DRN-4801092

## The complaint

Mr M is unhappy as he feels an appointed representative of Openwork Limited trading as The Openwork Partnership (Openwork), committed him to a fixed interest rate product for five years with his lender, without his authority. Mr M says he was not provided with a copy of the mortgage illustration until after this product had been locked in and he is unclear how this could be legal. Overall, Mr M says this has resulted in him not having the interest rate product he subsequently wanted – a two-year tracker rate – and has potentially been left paying more on his mortgage for the foreseeable future.

Any reference to Openwork in this decision should be taken to mean the individual broker where appropriate.

## What happened

In August 2020, Openwork arranged a mortgage for Mr M on a fixed rate for two years, which was due to end in 2022.

In anticipation of this fixed rate product ending, Openwork emailed Mr M on 1 May 2022, offering its services to review the mortgage and assist Mr M in deciding what the next steps would be. Mr M responded on 15 September 2022, confirming he would like to discuss his options.

Following a conversation on 20 September 2022, Openwork emailed Mr M about a two-year tracker rate and included a full illustration (albeit based on rough figures that Mr M had provided). In response Mr M emailed on 15 October 2022, confirming he still wanted to switch his rate with his existing lender, although he now enquired about two- and five-year fixed rate products. Mr M provided Openwork with details of his mortgage and property value, so it could provide him with examples of two- and five-year fixed rates that were portable as he explained there was a possibility he might move home.

The same day, Openwork emailed Mr M with details of both a two- and five-year fixed rate (5.39% and 5.29% respectively). Openwork confirmed both were portable. It also pointed out that while these rates were higher than the lenders standard variable rate (SVR) – which Mr M was now on – they expected the Bank of England base rate to increase next month, so this shouldn't be the case for long.

Mr M emailed Openwork saying – *'… this is great, thanks. Can I please get a 5 yr fixed? What are next steps'.* Openwork explained it would make the switch tomorrow (21 October 2022), so long as Mr M provided it with details of his mortgage and bank account numbers – which he did.

Openwork didn't contact the lender to make arrangements until 24 October 2022. The lender sent Mr M a mortgage offer (containing a key facts illustration), and cover letter. These explained that the offer was only valid for 24 October 2022 (and after that date, it may change in line with market conditions) and that, if accepted, the rate switch would take effect from the date the lender activates the interest rate switch. The mortgage offer said '***To***

***accept this offer, please contact your broker** who will act as an agent on your behalf and confirm your acceptance of the offer with [the lender].'*

The covering letter said *"Please contact your mortgage broker to accept the enclosed Offer on your behalf."* And *"If you have any questions, would like to make changes, or do not wish to accept this Offer Document, please contact your mortgage broker who will be able to continue to assist you further."*

From the lender's status history it appears Openwork confirmed acceptance of the offer for the rate switch a few minutes after it submitted the application, and the lender has since explained that, as the mortgage was on its SVR, the switch took effect immediately.

Mr M emailed Openwork on 26 October 2022, explaining he'd decided not to go ahead with the five-year fixed rate and would rather stay on the SVR, adding that he would likely be back in contact in the next few months.

Openwork responded the same day to explain the lender had just reduced its tracker rate margins. After answering a few questions about a two-year tracker product, Openwork issued a key facts illustration and Mr M responded with – *'Thanks* […] *yes all ok to move to product'*.

On 28 October 2022, Openwork emailed Mr M to explain the five-year fixed was live as of 24 October 2022, and now could not be changed without incurring an early repayment charge (ERC). On the same day, Openwork sent Mr M a copy of its mortgage advice document – which confirmed Openwork recommended the five-year fixed rate.

Unhappy with this, Mr M complained to Openwork, and later referred the complaint to our service. Our investigator didn't uphold Mr M's complaint as he was satisfied that Openwork had acted on Mr M's instruction and arranged the product he'd asked for.

While Mr M accepted the investigator's summary of what happened, he didn't agree with his overall conclusions for the following reasons:

- His email of 18 October 2022 was only indicating an interest in the five-year fixed rate product, but wasn't intended as an instruction for Openwork to put it in place for him.

- It would be completely unacceptable to commit him to a mortgage, without first showing him the offer letter – Mr M also questions whether doing so would even be legal.

- The lender had told Mr M on 24 October 2022 by email, that he needed to confirm the offer with his broker (Openwork), and he didn't contact Openwork again until 26 October 2022, when he made it clear he didn't want to proceed with the five-year fixed rate.

- The figures quoted to him in Openwork's email of 18 October 2022, were different from what was set out in the mortgage illustration. The actual contractual monthly payments Mr M has had to pay are higher than he'd been quoted in that email.

The investigator wasn't minded to change his stance on the complaint, so it was passed to me to decide.

