

The complaint

Mr U has complained about the service he received when he applied for a mortgage through Sequence (UK) Limited, which is an appointed representative of Connells Limited. He says he was a vulnerable customer, and he was pressured into buying a property at auction without being warned of the risks. Two attempted mortgage applications were declined which led to him losing his deposit of around £10,000.

Mr U has been represented in bringing this complaint. For ease I will mainly just refer to Mr U in this decision, but that should be taken to mean his representative acting on his behalf where appropriate.

What happened

Mr U approached Connells in March 2023 as he wanted to buy his first property and wanted mortgage advice.

On 20 April 2023 the Connells adviser sent Mr U a link to a property that was for sale. The link was for a property listings site which showed the details of the property, and the property was to be sold at auction by a third-party firm of auctioneers.

It isn't in dispute the Connells adviser placed the bid for Mr U. The adviser said she did so using his mobile phone as he asked her to, and said she asked him multiple times if he was sure he wanted to do it. Mr U says the adviser instigated the call and bid on his behalf, without any warning to him about the risks of buying a property through an auction.

Mr U was the successful highest bidder at the auction on 26 April 2023, and the following day the auctioneer contacted Mr U to remind him that he had been contractually obliged to pay around £10,000 within one hour of the auction ending, which he hadn't done. The auctioneer said Mr U needed to pay by 3pm that afternoon otherwise he would be in breach of contract. Mr U paid the funds to the auctioneer that day.

Connells obtained an agreement in principle and submitted a mortgage application to lender A on 27 April 2023. Connells also collected some fees from Mr U the same day. Those were a £99 administration fee, a £599 lifetime broker fee and a £30 Will fee.

A survey was carried out on the property on 2 May 2023, with no concerns coming from that once a query was resolved over whether the property was freehold or leasehold, and as it was leasehold what the service charge and ground rent costs would be. That was resolved on 9 May 2023.

After some back and forth, including requests for further information, lender A declined the application on 12 June 2023 as the application was outside of its risk appetite.

Connells attempted to place the application with a different lender, but it also declined the application.

Mr U complained to Connells about what had happened. Connells responded to the complaint on 11 August 2023, saying that whilst the adviser had provided the details of the property to Mr U there was no evidence to show she'd placed any pressure on him to buy it. It said the adviser had submitted the applications in good faith, and it was outside her control that the applications were declined. It said that as Mr U hadn't fully benefitted from the services associated with its fees, it would like to offer to refund them to him; those being a £599 lifetime broker fee and a £99 administration fee.

Mr U referred his complaint to the Financial Ombudsman Service where it was looked at by an Investigator. She said we can only look at the actions of the broker in respect of the mortgage (and not relating to the choice, or purchase of, the property) and having done so she didn't think the broker had done anything wrong. That said, she thought Connells hadn't handled Mr U's request for a data subject access request well, taking too long to provide the information, and for that she felt £200 compensation should be paid.

Mr U didn't agree with our Investigator's outcome and 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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I was sorry to see the position Mr U found himself in, it is clear this will have a significant impact on him. But 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, Sequence (UK) Limited – that is, the mortgage broking. But it hasn't, within FSMA and our rules, taken responsibility for Sequence (UK) Limited's (or the individual estate agency involved) 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".

When helping Mr U find – and bid on – the property, Sequence (UK) Limited was acting as an estate agent (albeit here it wasn't selling the property in question, as that was for sale through a third-party auctioneer). 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, or in helping Mr U to find and bid on a property from an auctioneer, is not something I can consider as it doesn't fall within my power to do so. That includes whether or not Mr U was warned about the risks of purchasing a property through an auction, such as the need for an immediate payment of funds and the completion deadline as that would fall under the actions of someone acting as an estate agent, not what they did in the course of broking the mortgage.

Connells submitted the first mortgage application to lender A on 27 April 2023 and after some back and forth, with lender A asking additional questions and for some further information to support the application, the application was declined on 12 June 2023 with lender A saying the application didn't meet its risk appetite following its due diligence checks. Connells then submitted an application to lender N which also, after reviewing the application, declined to lend.

Mr U's representative has talked about the property not being suitable for lending, but that wasn't the reason the applications were turned down. Lender A had assessed the valuation report and was happy to proceed once it had clarified the property was leasehold and what the ground rent and service charge costs were. So the comments below from Mr U's representative have no relevance to this complaint as the property was acceptable security:

- 'The property is located in an area surrounded by licenced premises, fast food takeaway, shops and other commercial businesses which are unacceptable to many lenders. Again, no risk warning given at all in this respect. [Lender A] & [lender N] both rely on valuer's comments when determining mortgage suitability and there are frequent declines in this respect'
- 'There are no warnings or enquiries as to why the property was at auction, often properties sold in this manner have defective title, close to commercial premises, construction faults. [The estate agent] as an experienced estate agent are well aware of the risks but failed to even discuss this with their client. Yet they were super efficient selling Mortgage, Wills, Insurance and Solicitor Referrals and collecting ALL their NON-REFUNDABLE fees up front'
- 'Furthermore, we disagree that FCA regulated mortgage advisers (notwithstanding those representing estate agents) are not responsible if a property doesn't meet lenders criteria. So, a thatched cottage built of reinforced concrete can be ignored by a mortgage adviser? A flat roofed home, a listed building, flying freehold flat, short term leasehold. In your scenario, an adviser can promote being able to do such mortgage work, charge excessive fees and have no culpability should the mortgage fail at survey or in legal process?'

