

The complaint

Mr H and Mr Y complain about poor advice from Turney & Associates Ltd (who I'll refer to as T&A) when they took advice about a mortgage for a self-build property.

Mr H and Mr Y say they shouldn't have to pay T&A's broker's fee.

What happened

Mr H and Mr Y wanted to buy a plot of land to build a property. The property had planning consent which was subject to conditions being discharged.

Mr H and Mr Y took mortgage advice from T&A which recommended a mortgage in October 2022. The lender asked for evidence that the planning conditions had been discharged. This wasn't available, and the lender said it would proceed on the basis this was in progress, but wouldn't release funds until the conditions were discharged. A mortgage offer was issued in December 2022. This said completion was subject to the solicitor confirming the planning conditions had been satisfied.

In February 2023 Mr H and Mr Y said the vendor hadn't provided the information they needed to discharge the planning conditions. Mr H and Mr Y asked if the lender would allow them to buy the land and complete the mortgage later. The lender said if they bought the land they'd need to submit a new application for a re-mortgage. T&A advised against buying the land without a mortgage offer and with the planning conditions still outstanding.

In early April 2023 Mr H and Mr Y told T&A the vendor had pulled out of the sale. They said the vendor had submitted documents to discharge some of the conditions. They said the vendor hadn't been back in touch with them, which suggested they were intending to develop the land themselves. In May 2023 Mr H and Mr Y told T&A the vendor had taken the property off the market. They said there was a chance the conditions would be discharged before the mortgage offered expired, but it wasn't clear the vendor would sell the property.

In early June 2023 Mr H and Mr Y told T&A that the conditions had been discharged, but the vendor was looking for a contractor to build on the plot themselves. Mr H and Mr Y's solicitor asked the lender to extend the mortgage offer – which it agreed to do – in the hope the vendor would agree to the sale.

In early August 2023 Mr H and Mr Y told T&A that the vendor had taken the land off the market and started building work on it. They said this was because the extension to the mortgage offer wasn't confirmed quickly enough and the vendor had started building on the land already. They said they couldn't take up the mortgage offer because the lender didn't reach agreement with the vendor regarding the planning conditions.

T&A sent an invoice to Mr H and Mr Y for its broker's fee. In late 2023 T&A asked Mr H and Mr Y to pay its fee of £1995. It said on the basis they asked it for assistance on any future property plans it would accept £995. Mr H and Mr Y didn't pay the fee and T&A started legal action to collect the fee.

Mr H and Mr Y complain that:

- The mortgage recommended by T&A was unsuitable, and the lender prevented completion.
- T&A didn't explore options with other lenders and misled them that no lender would release funds when there are undischarged planning conditions. Mr H and Mr Y say they've been told by another broker there are lenders that would do this.
- They committed to the purchase and incurred costs based on T&A's advice.
- T&A tried to collect its brokers fee, which it isn't entitled to under its contract.

Our investigator said the mortgage recommendation was suitable. However, T&A wasn't fairly entitled under the terms of its contract to ask Mr H and Mr Y to pay the broker's fee.

Mr H and Mr Y agreed. T&A didn't agree. It said Mr H and Mr Y proceeded with the mortgage application knowing that the planning conditions needed to be discharged. It said it had put many hours of work into the application.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Was the recommendation suitable?

T&A made Mr H and Mr Y aware in October 2022 that the lender it recommended would require the planning conditions to be satisfied before it would release funds. Mr H and Mr Y were aware of the lender's requirement before they proceeded with the application.

The mortgage offer issued in December 2022 said satisfaction of the planning conditions was a condition to the mortgage completing. So again, Mr H and Mr Y were aware of this.

If Mr H and Mr Y had told T&A they needed a mortgage from a lender that would release funds while the planning conditions were undischarged, I'd have expected T&A to look for a mortgage on these terms, or tell Mr H and Mr Y this wasn't available. But Mr H and Mr Y didn't say that discharging the planning conditions would be a problem. In December 2022 they told T&A it would take one or more likely two months.

