That hypothetical situation didn't happen, and Mr M didn't incur those losses.

Mr M has talked as if he needs to repay the £10,000 to his uncle, but that's not correct. His uncle gifted that £10,000 to him and signed a declaration stating "*The Gift is non-repayable*". Mr M would also have to have agreed that the money was a gift. If the lender had been told the money was a loan rather than a gift then it wouldn't have granted the mortgage to Mr M.

I must take those declarations as true when considering this complaint. To say they are untrue - and that Mr M should be compensated for needing to repay £10,000 to his uncle - I would, in effect, be saying that Mr M made a false declaration about the nature of the £10,000 in order to obtain a mortgage he was not eligible for.

That £10,000 isn't lost as Mr M instead has that £10,000 as additional equity in his home. If Mr M were just to be given £10,000 then he'd be in a much better position than he could ever have been in. And, as our Investigator explained, we can't order the mortgage lender to lend the £10,000 to Mr M as it isn't party to this complaint, and the broker isn't a money lender so is unable to give a loan to Mr M. There is no way, as part of this complaint process, for that £10,000 to be taken out of the property's equity and be returned to Mr M's uncle.

Based on the declarations made that the £10,000 was a gift from his uncle, Mr M hasn't incurred a financial loss. Instead he is better off each month as his mortgage balance is lower than it would have been had the higher deposit not been needed.

That said, Mr M was put to significant inconvenience in this matter. Mr M said for that element he wanted £500 compensation and Connells have already offered more than that at £700. I've considered the general level of awards made by our service, and having done so I'm satisfied that £700 is a fair award for the inconvenience Mr M was put to and the

additional stress this would have caused at an already stressful time. On top of that I agree that the £199 broker fee should be refunded.

### **My final decision**

Connells Limited has already made an offer to pay £899 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Connells Limited should pay £899 (less any amounts already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 March 2024.

Julia Meadows  
**Ombudsman**