As the property was suitable security for lender A, with none of the above potential issues and/or defects, then I won't comment on these points any further as they don't alter the outcome of this complaint.

There is also a dispute over why the application stated Mr U was single, with the adviser saying that is what she was told by Mr U, and Mr U saying he told the adviser he had a partner and five children and they would be living with him in the new property. We have no way of knowing for sure what was said, but in any event I don't need to make a finding on this point as it had no impact on the applications being declined so wouldn't alter the outcome of this complaint. That is also the case for the fact this was a concessionary purchase. That wasn't the reason for the declines so has no bearing on the overall outcome of the complaint. For that reason, I'll make no further comment on these points.

The representative said that it should have been clearly pointed out to Mr U, prior to bidding on the property, that he would need to pay a deposit immediately if his bid was successful and then complete the purchase within 28 days (although the email from the auctioneer actually says Mr U had 56 days to complete the purchase, not 28 days). The adviser has said she can't remember whether Mr U was verbally warned by her or by the auctioneer of the potential risk of the loss of the deposit, but she says she did tell him to read all the paperwork he'd been sent by the auctioneer.

As I've said, I don't have the power to deal with the parts of this complaint that relate to the purchase of the property as they aren't regulated – or ancillary to regulated – activities. The auctioneer would have been responsible for making all the information available to Mr U about how the auction process would work (such as that he would need to pay a certain amount immediately, and complete within certain timescales). Mr U viewed the property with his family, without Connells's involvement, and decided to proceed after that viewing. Whilst Connells may have helped Mr U place his bid, that doesn't make it a regulated – or ancillary to a regulated – activity. As I've explained, I simply don't have the power to hold Connells liable for the fact Mr U bought a property at auction, and the consequences that flowed from that as such a complaint doesn't fall within my jurisdiction.

Mr U is understandably upset that he lost the deposit he paid to the auctioneer, but I'm satisfied Connells had no reason to believe his mortgage application would be declined. I'm also satisfied the applications weren't declined due to any act or omission on the part of Connells. Connells did everything it could to try to obtain a mortgage for Mr U so he could complete the purchase of the property he'd chosen and having considered everything very carefully I simply can't hold Connells liable for the losses Mr U incurred.

Mr U's representative has said that the adviser should have treated Mr U as a vulnerable customer (in line with guidance from the regulator) and that his status as a vulnerable customer should have been recorded.

Whilst I acknowledge the points Mr U's representative has made, again this complaint doesn't turn on that. The mortgage applications were declined and even if Connells had recorded that Mr U was a vulnerable consumer on its paperwork, that wouldn't have altered the decisions of the lenders.

Mr U's representative has also said the complaint is about the fact Connells shouldn't have applied for the mortgage without the appropriate risk warnings and that Mr U was sold products to meet targets with no regard to his vulnerability and subsequent losses.

But by the time the mortgage was applied for a risk warning would have been too late as by then Mr U was already committed to buying the property and had paid the roughly £10,000 to the auctioneer. And as I've explained I can't consider what happened before then that led to Mr U finding - and being the successful bidder on - the property. So my starting point is that Mr U had agreed to purchase a property and that he needed to finance that within 56 days (as per the email from the auctioneer). Connells applied for a mortgage, and associated insurances, as I would expect it to do to try to help Mr U facilitate that purchase. Had Connells not done so then Mr U would not have been able to meet the 56 day completion deadline unless he applied for what would, in essence, have been similar products elsewhere, either through a different broker, or directly with a lender and insurer.

Connells offered, in its response to the complaint, to pay £698 to Mr U; that is, a refund of the £99 administration fee and the £599 lifetime broker fee.

Mr U has mentioned as part of his submissions, albeit it doesn't seem that he has specifically complained about it, that he was also charged a £30 Will writing fee. I can't see

that Mr U has complained to Connells about that £30 Will writing fee so if that is something he would like Connells to look into then he will need to raise that complaint with Connells directly.

In respect of the costs charged by Connells, I'm satisfied its offer to refund £698 is fair and reasonable in all the circumstances.

Finally, Mr U has complained about how long it took Connells to respond to his data subject access request, with Mr U making the request on 12 July 2023, and the information being sent to him on 18 September 2023. Our Investigator felt £200 compensation was due for any upset and inconvenience that caused, and Connells has accepted it was at fault here and agreed with our Investigator that it should pay that sum.

Whilst Connells took longer than it should to send the information, Mr U hasn't shown us any financial impact that delay had on him. This means all I'm looking at is a payment for the inconvenience Mr U was put to, and any upset caused to him. The award of compensation is fairly subjective, and whilst we have some approximate bandings we publish on our website, these are fairly broad. Having considered everything that has been said in this case, and awards we've made in other cases, I'm satisfied the £200 put forward by our Investigator is fair and reasonable.

In summary, whilst I have a great deal of sympathy for the situation Mr U found himself in, I don't have the power to deal with the main thrust of Mr U's complaint. In terms of the parts I can deal with, I'm satisfied Connells' offer to refund £698 of fees, and its agreement to an additional £200 compensation for the data subject access request delay, is fair and reasonable and I make no further award.

My final decision

I uphold this complaint in part and order Connells Limited to pay £898 to Mr U – that is a refund of the £698 fees plus £200 compensation for the data subject access request delay – less any amounts already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 2 January 2025.

Julia Meadows
Ombudsman