

The complaint

Mr and Mrs B complain they suffered a financial loss when purchasing a new home due to unnecessary delays caused by their broker. The broker was an appointed representative of Openwork Limited (“Openwork”).

What happened

Mr and Mrs B wanted to sell their existing home and increase the loan on a buy-to-let property in order to buy a new home. They made their broker aware of this in August 2020, and by December 2020 they informed the broker they had accepted an offer on their property.

In January 2021, Mr and Mrs B had an offer accepted on a property they wished to purchase, and their broker issued a recommendation letter shortly afterwards. It was agreed the broker would apply for a further advance on the existing buy-to-let and submit an application to a new lender for the remaining mortgage amount required.

Mr and Mrs B say they found out at the end of April 2021 that the broker still hadn’t submitted their applications, so they felt they had a responsibility to inform their estate agent their applications were behind schedule. Mr and Mrs B say, within three weeks, they found out their chain had collapsed. And, at the time, the estate agent told them the top of the chain was concerned they didn’t have a mortgage in place.

Around the same time, Mr and Mrs B say property prices increased in their area and as a result they had to offer a further £8,000 to secure the property they wished to purchase. The offer was accepted in June 2021, around the same time a mortgage offer was produced by the new lender. But, due to the increased purchase price, and the likelihood that Mr and Mrs B would miss the deadline to avoid stamp duty, Mrs B sought a job to increase the amount they could borrow. This meant a new application was required as they needed to declare the additional income and ask for a greater sum.

A new application was submitted, but a new mortgage offer wasn’t produced until October 2021. The purchase eventually went through in December 2021, which meant Mr and Mrs B had to pay £8,500 in stamp duty as well as the £8,000 increase in purchase price. Mr and Mrs B believe they shouldn’t have had to pay either.

Mr and Mrs B complained to Openwork and said the broker hadn't progressed their applications in a timely manner and had lied to them about the status of their applications. They believe they could have completed the purchase of their new home prior to June 2021 at the lower purchase price and without having to pay any stamp duty.

Openwork reviewed Mr and Mrs B's concerns and agreed the broker hadn't progressed their applications when promised. But, it said, it wasn't guaranteed they would complete before stamp duty became payable. Openwork decided the purchase could have been made prior to 30 September 2021 when the stamp duty would have cost £6,000. So, it offered to refund £2,500 – the amount stamp duty increased by. It also offered £600 for the distress and inconvenience caused. Mr and Mrs B remained unhappy, so Openwork reviewed their complaint again on two further occasions, but its findings were broadly the same. Even so, it increased the offer of distress and inconvenience to £800 and added a further £250 for delays during the complaint process.

The complaint was then referred to this service and our investigator looked into Mr and Mrs B's concerns, but they didn't think Openwork Limited needed to do anything more. As Mr and Mrs B disagreed, the complaint was passed to me for a 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.

Having done so, I don't think the complaint should be upheld as I think the settlement that's already been offered is fair. I'll explain why.

Openwork has accepted that the broker caused unnecessary delays during the application process on both the further advance and new mortgage application. It's unclear quite how long the delays were as the broker says a postal application was submitted for the further advance in March 2021, but the lender said this wasn't received. As a result, an application was submitted in May 2021. The broker explained they wanted to ensure this application was agreed prior to submitting an application for a new mortgage. But when it came to light, they would need to resubmit the further advance application, they went ahead with the application for the new mortgage in May 2021 in hopes of securing both prior to the deadline.

I can understand why the broker may have wanted to make sure the further advance was agreed prior to submitting the application for the new mortgage. And the broker would have been aware there were delays processing applications as a result of the coronavirus, Covid-19, pandemic, as well as a surge in applications due to the deadlines associated with stamp duty. So, this may have been why they had less cause for concern when they didn't receive a response to the initial application. But, overall, I think the further advance application could have been submitted earlier than it was, and it should have been established much sooner if the application hadn't been received by the lender.

That said, in order to hold Openwork responsible for the additional costs Mr and Mrs B incurred in stamp duty, I would have to think the purchase of their new home would more likely than not have completed by 30 June 2021. And based on what I've seen, I can't agree that it would have.