**What I've decided – and why**

I issued a provisional decision in April 2024, the findings of which said:

‘I understand Openwork has placed great emphasis on the fact it feels Mr M’s emails on 18 and 21 October 2022 constitute an instruction to secure him a five-year fixed rate for his existing mortgage.

Mr M was sent a copy of the mortgage illustration (as part of the mortgage offer) by the lender at 17:19 on 24 October 2024 along with another copy by Openwork at 17:46. System notes from the lender show that the offer was accepted on Mr M’s behalf at 17:22, with Openwork confirming to the lender that Mr M had accepted the declaration on the mortgage offer received.

Having considered the timeline I’m satisfied Mr M hadn’t had a chance to review a copy of the mortgage illustration and mortgage offer, before Openwork committed him to the five-year fixed interest rate product he is currently on.

This is a regulated mortgage contract so subject to the rules and guidance set out in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB contains the following provisions:

MCOB 4.7A.2 If a firm gives advice to a particular customer to enter into a regulated mortgage contract, or to vary an existing regulated mortgage contract, it must take reasonable steps to ensure that the regulated mortgage contract is, or after the variation will be, suitable for that customer.

MCOB 4.7A.3 In MCOB 4.7A, a reference to advice to enter into a regulated mortgage contract is to be read as including advice to vary an existing regulated mortgage contract.

MCOB 5.2.1 (1) MCOB 5 amplifies Principle 6 and Principle 7.

(2) The purpose of MCOB 5 is to ensure that, before a customer submits an application for a particular home finance transaction, he is supplied with information that makes clear:

(a) (in relation to a regulated mortgage contract) its features, any linked deposits, any linked borrowing and any tied products; and

(b) the price that the customer will be required to pay under that home finance transaction, to enable the customer to make a well-informed purchasing decision.

(3) MCOB 5 requires information to be disclosed in a consistent way to facilitate comparison between products of different providers.

MCOB 5.5.1 (1) A firm must provide the customer with an illustration for a regulated mortgage contract before the customer submits an application for that particular regulated mortgage contract to a mortgage lender, unless an illustration for that particular regulated mortgage contract has already been provided.

MCOB 5.5.4 A firm must not undertake any action that commits the customer to an application (including accepting product-related fees in relation to the regulated mortgage contract concerned) until the customer has had the opportunity to consider an illustration.

MCOB 5.5.7 The firm dealing directly with the customer is responsible for ensuring compliance with the content and timing requirements, that is, a mortgage lender is not responsible for ensuring that a customer has received an illustration before accepting an application from a mortgage intermediary.

MCOB 6.2.1 (1) MCOB 6 amplifies Principle 6 and Principle 7. The purpose of MCOB 6 is to ensure that a customer receives a clear offer document to enable him to check the features and price of the home finance transaction before he enters into it. The offer document should include an updated and suitably adapted illustration (for a regulated mortgage contract) or financial information statement (for a home purchase plan) so that the customer can compare it with the one he received before he applied for the home finance transaction.

'Illustration' is defined as:

(in MCOB) the illustration of the costs and features of a regulated mortgage contract or home reversion plan which is required to be provided by MCOB 5 (Pre-application disclosure), MCOB 6 (Disclosure at the offer stage), MCOB 7 (Disclosure at start of contract and after sale) and MCOB 9 (Equity release: product disclosure) and the template for which is set out:

(a) for a regulated mortgage contract other than a lifetime mortgage, at MCOB 5 Annex 1

It is clear from the email trail that Mr M wasn't issued an illustration (under the definition in MCOB) before Openwork applied for the rate switch. And the time between the offer being issued and Openwork accepting it on Mr M's behalf didn't give him time to review the offer document (containing what should have been a further copy of the illustration, but was instead the first illustration).

The initial discussions between Mr M and Openwork were discussing a tracker rate product but Mr M didn't proceed at that time, coming back a few weeks later to say he was looking at a fixed rate instead now, and asking that Openwork provide some options. Openwork provided some rough figures for a two-year fixed rate and a five-year fixed rate with Mr M's existing lender. It said both were more expensive than his existing lender's SVR but it expected base rate to increase the following month which would push the SVR up.

Mr M responded *"*[broker name] *this is great, thanks. Can I please get a 5 yr fixed? What are next steps?"* The broker said he was out of the country, but a colleague could make the switch the following day, and all it needed was the mortgage account number and confirmation of the account the mortgage payments were collected from. Mr M responded providing that information and that was the end of the conversation until after Openwork submitted the rate switch application and accepted the formal mortgage offer on 24 October.

