

The complaint

Mr C complains that Turney & Associates Ltd unfairly asked him to pay its brokers fee after he decided to take mortgage advice elsewhere.

What happened

Mr C contacted Turney & Associates for mortgage advice in January 2023 as he was looking to buy a property. He didn't go ahead with the property purchase. Mr C contacted Turney & Associates about further prospective purchases, however these didn't proceed and in December 2023 Mr C put his property search on hold.

Mr C contacted Turney & Associates in June 2024 after he'd had an offer accepted on a property. Turney & Associates asked for information from Mr C and issued a mortgage recommendation in July 2024.

In early August 2024 Mr C told Turney & Associates he'd decided to proceed with another broker on a fee free basis. Turney & Associates asked Mr C to pay its fee of £995.

Mr C says he didn't agree to pay this fee and wasn't made aware that the advice given was on this basis. When he didn't agree to pay the fee, he says Turney & Associates threatened legal action and harassed him with emails and phone calls.

Turney & Associates said it discussed its fees with Mr C at the outset of the relationship and its fees were also set out in its client agreement and on the front page of the client profile completed by Mr C.

I sent a provisional decision to the parties. In summary, I said Turney & Associates didn't make its fees sufficiently clear when Mr C contacted it in June 2024 – including that it would charge a fee of £995 fee if he went elsewhere after it issued a mortgage recommendation. I said it wasn't fair for Turney & Associates to rely on information it had provided to Mr C the previous year.

I said, if Mr C had been given clear information in June 2024, he'd most likely have stayed with Turney & Associates and paid its £495 fee, rather than go elsewhere and incur a £995 fee. I said it was unreasonable for Turney & Associates to say it would pursue a legal route to recover the fee if Mr C didn't respond within a few days and, for this upset this caused, Turney & Associates should reduce its fee by £95. As a result, I said Turney & Associates could only ask Mr C to pay a broker fee of no more than £400.

Turney & Associates agreed. Mr C didn't agree. He said Turney & Associates didn't explain its fees and his preference was for a fee free adviser. He said all Turney & Associates did in 2023 was issue a few mortgage illustrations – work he says can be undertaken in a few minutes by a comparison website. He said I hadn't taken into account comments he'd found online that he says suggest a pattern of behaviour by Turney & Associates.

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.

This service is not a regulator. We provide an informal dispute resolution service. We take law, regulation and good industry practice into account, as well as the parties' comments and the available evidence, to decide what's fair and reasonable in the circumstances of a complaint. I can't fairly comment on or make any findings about Turney & Associates dealings with other customers. If Mr C has evidence of a pattern of behaviour that he considers inappropriate he can consider contacting the regulator (the Financial Conduct Authority).

Turney & Associates says its fees would have been explained to Mr C orally at the outset of the client relationship (in early 2023). It says the fees are set out in its client agreement and on the front page of the client profile that Mr C completed and returned.

Turney & Associates doesn't record phone calls, so it can't provide a call recording to evidence what Mr C was told orally. It did provide copies of its client agreement and evidence that it sent this to Mr C in January 2023 and June 2023. This set out the fees payable.

Turney & Associates also provided a copy of the client profile which Mr C completed and returned in January 2023. This set the fees out on the front page.

There's no requirement for Turney & Associates to provide services and advice free of charge. But it did have to make its terms of business clear to Mr C, so he could decide whether to engage its services.

I think Turney & Associates did make Mr C aware of its fees at the start of the client relationship and again in mid-2023. While Mr C says the fees were not explained to him, I don't think he's disputing that he was sent the client agreement and client profile. Mr C didn't sign the client agreement. Contracts don't have to be signed or even in writing to be binding (although whether a contract is binding and enforceable would be a matter for a court to decide). Mr C accepted Turney & Associates terms of business – including its fees – when he chose to use their services.

Mr C contacted Turney & Associates again in June 2024, after he'd had an offer accepted on a property. Turney & Associates asked for information and documents from Mr C so that it could look for mortgages and obtain a decision in principle. Turney & Associates sent an email to Mr C in mid-July 2024 saying it had researched the market and attached a mortgage illustration. It sent a recommendation letter in mid-July 2024.

Turney & Associates chased Mr C in late July and early August 2024, asking if he wanted to do ahead with the mortgage application. Mr C responded on 7 August 2024 saying:

“Apologies for going radio silent on you. I'm afraid I was tempted away by another mortgage advisor who was only charging proc fees and seemed to have accessibility to the same products. As it happens you both sent me the same mortgage illustration! Apologies again and I hope I haven't taken up too much of your time!”

Turney & Associates sent an email to Mr C saying a fee was owed. It referred to its client agreement which says:

Mortgages

A fee of £495.00 payable on completion of your mortgage. We will also be paid commission by the lender. A fee of £995.00 will be payable in the following circumstances....

...You, the client, decide to go direct to the lender, another lender, another broker or purchase as a cash buyer, after a recommendation has been given.

Turney & Associates said Mr C could continue with its services and pay the lower fee on completion. It said it would await his response. It re-sent copies of the client agreement and client profile.

Turney & Associates says it told Mr C about its fees and did considerable work on Mr C's behalf over 18 months. It did this in the expectation that it would complete a mortgage with Mr C. Had this happened, Turney & Associates would have received commission from the lender as well as a £495 broker fee from Mr C.

