

The complaint

Mr A complains the appointed representative of Openwork Limited, his mortgage broker, told him that his mortgage offer could be transferred to another property if his purchase fell through. But when the purchase fell through he was unable to transfer the offer. As interest rates went up, Mr A had to buy his new property at a higher rate of interest than was on the mortgage offer. Mr A would like to be compensated for the £18,000 that he is worse off by.

What happened

In April/May 2022 Mr A was looking at buying a property and getting a mortgage and used the appointed representative of Openwork to do so. The purchase was agreed, and Mr A says that he asked what would happen if the sale fell through and he was told that the mortgage offer would be transferable to another property if the new property had the same loan to value and if he bought it by 17 December.

Mr A made a mortgage application to a lender, I shall call Lender A, in May 2022 which was successful, and he got a mortgage offer which was issued on 20 June. The offer was for borrowing £323,000 with a fixed rate of 2.49% for five years to buy a property for £380,000. Mr A indicated that the purchase might not happen as the Vendor appeared reluctant to sell. Mr A wanted to know what would happen to the mortgage offer if it fell through and the broker said that his understanding was that if an alternative property was acceptable to the lender and the loan to value ("LTV") was similarly acceptable that the offer could be transferred.

On 25 July Mr A told the broker that he had found a new property and the broker confirmed that he could use the existing mortgage offer to purchase this if the property was acceptable to the lender. Mr A later had a conversation with Lender A which told him something different and that he needed to submit a new application for any property that he wanted to purchase. At this stage interest rates had gone up and Mr A had now to pay a higher rate of interest on his mortgage to buy the new property. Mr A says that if he got the correct advice, he would not have made an offer on the first property and would have taken other action to identify a property sooner and arranged an alternative deal.

Openwork said that it believed that it acted correctly in obtaining Mr A's primary goal, but it accepts that the broker didn't act with proper due diligence to find out if the mortgage was transferable. It offered its apologies and compensation of £350 for Mr A's trouble and upset but said that Mr A had suffered no financial loss because of its actions. Our investigator recommended that this complaint should be upheld as the impact of Openwork's mistake had caused considerable distress, upset and inconvenience. She recommended compensation of £500. But she didn't award compensation for financial loss as she said we couldn't compensate Mr A for a hypothetical loss. Mr A disagreed and said that he should be compensated the difference between the rate of next best alternative mortgage which could be transferred, and the one that he was eventually forced to accept.

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.

In this case it's accepted that the Openwork representative made an error. The representative accepts that he told Mr A that this mortgage offer was transferable, but it wasn't. There are several issues here. Mr A says that getting a transferable mortgage offer was crucial to him. Had he known the mortgage wasn't transferable he says he wouldn't have made an offer on the property and would instead have identified a different property sooner and arranged an alternative mortgage deal. I have to say that I find this unusual. Mr A is in effect saying that the transferability of the mortgage determined what property he was bidding on rather than the property determining what mortgage he wanted.

Mr A appears to be saying that his requirement was to have a fully transferable or mobile mortgage rather than a mortgage for a property that was potentially transferable if the purchase fell through. But residential mortgages are for particular properties. Some are potentially transferable, and some aren't, but I've not come upon one that is totally mobile. From the file notes the appointed representative understood his role was to get Mr A a mortgage offer for a particular property which is what we would expect him to do and which he achieved. I see nothing on the notes, or in the mortgage recommendation, that say that the transferability of the mortgage offer (as opposed to the mortgage product) was a requirement for Mr A.

In May 2022, the advisor sent a document summarising his advice. I note that the mortgage objective is to raise sufficient finance to enable Mr A to purchase a particular property. The recommendation makes no mention of the mortgage offer being transferable if the present purchase broke down, but it does say that *"I have recommended this mortgage so that you can take advantage of its flexible features. Given your current circumstances I have recommended a mortgage which you may be able to take with you to a new home."* If I look at the mortgage offer under *"Flexible Features"* it refers to porting and this allows Mr A when he takes out the mortgage to transfer the mortgage product to a new home if he sells the first home and buys another one during the period of the fixed term mortgage product. It's not a promise that the mortgage offer is transferable. The mortgage offer has to be used to buy the existing property. There is nothing in the documentation to indicate that Mr A required a fully transferable mortgage offer when he made the application to Openwork, and he doesn't get one. Nor is there any indication when he gets the recommendation that he is dissatisfied with it and that it doesn't fulfil his objectives. So, I can't fairly say that Openwork failed Mr A in not obtaining a transferable mortgage offer.

But even accepting that Mr A wanted a transferable mortgage and Openwork failed to provide one, what financial loss did he suffer? Mr A says that Openwork shouldn't have recommended, because of its inability to transfer the mortgage, Lender A. Mr A has done some research and says that Openwork should have recommended another lender I shall call Lender B. Mr A says that Lender B's mortgage offer was transferable.

If I accept that Openwork should have recommended Lender B rather than Lender A and that Mr A's application was acceptable to Lender B and assuming the same timescale, Mr A would have got a transferable mortgage offer that lasted until 17 December 2022. But Mr A didn't complete on a property within that period. Mr A tells me that he bought his property on 24 February 2023. Assuming that he got the offer from Lender B, by that time the mortgage offer would have lapsed, and he would have had to get a new mortgage offer in any case and not the interest rate on Lender B's offer. So, I can't fairly say that Mr A lost out financially because of Openwork's recommendation.

But I agree with our investigator that Mr A was given incorrect information by Openwork. This would have caused Mr A distress at a time of rising interest rates when he hoped that he could have transferred his mortgage offer and paid a lower rate. So, I accept that Mr A should receive compensation of £500 and on that basis I uphold this complaint.

Putting things right

Openwork Limited should pay Mr A compensation of £500.

My final decision

I uphold this complaint and require Openwork Limited to pay Mr A compensation of £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 June 2023.

Gerard McManus
Ombudsman