I don't think it's fair to say that the recommendation was unsuitable due to the lender's requirements regarding the planning conditions. T&A couldn't have known when it made its recommendation that this would be a problem, or that the planning conditions would remain undischarged some months later.

Mr H and Mr Y say when it became apparent that the planning conditions were a problem, T&A incorrectly told them all lenders would have the same requirements for a self-build application. They say it repeated this in an email in May 2023 (they provided a copy of the email). On that basis, they didn't look for an alternative lender which might have allowed the purchase to go ahead.

In February 2023 T&A advised Mr H and Mr Y against buying the land (using savings and a family gift) with the planning conditions unsatisfied. It said they'd be without a mortgage offer and reliant on the vendor providing information for them to satisfy the planning conditions. I

don't think it was unfair for T&A to make Mr H and Mr Y aware of the risks. This didn't stop them going ahead, if they were confident of the outcome or prepared to take the risks.

T&A disputes that any lender would lend when there are unsatisfied planning conditions. Mr H and Mr Y aren't able to provide evidence a lender would agree to this – this is something they were told by a broker. Without evidence to support this, I don't think I can fairly find that another lender would have offered a mortgage on terms that would have allowed Mr H and Mr Y to go ahead with the purchase and development of the property.

Mr H and Mr Y say the property purchase didn't complete because the lender failed to reach agreement with the vendor regarding the planning conditions and the vendor was fed up with the delays. But, based on the available evidence, it seems the vendor failed to provide the information Mr H and Mr Y needed to discharge the planning conditions. The vendor withdrew from the sale in mid-March 2023 and by mid-2023 had started development of the plot themselves. I must fairly take into account that this suggests there might have been other reasons why the vendor didn't go ahead with the sale of the property.

I think the mortgage recommended by T&A was suitable, given what T&A knew about Mr H and Mr Y's circumstances and aims at the time. Mr H and Mr Y proceeded with the mortgage application and the property purchase knowing the mortgage funds wouldn't be released until the planning conditions were satisfied. I can't fairly find that another lender would certainly have offered a mortgage without similar (or other) conditions. And, even if this was the case, I can't fairly find that the vendor would certainly have sold the property to Mr H and Mr Y.

It follows that I don't think it's fair and reasonable to require T&A to pay compensation to Mr H and Mr Y for any costs or losses related to the mortgage application or the failed property purchase.

Is T&A entitled to ask Mr H and Mr Y to pay its broker's fee?

T&A asked Mr H and Mr Y to sign its broker fee contract in late 2022. This said:

The fee of £995 "The Broker Fee" shall become payable immediately upon completion of the Mortgage. However, if the mortgage does not complete after an application has been submitted, as a result of The Clients' choices/actions/decisions, then the full fee will become immediately payable to Turney & Associates Limited. In addition, if a recommendation is provided and you subsequently choose to go direct to the lender or another broker a fee of £1995 will be payable.

Mr H and Mr Y's mortgage didn't complete. I don't think it's reasonable to say this was because of choices/actions/decisions of Mr H and Mr Y. The conditions set out in the mortgage offer relating to the discharge of the planning conditions weren't satisfied for some months. It wasn't within Mr H and Mr Y's ability to discharge the planning conditions without information from the vendor, which the vendor didn't provide. The vendor then withdrew from the sale. There's no suggestion that Mr H and Mr Y went direct to the lender or to another broker to source the mortgage for this property purchase.

I appreciate that T&A spent time researching the market, completing the application and liaising with the lender and Mr H and Mr Y. It must be disappointing not to be paid for this work. But the contract – which T&A prepared and asked Mr H and Mr Y to sign – sets out when the fee is due. I don't think it's fair to say that the circumstances in which the contract says the fee is due apply here.

I don't think it was fair for T&A to ask Mr H and Mr Y to pay the fee. I don't think it was fair for

it to start legal action to collect the fee. And I don't think it would be fair for T&A to ask Mr H and Mr Y to re-imburse any costs it incurred in doing so.

My final decision

My decision is that I uphold this complaint and order Turney & Associates Ltd not to pursue Mr H and Mr Y for its broker's fee or for any costs it incurred trying to collect the fee.

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

Ruth Stevenson
Ombudsman