

## **The complaint**

Mr N's complaint about Connells Limited (Connells) relates to the service they provided when making a mortgage application on his behalf.

## **What happened**

Mr N approached Connells asking for assistance in obtaining a mortgage on a residential property he wished to buy for himself and his family. He told Connells he only wanted to pay a 10% deposit towards the purchase price.

Connells then obtained for Mr N a mortgage offer on a property I shall call 'A', but the purchase fell through. He then found another property 'B', but this fell through too. Mr N finally found another property 'C' which he went ahead. The purchase price of property 'C' was different to that of the 'A' and 'B' and so a new mortgage offer was issued to him which Connells arranged.

However, when the transaction ultimately completed, Mr N said he learned the mortgage he'd obtained was based on a 20% deposit being paid towards the purchase price.

As a result of having to pay the larger deposit Mr N didn't have as much money left from the equity on the sale of his former property as some was needed to be used for the deposit. This meant he has less money to spend on property C for things like furniture and repairs, or to pay off some other debt or to pay for a scheduled family holiday.

Mr N complained to Connells, but they did not accept they had acted unfairly or misled him about the size of the deposit he would need. They did however acknowledge that their advisor could have communicated better with Mr N and so offered to pay £400 in compensation and refund the broker fee of £550.

Mr N was unhappy with Connells' final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that although there had been poor service, the amount of compensation Connells offered was enough to put things right. Mr N 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.

I can see from the documentary evidence provided that Mr N made a mortgage application in December 2021 regarding property A for a purchase price of £133,500. The mortgage illustration issued in January 2022 shows the amount of the loan to be granted was £121,149 which means the deposit would have been 10%. This accords with Mr N's view. That application was cancelled in May 2022 as the transaction did not proceed.

In September 2022 a new mortgage application was submitted regarding property B. The mortgage illustration issued in September 2022 shows the amount of the loan to be granted as £107,399 and when set against the purchase price of £133,000 means that the deposit would have been 20%.

The maximum amount Mr N could borrow was £107,399 and the lender has confirmed that when the application was made it was done so on the basis of an 80% loan to value (LTV). Although that purchase also fell through, there is no evidence that prior to doing so Mr N had spotted that he would need to find a 20% deposit.

In November 2022 Connells asked the same lender to amend Mr N's mortgage application so he could proceed with property C at a higher purchase price of £140,000. A mortgage illustration was issued in December 2022 and this shows the amount of the loan to be granted as £112,999. This means the deposit was 20%. The lender has also confirmed that when this application was made the LTV was set at 80% not 90%.

The effect of having a mortgage offer with a 20% deposit instead of a 10% deposit meant that Mr N had to use £15,000 of the money he expected to get from the sale of his former property, which left him with insufficient funds to spend on new furniture, repairs, paying debt and a scheduled family holiday, all of which he says he had intended to do.

I have not seen any evidence to suggest that at any time Mr N agreed to or instructed Connells to arrange a mortgage for him with a 20% deposit. To the contrary the email exchange on the 26 October and 27 October with Connells' representative shows Mr N and his partner had viewed a property offered for sale through Connells with a £140,000 – £150,000 asking price, and they had *'wondered whether it would be possible to enquire as to how much maximum Mark could potentially borrow with a 10% deposit .....*' The email exchange was very clear in stating that Mr N wanted a mortgage with only a 10% deposit to be paid towards the purchase price.

The representative responded confirming, *'we would be keeping the rate for HSBC mortgage we have already applied for at £106,400. Then we can borrow the residual amount at the current rate (which I will need HSBC to confirm), so long as we maintain a 10% deposit'*. Mr N's partner replied, *'...We will still be doing a 10% deposit'*. A further email was then sent to Mr N and his partner showing that the mortgage amount would be £130,500, the deposit £14,500 based on an offer price of £145,000 and the monthly payment would be £649.62. I can therefore accept that Mr N never wanted to have to pay more than 10% by way of deposit and it is likely that the application made by Connells for a mortgage which would require a 20% deposit was their error.

However, Connells have provided two documents which were sent to Mr N which confirmed the amount of the mortgage advance. These are the Statement of Demands and Needs (SDN), sent on 9 November 2022, and the Mortgage Illustration issued on 8 December 2022. It is not disputed that Mr N received these documents. The mortgage illustration

shows that the value of the property was assumed to be £140,000 and the amount to be borrowed was £112,999 since it included a booking fee of £999.

The SDN shows the mortgage amount was £112,000 with a fee to be added to the mortgage of £999. Discounting this additional fee, when the mortgage amount is set against the purchase price of £140,000 the mortgage is precisely 80% meaning the deposit required was 20%.

I think it is reasonable to have expected Mr N to have noticed that the amount that the lender was prepared to lend in the formal mortgage illustration and SDN (£112,000) was different to the figure quoted to him in the email prior to receipt of those documents (£130,500) and that he should have raised that discrepancy either directly with Connells or his solicitor. I have seen no evidence that he did.

I think it is also reasonable to conclude that Mr N's solicitor will have raised with him, prior to him becoming bound by the exchange of contracts, the financial aspects of the proposed purchase. This is normal conveyancing practice to ensure that the purchaser has the necessary funds to complete the purchase. In such circumstances it would be brought to Mr N's attention how much he would be required to pay by way of deposit.

It follows that having then decided to go ahead with the purchase, Mr N must have known, or at least be taken to have known, the level of his deposit.

So, I agree that Connells made an error and applied for a mortgage with a 20% deposit when that was not what Mr N asked them to do. However, I do not agree that the money Mr N used from the equity in his former property ought to be repaid to him by Connells because he had the opportunity not to go ahead with the purchase prior to exchanging contracts. In choosing to go ahead with the purchase he has done so with either actual knowledge or constructive knowledge that he would be required to make a 20% deposit.

Connells has accepted that it didn't get things right and because of that it compensated Mr N with compensation of £400 for the trouble and upset he experienced as well as refunding the £550 broker fee. As Mr N didn't think that was enough to put matters right, I've given this some further thought as to whether that was fair and reasonable.

When I consider the issue of compensation, I start from the point that any award for the trouble and upset caused should be balanced against the ups and downs of everyday life which we all face when dealing with other people, businesses, and organisations, and recognising that at times this can be inconvenient. It is also very important to remember that there is no set figure for compensatory awards, since the facts of each case are different. Ultimately it is an exercise of judgement, looking at all the circumstances and coming to a figure which feels fair, when set against the effect of any failures in service on the person bringing the complaint.

When we make awards of compensation we categorise them and examples of these can be found on our website.

In this complaint Connells' error, in my view, is limited to making an incorrect mortgage application which would have been very evident on the face of the SDN and Mortgage Illustration. The losses Mr N says he has suffered have not been caused by that error, since Mr N did not need to exchange contracts and proceed with the transaction. And in any event Mr N has not incurred a financial loss since the money he refers to is effectively in property C which is to his benefit. In these circumstances I view the offer made by Connells as sufficient, fair and reasonable.

So, although Mr N will probably be disappointed with my decision, and whilst Connells have indeed made an error, I can't say Connells has subsequently acted unfairly or unreasonably here.

### **My final decision**

Connells Limited has already made an offer to pay Mr N £400 compensation and to refund the £550 broker fee to settle this complaint, and I think that is fair and reasonable. So, my final decision is that it should pay Mr N £950, if of course that sum has not already been paid to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 19 April 2024.

Jonathan Willis  
**Ombudsman**