

The complaint

Mr M has complained about the service he received when he applied for a mortgage through Connells Residential, which is an appointed representative of Connells Limited. He says his first mortgage offer expired and he wasn't informed, and then the second mortgage offer was at a higher rate of interest plus he had to pay a second £99 administration fee.

What happened

Mr M put an offer in to buy a property being sold by Connells Residential estate agents. His offer of £390,000 was accepted. To differentiate between the two companies any reference to Connells in this decision should be taken to mean the mortgage broker, and I'll refer to the estate agents as CR.

Connells submitted a mortgage application to lender N in June 2021, and a mortgage offer was issued on 8 July 2021. The mortgage offer said the mortgage had to complete by 8 January 2022. Connells charged Mr M a £99 administration fee when it submitted the application.

There is a dispute between the parties about what happened after that, with Mr M saying he was chasing CR and kept being reassured that everything was progressing. Whereas Connells says that there were legal issues with the property which meant a sale couldn't be progressed at that time and so the property sale was cancelled at the start of December 2021. Connells says CR then got back in touch at the end of March 2022 to say the property purchase was now going ahead and was urgent, but because the original mortgage offer had expired the broker needed to apply afresh. Connells said that this time lender S was the best option for Mr M so it submitted an application the same day. As it had been over six months since the first mortgage application had been submitted Connells charged a further £99 administration fee.

Lender S issued a mortgage offer on 11 April 2022 and the mortgage and property purchase completed in May 2022.

Mr M complained to Connells and CR in January 2023. He said he wanted the second £99 administration fee back, as well as compensation for the difference in interest rates as the mortgage Mr M obtained with lender S was at a higher interest rate than the originally quoted mortgage with lender N.

Connells responded to the complaint, saying the first application was closed because it had been told the property couldn't be sold at that time, and the second application was progressed quickly and completed in May 2022. It said a second £99 was charged in line with its policy as over six months had passed since the first application, and the original mortgage offer expired in January 2022 and couldn't be extended past then, so Mr M always needed to apply for a new rate as his property purchase didn't complete before that offer expired.

Unhappy with that Mr M referred the complaint to the Financial Ombudsman Service where it was looked at by one of our Investigators. She said we can only look at the actions of the

broker (not the estate agent or solicitor) and having done so she didn't think the broker had done anything wrong. She said the initial disclosure document showed the administration fee of £99 was payable upon application, that it was non-refundable, and that it was only if a second application was made within six months of the first that a further fee wouldn't be charged. She said the broker acted on the information that was given to them, and by the time the broker was told the property purchase was ready to proceed the first mortgage offer had expired, so a new application was required.

Mr M didn't agree with our Investigator's outcome, but much of what he said relates to alleged acts or omissions of CR. He said that his complaint is against Connells Limited and he's not interested in whether the issues were with the Connells estate agent or the Connells mortgage broker. He said he wanted an Ombudsman who is able to look at the complaint from the point of the whole of Connells, rather than just part.

Our Investigator explained we can't do that as we only have the jurisdiction to consider a complaint about the mortgage broker; we don't have any power to consider complaints about the estate agent. As an agreement wasn't reached the case has been passed to me to decide.

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.

As our Investigator explained, I'm limited in what I can look at in this case and in the findings I can make. The legislation underpinning financial services, the Financial Services and Markets Act (FSMA), says that unregulated firms and persons can carry out regulated financial services if another firm takes responsibility for their actions – a system known as appointed representatives.

That means that for the purposes of our rules, I can only consider the activities of the firm that falls within our jurisdiction – which is Connells Limited. It has taken responsibility for the financial services acts of its appointed representative, Connells Residential – that is, the mortgage broking. But it hasn't, within FSMA and our rules, taken responsibility for Connells Residential's other activities – the estate agency.

Our rules are set out in the Financial Conduct Authority's handbook under the heading DISP. Rule 2.3.1 sets out the activities we cover. These are, broadly speaking, what are known as regulated activities (that is, they're set out in law as activities regulated by the Financial Conduct Authority and as falling within our remit), as well as certain other banking-type activities, such as lending money. And we can consider *“ancillary activities, including advice, carried on by the firm in connection with them”*.

CR was acting as an estate agent. I don't think that's ancillary to mortgage advice. The two activities are related, of course – in that the mortgage facilitates the house purchase. But to my mind an ancillary activity supports, but is subordinate to, the main activity. I don't think that could be said of estate agency and mortgage advice; if anything, it's the other way round. The mortgage advice supports and is ancillary to the house purchase.

So for that reason, I can only consider what the broker did in the course of broking (or not) the mortgage. What people did or did not do in their capacity as estate agents is not something I can consider.

Connells submitted the first mortgage application to lender N in June 2021 and a mortgage offer was issued in August 2021. To that end Connells had done its job in that it obtained a

mortgage offer for Mr M to purchase the property, what happens after that is between the buyer, the seller and their solicitors.

Whilst there is a dispute about what happened once that mortgage offer was issued, none of that is down to the acts or omissions of the mortgage broker. The broker had obtained a mortgage offer for Mr M and it didn't need to have any further involvement. Connells was told by CR at the start of December 2021 that the property couldn't be sold at that time due to some legal issues and so the mortgage application with lender N was cancelled. Connells would have no reason to doubt that information, or that Mr M was aware that the purchase couldn't proceed at that time.

Even if the application hadn't been cancelled in December 2021 a new application would still have been required in January 2022 as the mortgage offer expired then. Again, Connells at that time was under the belief the transaction couldn't proceed due to the unresolved legal issues with the property, so it had no reason to speak to Mr M at that time. When it was told in March 2022 that the purchase was now proceeding then it acted the same day, looking at what was available and making an application to lender S as it was now the most suitable mortgage for Mr M. Again that application proceeded to offer, and this time the application completed.

I'm satisfied Mr M was never in a position to complete the property purchase before the first mortgage offer expired on 8 January 2022, and there wasn't an option for that offer to be extended as Mr M would have needed. That means he could never have obtained that first interest rate, and instead would always have needed to make a fresh application at a different interest rate. For that reason there are no grounds for me to order Connells to pay the difference between the two interest rates.

Mr M has also said he paid the £99 administration fee twice, but that is right. The terms of Connells' business are contained within a document entitled "*key information on our mortgage and protection services*" and that says:

"If we charge you fees, and your mortgage does not go ahead, these fees are non-refundable. However, if you make a new application within six months of your initial payment, you will not be charged a further administration fee."

The second application wasn't made within six months of the initial £99 payment (it was around nine months after the initial payment) and so the second £99 administration fee was fairly due.

In respect of the fees charged to Mr M, I'm satisfied that these were reasonable and that the documentation supplied to Mr M explained them. It was unfortunate that the additional administration fee was incurred, but in my view this was not the fault of Connells, and the possibility of a second fee being incurred was set out in Connells' literature.

I am sorry to disappoint Mr M, but, for the reasons given above, I'm unable to uphold his complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 May 2024.

Julia Meadows
Ombudsman