

The complaint

This complaint's about a mortgage application that Mr P made to C Hoare & Co (Hoare). Hoare issued a binding offer to lend, but attached conditions that Mr P considered excessive and unreasonable. Mr P withdrew from the offer and is unhappy that Hoare requires him to pay legal fees incurred by the solicitors instructed to act for Hoare in the transaction.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having no regulatory function means that it's not open to me to determine what Hoare's policy requirements and appetite for lending risk should be in cases like Mr P's. My role is to determine if Hoare has applied its policy fairly and in accordance with the terms of the mortgage offer.

The first test for me to consider is whether Hoare had the right to impose the conditions that Mr P objected to, and which ultimately led to him withdrawing from the transaction. Having considered the offer and associated conditions, I'm satisfied it did have the right.

The mortgage offer states, at section 9.1.3 that the offer can be withdrawn if the solicitor or conveyancer is not able to give Hoare a satisfactory certificate of title in respect of the secured property. Although, as I have said, it was Mr P rather than Hoare, who withdrew from the transaction, this clause in the offer establishes that Hoare's offer is subject to it being given acceptable security.

Additionally, and to that end, the mortgage general conditions, at section 13, under the heading "Further Assurance", say:

“13.1 You will at the request of the Bank and at your own cost promptly execute any deed or document or take any action **reasonably required** by the Bank:

- a) to create, perfect, protect or maintain the Security provided created or intended to be under or evidenced by the Deed and/or;
- b) to facilitate its realisation of the assets which are, or intended to be, the subject of the Security created by or under this Deed. This includes taking the assets into possession and selling them.”

(My emphasis in bold)

This clause in the general conditions attaching to the mortgage offer allows Hoare the right to specify such requirements that it judges necessary to achieve acceptable security even though those requirements weren't specified in the offer itself.

My reason for emboldening the words “reasonably required” is that having established that Hoare was entitled to impose the disputed conditions, the next test for me to consider is whether it was right to do so. It seems to me that the main bone of contention for Mr P is that he believes the conditions Hoare imposed were excessive and disproportionate.

I've very carefully read everything that Mr P has said about the conditions, and why he believes Hoare wasn't justified in imposing them. I understand his frustration, and his strength of feeling, but in the end, this is a dispute about Hoare's commercial judgement on what constitutes satisfactory security. Mr P clearly has a different opinion from Hoare on this, but what he's effectively asking me to do is substitute my commercial judgement (or indeed his own) in place of Hoare's. It's not in my remit to do that.

Hoare was the party being asked to lend money, and it's not for me to assess the application for risk or second guess how Hoare should have assessed it. Hoare exercised its discretion as it was entitled to do. This put Mr P in the position of having to choose between two unwelcome options; either comply with Hoare's conditions, or abort the transaction. A choice between two unwelcome options is still a choice, and Mr P opted for the option that left him liable for Hoare's abortive legal costs.

I'm satisfied Mr P should reasonably have known that. It's specified on page one of the covering letter of 8 September 2022 that accompanied the mortgage offer. In fact, Hoare hasn't sought to recover all of the costs incurred by its solicitors from Mr P. instead it has agreed to accept the amount quoted at the start of the transaction. In my view, that's fair and reasonable.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome.

I can see from his submissions how important this is to Mr P. But my remit requires me to be objective, impartial, and to decide what is fair, reasonable and pragmatic in all the circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

My final decision

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 1 April 2024.

Jeff Parrington

Ombudsman