



# “Auctioneers have discretion but must not discriminate, says Christopher Hamer The Property Ombudsman.

The National Association of Valuers and Auctioneers (NAVA) Committee recently determined that their members should make access to independent redress available to their clients and buyers where unresolved disputes come about. My jurisdiction also covers this sector.

Buying property at auction is favoured by some buyers because of the speed of the process by comparison with regular property purchases. As soon as the gavel falls the deal is done. My Office has seen a few cases recently concerning the sale of property at auction.

I consider that there are some important points to highlight which will, hopefully, ensure that all parties fully understand the obligations upon the auctioneer and the commitments that they are making when bidding.

I should first clarify that when considering any case that is referred to this Office, I will have regard to an agent's obligations under the TPO Code of Practice for Residential Sales and the Common Auction Conditions.

The most significant point, which should be made clear to anyone attending an auction with the intention of bidding on a property, is that, under Paragraph 10a of the TPO Code of Practice (effective from 1 August 2011), the auctioneer has a primary duty to act in the seller's best interests and follow his instructions. Consequently, he is required to obtain the best price for the property in order to fulfil this duty.

The auctioneer has considerable discretion as to how to operate the auction. The auction catalogue will normally stipulate the Common Auction Conditions apply, that is:

▶ “The catalogue is issued only on the



## Disappointed buyers blame auctioneers if they are unsuccessful.

basis that you accept these conditions relating to the conduct of the auction. They override all other conditions and can only be varied if we agree.”

▶ “Our decision on the conduct of the auction is final. We may cancel the auction, withdraw lots from sale, or alter the order in which lots are offered for sale. We may also combine or divide lots. You acknowledge that to the extent permitted by law we owe you no duty of care and you have no claim against us for any loss.”

And, in connection with bidding and reserve prices:

▶ “We may refuse to accept a bid. We do not have to explain why. If there is a dispute over bidding we are entitled to resolve it, and our decision is final.”

I have seen complaints from disappointed buyers who allege that in some way they were prevented from buying a property because of the actions of the auctioneer. I would expect to see some evidence that the auction was properly conducted but I accept that the auctioneer has discretion to conduct the auction in the manner he sees fit, in accordance with his seller client's instructions.

The auctioneer is the professional in the transaction. Some bidders will be well used to the procedure, others will be less regular participants. Particularly for the latter category, the auctioneer should emphasise to them the crucial importance for a potential buyer to thoroughly research the property as a legally binding contract to purchase will come into force when the gavel falls. Under the TPO Code of Practice, the auctioneer has an obligation to ensure that all potential or actual buyers are treated fairly. Whilst the principle of *caveat emptor* (let the buyer beware) places an obligation on buyers to ensure that what they are buying suits their purpose (and hence I would expect an interested buyer to have thoroughly researched the intended purchase, carrying out all the usual searches and seeking professional advice, as required, before the auction using a solicitor and/or surveyor as deemed necessary), I would expect the auction house to promptly forward all copies of legal documents that they have been provided by the seller or his solicitor, to the potential buyer as soon as such a request is made. I would also expect them to clarify, if questions are raised, that the 10 per cent deposit will become payable on the day of the auction (and advise what payment methods are acceptable) and make clear when the balance will become due, normally within 20 working days of the contract being signed.

As in any property sale, clear and accurate property particulars and accompanying information, and a clear and fair sale process, is essential to avoid complaints being upheld by my Office. ☺

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