I say this because the evidence Mr and Mrs B have submitted from their estate agent doesn't confirm their mortgage application status was the sole reason their chain collapsed. The estate agent said there were a number of issues during the course of the sale up and down the chain. And that while some of those issues may have been avoided if it weren't for the delay in Mr and Mrs B's mortgage offer, there were also other issues involved, so they couldn't conclusively say the purchase would have gone through sooner than it did.

As a result of the additional costs, Mrs B decided to find a job in order to increase their borrowing potential. The new mortgage lender issued an offer around the same time, but this was no longer suitable, so the broker had to submit a new application to reflect the changes in Mrs B's employment and request a greater amount. There were some issues with this application, which isn't surprising given the employment was new. But, that meant an offer wasn't issued until October 2021, by which point stamp duty had increased to £8,500.

Considering everything, I can't be satisfied Mr and Mrs B would have met the deadline of 30 June 2021 and avoided paying stamp duty entirely. The next deadline would have been 30 September 2021, when stamp duty cost £6,000. But there were some more delays after Mr and Mrs B required a new application for their mortgage, which given the nature of it, were more explainable. So, Mr and Mrs B ended up paying £8,500 in stamp duty as the purchase didn't complete until December 2021.

As an impartial service, it wouldn't be right for me to ask Openwork to compensate Mr and Mrs B for something that may or may not have happened. But Openwork has offered to refund the additional £2,500 in stamp duty, as though the purchase went through before the second deadline, and I think that's fair and reasonable in the circumstances.

Mr and Mrs B strongly feel Openwork is also responsible for the increase in purchase price which cost them £8,000. But, for the same reasons I can't hold Openwork responsible for Mr and Mrs B missing the deadline of 30 June 2021, I also can't hold Openwork responsible if Mr and Mrs B decided to increase their offer prior to that deadline.

Mr and Mrs B offered to increase the purchase price because the market increased around the same time and they were worried about losing the property. But again, there was no guarantee the purchase would have gone ahead before 30 June 2021, even if the broker hadn't caused delays. It was Mr and Mrs B's decision to increase their offer. Although I fully appreciate what they've said about the difficulties they would have faced finding a new property – that was ultimately a decision for them to make at the time and not Openwork's responsibility.

Mr and Mrs B have also expressed how extremely concerned they are by the actions of the broker. And they have questioned whether their complaint has been taken seriously or not. They've indicated they think they're entitled to substantially more compensation than they've been offered – they're expecting around £10,000.

I've reviewed the evidence Mr and Mrs B have provided which includes several emails and text messages where they tried to get answers from the broker throughout the application process. And in these messages it's clear the broker misinformed them about the status of their applications. Mrs B has said she also spent a lot of time progressing the application to the new lender herself, directly, and was effectively doing the broker's job for them.

I've thought about all of this carefully, and I agree Mr and Mrs B received a poor level of service and this must have been very stressful for them. But I need to explain that as an informal and impartial dispute resolution service, our awards will not be as substantial as Mr and Mrs B may expect from an alternative, such as the courts. I also can't award compensation as a punishment – that's not our role.

Openwork has offered a total of £800 for the distress and inconvenience caused to Mr and Mrs B, as well as £250 for delays in handling their complaint. So, the compensation for the impact on them, excluding financial loss, comes to £1,050. This is a significant award and is more than this service would usually recommend in similar circumstances. So, considering everything, I think the total offer Openwork has made for the distress and inconvenience caused is fair in the circumstances.

Putting things right

It's my understanding that Mr and Mrs B didn't accept Openwork Limited's offer at the time. Should Mr and Mrs B decide they now want to accept the offer, Openwork Limited should compensate Mr and Mrs B as follows:

- £800 for the distress and inconvenience caused.
- £250 for the delay in investigating their complaint.
- £2,500 towards the stamp duty they paid.

My final decision

My final decision is that I do not uphold this complaint. Openwork Limited has already proposed a fair offer to Mr and Mrs B and they now need to decide whether they want to accept it or not.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 4 January 2023.

Hanna Johnson
Ombudsman