Mr C disputes that he should have to pay the £995 fee. He says he didn't sign the client agreement. He says a small paragraph in a client profile isn't sufficient and Turney & Associates hadn't been transparent. Mr C has a professional occupation and says he deals with terms and conditions as part of his role. Mr C questioned whether the client agreement is legal and binding as it doesn't have an end date or a cooling off period. He said his discussions with Turney & Associates were part of his due diligence in selecting a product and adviser to proceed with and he didn't consider he'd commenced business with Turney & Associates.

Mr C said Turney & Associates didn't meet its obligations under the Consumer Duty or ensure he was provided with clear information and kept appropriately informed before during and after the point of sale.

I think Turney & Associates made Mr C aware of its fees at the outset. It sent its terms of business to Mr C in January 2023 and June 2023.

However, given the amount of time that passed before Mr C contacted Turney & Associates again in June 2024, I'm not persuaded this was a continuation of the contract from 2023. I think Turney & Associates ought fairly to have treated this as a new instruction and issued Mr C with new terms of business, including information about its fees to ensure he was happy to proceed. It also ought to have considered its obligations under the Consumer Duty, which came into force on 31 July 2023, particularly its requirement to support Mr C's understanding.

Even if this was a continuation of the contract from 2023, I don't think Turney & Associates could fairly rely on having sent its terms of business to Mr C in 2023. The Consumer Duty requires businesses to provide information to their customers, to enable them to make decisions that are effective, timely and properly informed. This information should be provided in a way that's likely to be understood. I don't think Turney & Associates acted fairly or reasonably in seeking to rely on information it had sent to Mr C more than a year previously. Nor do I think it was reasonable to have expected Mr C to have either remembered the contents of those documents or for him to realise that they would apply to this transaction

Turney & Associates' recommendation letter sent in mid-July 2024 referred Mr C to the client agreement and the client profile, both of which set out its fees. However, it didn't attach copies. I don't think it was fair or consistent with Turney & Associates' obligations under the Consumer Duty to expect Mr C to cross reference documents in order to understand the terms on which it was providing services – particularly given how long ago those documents

had been sent. And Turney & Associates needed to have sent information about its fees to Mr C in June 2024 when he got back in contact, so that Mr C could make an informed decision whether to use its services.

I think Turney & Associates should have issued – or re-issued – its terms of business, including its fees, to Mr C in June 2024 to ensure he had sufficient and timely information to make an informed decision about whether to use, or continue to use, its services.

However, that doesn't necessarily mean it isn't fair and reasonable for Turney & Associates to ask Mr C to pay its fee. What I have to consider is what Mr C would have done differently if Turney & Associates had sent its terms of business and fee structure to Mr C in June 2024, and whether he's lost out as a result of it failing to do this.

I think if Turney & Associates had given Mr C sufficient and timely information about its fees in June 2024, Mr C would have acted differently. Mr C decided in late July 2024 or early August 2024 to go to a fee free broker to save on broker fees. I think it's unlikely he'd have gone to another broker if he'd known it would cost him more.

I've considered Mr C's comments that he doesn't consider Turney & Associates' terms of business to be binding. But I think it's unlikely he set out with the intention of taking advice from Turney & Associates and then going elsewhere on the assumption the fee was unenforceable. Providing information and documents to Turney & Associates would have involved some trouble and inconvenience – which he had to repeat with the next broker. And his response when Turney & Associates contacted him about the fee suggests this was unexpected.

In response to my provisional decision, Mr C said he wasn't aware of Turney & Associates terms and his preference was for a fee free mortgage adviser. I don't know if Mr C is saying that he'd never have used Turney & Associates services if he'd known it would charge a fee. If so, I don't think that's consistent with the evidence. Mr C continued to use Turney & Associates services after receiving its client agreement in early-2023 and mid-2023, which set out its fees. I think it's more likely that he was – as he told Turney & Associates in August 2024 – tempted away by a broker charging a lower fee.

I think Mr C was happy with Turney & Associates' mortgage recommendation – this was the same mortgage he decided to apply for via another broker. He didn't say there was a problem with the service he'd received from Turney & Associates prior to August 2024. Mr C just said he'd been tempted away by another advisor who was charging lower fees. Based on the available evidence, I think Mr C would have stayed with Turney & Associates if he'd been given timely information about the £995 fee he'd incur if he went elsewhere.

Taking all this into account, I don't think Turney & Associates can fairly ask Mr C to pay its £995 fee. But (subject to my comments below) I do think it's fair for Mr C to pay the £495 fee he'd have paid if he'd completed the mortgage with Turney & Associates. That's what I think would most likely have happened if Turney & Associates had given Mr C sufficient and timely information about its fees in June 2024.

Turney & Associates won't receive commission from the lender. But it didn't have to carry out the work involved in submitting the mortgage application on Mr C's behalf.

It's clear from the emails exchanged in August 2024 that both parties felt strongly about whether the fee was – or wasn't – payable. Mr C says Turney & Associates harassed him and threatened legal action if he didn't respond within an unreasonably short period. While Turney & Associates did chase Mr C for payment, I don't think it's reasonable to find this amounted to harassment. But I do think it was unreasonable for Turney & Associates to say

it would pursue a legal route to recover the fee if Mr C didn't respond within a few days. I understand that Mr C was upset by this. I think this made it difficult for Mr C to accept Turney & Associates' offer to continue to work with Mr C to progress his mortgage application. And this situation came about due to Turney & Associates' failure to provide sufficient and timely information to Mr C about its fees.

I think for this upset this caused, Turney & Associates should reduce its fee by £95. That means it can only ask Mr C to pay a broker fee of no more than £400.

My final decision

My decision is that Turney & Associates Ltd must reduce its fee to no more than £400.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 July 2025.

Ruth Stevenson
Ombudsman