

## The complaint

Mr M and Ms N complain about the mortgage advice they were given by an appointed representative of Openwork Limited ("Openwork"). They say the adviser recommended an unsuitable mortgage.

## What happened

In August 2020 Mr M emailed Openwork to ask for it to help find a new mortgage. Mr M said he wanted a mortgage on a joint borrower – sole proprietor ("JBSP") basis. In other words the new mortgage was to be in both his and Ms N's names. However, the title deeds of the property were to be in Ms N's name only.

The broker recommended a mortgage with Santander. Mr M and Ms N took the broker's advice and applied for the mortgage. Mr M and Ms N complain that at the point they were due to exchange contracts on the property they were buying they were informed that Santander wouldn't proceed with the mortgage if the deeds to the property were to be in Ms N's name only. That's because it didn't offer JBSP mortgages.

Mr M says he and Ms N had to abandon the purchase even though they had already sold the property they were living in at the time and had agreed to move out. He says that's because a purchase in joint names would mean they'd had to pay significantly more stamp duty than a purchase in Ms N's name alone, and they couldn't raise the extra money they needed for that at such short notice. Mr M says that abandoning the purchase caused him and Ms N significant inconvenience and costs.

Mr M and Ms N went on to buy another property in January 2021. They did this using a mortgage they got from Santander.

Openwork said it didn't do anything wrong. It acknowledged that Mr M wanted a JBSP mortgage when he first contacted the broker. However, it said that Mr M also told him that a purchase in joint names would work too. It says the broker spoke to Mr M on the phone and told Mr M that the deeds needed to be in joint names if Mr M and Ms N were to proceed with the Santander mortgage. He says Mr M agreed to this as Santander was willing to lend them all the money they wanted.

Mr M and Ms N disagreed and brought their complaint to the Financial Ombudsman Service.

Our investigator looked into what happened. He said he wasn't present for any conversations that took place during the mortgage application, and recordings of the relevant phone calls weren't available. Although he acknowledged that Mr M asked for mortgage on a JBSP basis in two emails he could see that in one of those emails Mr M also said:

*The purchase is in [Ms N]'s name only as my name is on the Deed of my parents property, although the property is subject to a Declaration of Trust. That allows us to avoid the uplift in Stamp Duty should we both be on the Deeds of the new property.*

So our investigator thought that Mr M and Ms N were happy to get a property where they

deeds would be in both of their names. He said the broker wasn't a tax adviser or a solicitor, so it wasn't the broker's responsibility to give Mr M and Ms N correct advice about stamp duty. That's relevant here as the declaration of trust referred to above didn't allow Mr M and Ms N to avoid the extra stamp duty if they proceeded with a purchase in joint names.

So while our investigator accepted that the broker recommended an unsuitable lender for a JBSP application, he thought that the broker and Mr M both contributed to the unsuccessful mortgage application. In the circumstances, he didn't think it would be fair to require Openwork to compensate Mr M and Ms N for their costs in relation to the failed purchase.

Our investigator also said that the evidence suggested that Mr M and Ms N had previously completed a mortgage application with another provider before they approached Openwork, and that they'd paid for a valuing the property in connection with that application. So he didn't think it would be fair to ask Openwork to refund those costs. He also said that the evidence suggested that Mr M and Ms N were informed by their solicitor that the purchase could proceed on a joint deed basis. So he didn't think it was fair that Openwork should refund Mr M and Ms N's conveyancing costs.

However our investigator thought that it would have been more suitable for Openwork to recommend a JBSP mortgage, so he thought it should refund the mortgage advice fee of £595 even though he accepted that Mr M and Ms N had signed documentation to say that the fee would be non-refundable regardless of a successful application.

Mr M and Ms N disagreed and asked for their complaint to be considered by an ombudsman, so it has been passed on to me to decide.

### **My provisional decision**

I issued a provisional decision on 20 July 2022. I explained why I thought Mr M and Ms N's complaint should be upheld in part.

I said that I disagreed with the conclusion our investigator had reached.

I considered the relevant emails between Mr M and the broker covering Mr M's instructions.

I said that in response to the email referred to above I could see that the broker wrote:

*Just to be clear is it a case that you want the deed of the new property in [Ms N]'s name, but both be on the Mortgage?.... is that correct?*

Mr M replied:

*To confirm:*

*The Deed is in [Ms N's] name only but we are both on the mortgage.*

I also considered what the broker had said about Mr M's circumstances (including that he thought the lending amount was the most important thing for Mr M), and the phone conversation in which he said Mr M agreed to proceed with the Santander mortgage, even though it could only be provided on a joint mortgage basis - not a JBSP basis.

