

## **The complaint**

Mr M complains that Connect IFA Ltd trading as Connect Mortgages (Connect) incorrectly advised him about his mortgage arrangements, in particular the ability to 'port' his mortgage.

## **What happened**

Mr M had a mortgage on his property 15 H Rd (existing property) with AC Mortgages. In 2022 he decided to buy 11a H Rd (new property). Connect advised that he could (a) 'Port' his AC mortgage to the new property and (b) take a buy-to-let mortgage on his existing property with BM, the size of which would also provide funds for the deposit and refurbishment of the new property.

It was a condition of the AC mortgage that the loan over the existing property would need to be redeemed before it could be ported to the new property. This vital condition was overlooked by both Connect and Mr M's solicitors and on the day of completion only the BM mortgage funds were available which meant Mr M had a significant shortfall. Having received a Notice to Complete from the seller of the new property, Mr M obtained short-term funding to cover the shortfall in order to complete the purchase seven days later.

Mr M says that due to the negligence of Connect he has incurred considerable losses and costs which he feels Connect ought to pay.

Connect partially upheld Mr M's complaint accepting that their advisor had misunderstood the porting process and incorrectly advised him that the AC mortgage over the existing property would not need to be redeemed prior to porting to the new property. It agreed to repay the valuation, application and offer fees of £1,550 and the legal fees of £606.25. However, it did not agree that it was responsible for any further losses Mr M may have incurred because it said the responsibility for ensuring that he had sufficient funds to complete the transaction lay with his solicitor.

Mr M was unhappy with Connect's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that there had been poor service by Connect but that it wasn't responsible for the losses Mr M was seeking to recover. For the distress and inconvenience caused our investigator thought Connect should pay Mr M £350 in compensation.

Mr M 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.

It is accepted by Connect that on 16 June 2022 Mr M obtained a decision in principle regarding the BM mortgage in the sum of £140,000 at a rate of 2.7%. On 27 July Mr M requested that the BM mortgage be increased to £180,000, the additional funds being required for refurbishment of the new property. On 28 July Mr M was notified by Connect that a mortgage offer had been issued by AC in respect of the new property for £128,509 at a rate of 1.26% until 31 January 2024. On 29 July Mr M was notified by Connect that a mortgage illustration had been issued by BM in respect of the existing property for £181,995 at an initial fixed rate of 2.91% until 30 September 2027.

From the evidence provided it appears that on 12 August Mr M exchanged contracts on the new property and a completion date of 1 September 2022 was fixed. On the day of completion, a Notice to Complete on the new property was issued by the seller's solicitors as Mr M was unable to complete due to lack of funds, caused by not being able to port the AC mortgage.

Mr M says that on multiple occasions Connect told him that the AC mortgage would not need to be redeemed and I have seen the email evidence supporting that. The issue here is whether Connect are responsible for putting Mr M in the position where he was contractually bound and liable to the seller of 11a H Rd for failing to complete.

At section 7 of the AC mortgage offer Mr M's attention was drawn to the following condition.

*The following special conditions also apply. Please ensure that you have read and have taken the necessary action in relation to the conditions below. We will not release funds until these conditions have been met. Our legal advisor must ensure that your mortgage over 15 H Rd with AC Mortgages is redeemed on or before completion of your loan.*

Mr M had clear notice that the AC mortgage over the existing property needed to be redeemed, although that said, as he is a layman within the context of a conveyancing transaction, it is perhaps unsurprising that he may not have paid particular attention to the finer points in the mortgage offer. Further, as he was assured by Connect that the AC mortgage did not require redemption it is reasonable that he took those assurances at face value.

However, the solicitors handling the transaction are experts and they too saw the mortgage offer. It is a fundamental part of their role to ensure that prior to exchanging contracts that the proposed financial arrangements are correct, thus allowing Mr M to be in a position to safely complete. The reason for this is that it is upon the exchange of contracts that Mr M became contractually bound and then in breaching the contract he becomes liable, under its terms, for the seller's losses.

Prior to the exchange of contracts Mr M would not have been liable to the seller if he chose to back out of the purchase. If, prior to exchange of contracts the problem with the AC mortgage had been noticed it could have been remedied or Mr M could have simply chosen to proceed no further. It is the act of exchanging contracts which causes Mr M to potentially

have the losses he now claims. Those are not caused by Connect. Connect have rightly addressed the losses it has caused in relation to the valuation, application and offer fees of £1,550. Those are losses associated with the mortgage for which Mr M received no benefit. Connect has even paid for the solicitors' fees which arguably is not a loss caused by Connect since the issue should have been picked up by the solicitors.

### **Putting things right**

Clearly, Connect did make a mistake, and so in part Connect have contributed to the distress and inconvenience caused to Mr M. I agree with our investigator that Connect should compensate Mr M for that. I've given this some further thought I think what our investigator has suggested is fair and reasonable.

So, although Mr M will probably be disappointed with my decision, and whilst Connect have indeed made errors, I can't say Connect has caused Mr M the financial losses he claims although I do think it should pay him £350 in compensation for the distress and inconvenience caused.

### **My final decision**

So, my final decision is that Connect IFA Ltd trading as Connect Mortgages should pay Mr M £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 September 2023.

Jonathan Willis  
**Ombudsman**