

The complaint

Mr P complains that Openwork Limited wrongly disclosed information to his wife, Mrs P, with whom he jointly holds a mortgage.

What happened

Openwork was Mr and Mrs P's mortgage broker. In early 2023, Mr P contacted it for information and guidance about their mortgage. He explained that he and Mrs P had separated and he was exploring his options, including whether he would be in a position to buy Mrs P out of the joint property.

Mr P says that the Openwork adviser then contacted Mrs P and told her about his conversation with them. As a result, he says that what had been a reasonably amicable separation became acrimonious, Mrs P was no longer prepared to accept the interim financial agreement they had reached, and she stopped paying all bills and instructed solicitors. Mr and Mrs P are now divorcing.

Mr P complained to Openwork. Openwork accepted that its adviser had proactively contacted Mrs P, but said this was to discuss a cancelled direct debit and not Mr and Mrs P's mortgage or Mr P's discussion with the adviser. It said the adviser had confirmed to Mrs P, when Mrs P asked, that they had spoken with Mr P, but that was all, and they hadn't disclosed any of the detail of their discussions with Mr P. It didn't consider this a breach of data protection law or that any confidential information had been disclosed.

Mr P referred his complaint to the Financial Ombudsman Service. Our Investigator didn't recommend that it should be upheld. Mr P didn't accept that and asked for a review. He said Openwork had accepted that its adviser told his wife they had spoken to him; he still considered that was a breach of duty and it was unacceptable.

My provisional decision

I considered this complaint and came to a different conclusion to our Investigator, so I issued a provisional decision. I said:

"I was sorry to read that Mr P has been going through such a difficult time. I can see that he feels strongly about Openwork's part in his divorce and, while I find that Openwork got things wrong and that it should pay him some compensation, I don't find that I can fairly hold it responsible for the impact Mr P considers this had.

I haven't been able to listen to the conversation the Openwork adviser had with Mrs P, because Mrs P isn't party to this complaint, and in any event it's not clear whether the conversation was recorded. However, there's no dispute that the adviser told Mrs P they had spoken to Mr P and they were aware of the couple's separation.

That is the extent of the information the adviser says they gave Mrs P about their discussion with Mr P and, on balance, I accept that. I've come to that conclusion after careful consideration of everything that Openwork, its adviser, and Mr P have said and

provided. That evidence includes that the adviser in question has many years of experience as a mortgage broker and has been consistent about what she said to Mrs P, and Mr P has said in emails that he didn't believe everything Mrs P was saying or that the adviser said anything they would consider unprofessional.

In any event, in the circumstances I don't think I can fairly conclude that Mr P would be in a different position now had the adviser not told Mrs P that they had spoken to him. It's far from clear that Mr and Mrs P would have been able to finalise their divorce any differently and without involving solicitors. So I don't consider that Openwork should pay or contribute to their legal costs.

I do, however, consider that Openwork should fairly pay Mr P some compensation. Its adviser shouldn't have told Mrs P that they had had a discussion with Mr P. That discussion was confidential and I can see no reasonable basis for the adviser to have disclosed the fact that there was a discussion, even though Mrs P may have asked them about this specifically. In reaching that conclusion, I'm mindful that it's not for me to decide breaches of data protection law – that's for the Information Commissioner's Office. My role is to decide a fair and reasonable outcome in all the circumstances of the complaint at hand.

I consider a monetary award of compensation is the most appropriate way to resolve this complaint. The Financial Ombudsman Service isn't a regulator, so I can't require Openwork to change its procedures, or retrain or discipline its staff. And, for the reasons I've already explained, I don't require Openwork to compensate Mr P for the financial losses he is claiming. But I think that Openwork caused Mr P avoidable upset and distress at what was already a very difficult time. In all the circumstances, I find that it should pay Mr P £250 compensation in recognition of that."

I invited Mr P and Openwork to let me have any further evidence or arguments they wanted me to consider. Mr P said he was happy with my provisional decision, and Openwork said that it had nothing further to add.

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.

Mr P has accepted my provisional decision, and Openwork hasn't said it disagrees or that it has anything more it wants me to consider, so I see no reason to depart from my provisional conclusions.

My final decision

My final decision is that Openwork Limited must pay Mr P £250 in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 December 2023.

Janet Millington
Ombudsman