I noted that Openwork hasn't been able to provide a recording of the broker's phone conversations with Mr M or any other evidence to demonstrate that the broker told Mr M that the Santander mortgage could only be provided on a joint mortgage basis. I said I found that surprising given the significance of the potential change to Mr M's instructions.

I considered what Mr M told us about his conversations with the broker too. Mr M confirmed that he had a number of phone calls with the broker about the mortgage. However, he was adamant that the broker didn't tell him that the Santander mortgage wasn't on a JBSP basis. Mr M told us that he only found out the Santander mortgage wasn't on a JBSP basis at the point he and Ms N were due to exchange contracts on the property in September 2020. At that point Mr M says he and Ms N were faced with having to pay a significant amount more stamp duty than they'd anticipated (which they couldn't) or abandon the purchase. So they withdrew from the purchase.

I said I couldn't be certain what was said in the phone calls between the broker and Mr M at the heart of this complaint, but I thought it was unlikely that Mr M and Ms N would have proceeded with the purchase, only to pull out at the point of exchange, if they knew that the mortgage the broker had recommended to them wasn't suitable for them. Mr M told us that the property they were buying was their dream property, and that they'd already sold their current property and agreed to move out. So pulling out of the purchase meant they had to make significant changes to their plans including moving into rented accommodation with their family until they found another property. I didn't think it was likely that they would've put themselves in that position by ignoring what the broker told them or failing to tell their solicitor about the basis on which Santander was willing to lend.

So on balance, I thought it was likely that the broker didn't do enough to make it clear that the Santander mortgage was only available on a joint mortgage - not a JBSP - basis. So I said I intended to uphold this complaint. In reaching this conclusion I said I considered the fact that Mr M and Ms N went on to get another property in January 2021 with a mortgage from Santander. I took into account the reasons why Ms N said they did that. She said that when they withdrew from the property purchase they were very conscious of the mortgage market at that time (in the covid-19 pandemic) and the time it was taking lenders to evaluate and process mortgage applications. As they'd spent over six months securing a mortgage with Santander for the maximum amount they could borrow Ms N says they felt they had no alternative but to proceed with a Santander mortgage on the basis of a joint mortgage with the deeds in both names. Ms N told us that in taking that decision they'd had to re-evaluate the type of house they could afford to purchase and the location.

As I was minded to uphold the complaint, I went on to consider what I thought Openwork should do to resolve this complaint.

In considering those costs I noted that Mr M and Ms N told us that initially they thought they had to move out of their existing property in September 2020. So when the purchase of the property at the heart of this complaint fell through they moved their furniture into a number of storage units.

However, circumstances changed, and they didn't move out of their existing property (the property they had sold) until 4 December 2020.

Mr M and Ms N say they moved into temporary rental accommodation between 2 and 11 December 2020. However, they've told us that they couldn't find another short-term rental property for the rest of the period between 12 December 2020 and 7 January 2021 (when they moved into their new property) and had to move from friend to friend.

#### *storage costs*

Mr M and Ms N provided us with a number of invoices to cover these storage costs. Those invoices cover various dates and storage units. Some of the invoices covered periods beyond 7 January 2021 (the date when they moved into their new property).

I thought it was fair and reasonable that Openwork reimburse Mr M and Ms N for their storage costs up to 7 January 2021. I said I was conscious that they didn't move out of their existing property until 4 December. However, I thought it was unlikely that they would have moved their furniture into storage before this if they didn't think they had to.

I asked Mr M and Ms N to provide us with invoices to cover their storage costs up to 7 January 2021 only.

#### *solicitor costs*

I thought it was fair and reasonable for Openwork to reimburse Mr M and Ms N for their solicitor costs in relation to the purchase of the property at the heart of this complaint. I asked them to provide us with evidence of the amount they actually paid for this as they'd previously provided us with a quotation.

#### *temporary accommodation costs*

I said Mr M and Ms N provided the Financial Ombudsman Service with invoices for two Airbnb rentals.

Those costs were as follows:

02/12/2020 - £67.21

04/12/2020 to 11/12/2020 - £463.96

I thought it was fair and reasonable that Openwork should reimburse Mr M and Ms N for those costs.

#### *relocation charge*

I said that Mr M and Ms N provided the Financial Ombudsman Service with an invoice dated 04/12/2020 for £395. The invoice refers to relocation charges and appeared to cover Mr M and Ms N's costs moving into temporary accommodation. I thought it was fair and reasonable that Openwork reimbursed Mr M and Ms N for those costs.

#### *transportation costs*

Mr M and Mrs N provided the Financial Ombudsman Service with invoices for various taxis. Ms N told us that they related to trips to work and school from their temporary accommodation. I said it wasn't clear to me that Mr M and Mrs N were unable to get public transport on these occasions but I thought it was likely that they could have given that the temporary accommodation was in London. So I didn't think it would be fair and reasonable for me to require Openwork to reimburse Mr M and Mrs N for those costs.

#### *mortgage fee*

Mr M and Mrs N have provided the Financial Ombudsman Service with an invoice dated 06/08/2020 for £595.

I said the mortgage adviser fee agreement Mr M and Mrs N signed on 6 August 2020 said that the fee was payable once their loan application has been submitted to a lender (which it was in September 2020). The agreement went on to say that if the loan didn't proceed to completion for whatever reason a fee of £595 would still be due.

I said I was also conscious that Openwork have told us that after Mr M and Ms N complained to Openwork they decided to use the same broker they'd complained about to arrange

another mortgage with Santander. Openwork says that broker didn't charge Mr M and Ms N for his services in connection with that purchase.

So I didn't think it would be fair and reasonable for me to require Openwork to reimburse Mr M and Ms N for the mortgage fee.

### *building survey*

Mr M and Ms N provided the Financial Ombudsman Service with an invoice for £1,996 dated 14 July 2020 for a survey. The invoice says the surveyor was instructed by the lender Mr M and Mrs N approached before Santander. Having considered the available evidence (including the content of an email from Mr N to the Openwork broker dated 3 August 2020 in which he said "The house has been valued by HSBC at the value of the offer and a full structural survey has been carried out already,") I didn't think it would be fair and reasonable for me to require Openwork to reimburse Mr M and Ms N for these costs.

### *trouble and upset*

I was persuaded that Mr M and Ms N were extremely inconvenienced by the broker not doing enough to make it clear that the Santander mortgage wasn't on a JBSP basis. As a result of withdrawing from the purchase at the heart of this complaint Mr M and Ms N had to find another property and get another mortgage. I said I understood why they felt under pressure to do this quickly given that they had already sold their home and agreed to move out by the time they withdrew from the purchase. Mr M and Ms N said they were very stressed by what happened, and that purchasing another property all took time.

Mr M and Ms N also told us that they (and their family) had to stay with friends over the Christmas 2020 period as they were unable to get temporary accommodation for the whole period. They've told us that they weren't able to cook in the temporary accommodation they were staying in and had to get takeaways every day.

In the circumstances I thought Openwork should pay Mr M and Ms N £1,000 compensation for the stress and inconvenience they were caused by Openwork's actions in this case. I said I was conscious that Mr M and Ms N were likely to be disappointed by this, but I was satisfied that the £1,000 offered fairly reflected the substantial distress and inconvenience Openwork's mistake caused them.

## **Responses to my provisional decision**

Mr M and Ms N and Openwork both responded to my provisional decision.

Mr M and Ms N didn't make any comments on my decision. They provided us with evidence to show that their solicitor costs for the failed purchase were £2,340 (inclusive of VAT). They didn't provide me with new invoices for their storage costs as requested. However, they set out more information about the amounts they wanted to be reimbursed for.

Openwork noted that my provisional decision said that Mr M and Ms N got a mortgage with Santander in January 2021 on a different property. They said that as they didn't proceed with a JBSP mortgage at this time, this couldn't have been their highest priority. I appreciate Openwork's point of view on this point. However, I have nothing to add to what I already said in my provisional decision. I made it clear in that decision that I'd considered Ms N's explanation for why they did this and think that explains why they eventually decided to proceed with a Santander mortgage on a joint mortgage basis with the deeds in both names after they decided not to proceed with the mortgage at the heart of this complaint.

After this I said that I thought Openwork should pay Mr M and Ms N £7,152.05 in total to resolve this complaint. That covered the following:

- Storage Costs until 07/01/21: £2,885.88
- Temporary accommodation costs: £531.17
- Solicitor costs: £2,340
- Relocation charge: £395
- Trouble and upset: £1,000

Mr M and Ms N said they were willing to accept £7,152.05 to resolve this complaint.

Openwork said it had nothing further to add and no queries on costing.

### **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.

As neither party has made any substantive comments on my provisional findings I see no reason to depart from the findings set out in my provisional decision. I can see that both parties agree that £7,152.05 total compensation covers Mr M and Ms N for all the costs I said Openwork should reimburse them for and the trouble and upset Openwork caused.

### **Putting things right**

Mr M and Ms N have said they are willing to accept £7,152.05 compensation to resolve this complaint. Openwork has said they have no queries on how I have calculated this figure.

### **My final decision**

My final decision is that I uphold this complaint against Openwork Limited. I direct Openwork to pay Mr M and Ms N £7,152.05 to resolve this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Ms N to accept or reject my decision before 15 September 2022.

Laura Forster  
**Ombudsman**