Having reviewed that email trail I can't see that Openwork took steps to ensure the five-year fixed rate was a suitable recommendation for Mr M, or that he understood and agreed that not only would the application be submitted, but that the broker would also accept the rate switch offer (locking him into the product immediately), all without him seeing a formal illustration or mortgage offer.

I don't think a statement from Mr M of "*Can I please get a 5 yr fixed? What are next steps?"*, or Mr M not querying "[name] *will make the switch with HSBC for you tomorrow"* indicates that he is agreeing to a mortgage offer being accepted on his behalf, locking him into that product, without seeing anything he is required to see under MCOB, such as the key facts illustration and formal mortgage offer. He asked for the next steps and didn't say no to an application being submitted for the switch, but at no time did the broker explicitly say that upon submitting the application it would also accept the formal mortgage offer without Mr M having a chance to review it.

The broker issued a letter setting out *"a summary of my advice and recommendation"* on 28 October. That was four days after Mr C was locked into the product and was two days after the broker had tried to amend the application to a two-year tracker rate as Mr M, upon receiving the mortgage offer, didn't want to proceed with the five-year fixed rate. It was issued the same day the lender told the broker that the application couldn't be amended as the offer had been accepted and the switch had taken place.

There also appear to be factual inaccuracies in the document, with it saying there was an initial conversation on 24 October (there wasn't) and that an illustration was provided prior to application (again, there wasn't).

All that said, I can't award redress just because there has been a breach of MCOB. My role is to decide what is fair and reasonable in all the circumstances and a breach of the rules doesn't always mean a consumer would have done anything differently, or that they've suffered any financial loss. In other words, I wouldn't award Mr M the compensation he has asked for just because he didn't receive a copy of the mortgage illustration at the right time, or because he didn't have a chance to review the mortgage offer. Instead, as mentioned above, I need to consider if I think Mr M would have, on balance, likely done something different.

The mortgage illustration confirmed the monthly payment was £2,102.05 over the five-year fixed rate period, rather than the £2,030.88 quoted in Openwork's email of 15 October 2022. The difference in monthly payment was due to Openwork having based its calculations on a rough balance of £380,000 – as Mr M had said in his email of 15 October 2022 – rather than the actual balance of £394,062.

I don't think there is anything wrong with Openwork giving rough quotes based on figures provided by Mr M. But this is not a substitute for a full, accurate mortgage illustration. Openwork should've provided Mr M with accurate figures for the cost of the mortgage before proceeding with the application, such as by sending him a copy of the mortgage illustration. It should certainly have ensured he'd seen the accurate figures before it accepted the mortgage offer on his behalf.

The mortgage illustration also included details of how Mr M could exit the five-year fixed rate once committed to it – along with the cost of doing so. In this case, Mr M would have to pay 1% of the amount repaid for each year of the early repayment charge (ERC) period – which didn't end until 31 March 2028, with a maximum possible ERC of £19,226.51. I can't see that this was brought to Mr M's attention until after he'd been committed to the five-year fixed rate.

Openwork did confirm to Mr M that the mortgage was 'portable' – meaning the interest rate product could be moved to another property and so a way to avoid incurring an ERC. But while the five-year fixed rate was portable, the mortgage illustration went into greater detail on this – specifically circumstances or reasons why the lender might decline a porting application. Which, along with the details of the cost of the ERC, would've added important context to Mr M's understanding of how portable the product was when making his decision whether to fix the mortgage.

Lastly, and as I've already covered, at no point when explaining the five-year fixed rate product and obtaining Mr M's agreement to submit an application for it, did Openwork confirm that he'd not hear any more from it before the five-year fixed rate was applied to his mortgage. It seems that even Openwork wasn't aware that it had irreversibly committed Mr M to the five-year fixed rate until the lender told it this when it attempted to apply for a different interest rate product for Mr M.

In summary, I don't think Openwork made clear to Mr M the actual ongoing cost of the mortgage, the cost of coming out of the fixed rate early and that despite the mortgage being portable he could still incur these costs. I also don't think it made it clear that it would irreversibly commit him to the five-year fixed rate product, based solely on the information contained within their back-and-forth emails, and without him reviewing any formal documentation first.

I can't know for certain what Mr M would've done had Openwork not made the errors I've set out above, and instead issued him with the required mortgage illustration and mortgage offer before obtaining his informed consent to proceed with the five-year fixed rate. But based on what I do know, I've set out below what I think, on balance, would most likely have happened.

I think Mr M was happy to have an application made for the five-year fixed rate based on what Openwork had told him on 18 October 2022. But I also think that Mr M still expected that he would get the opportunity to review the full mortgage illustration and mortgage offer before he would be committed to the five-year fixed rate.

I say this as Mr M has said he expected to see a copy of the mortgage illustration before he would agree to it, and this is what happened when he'd previously discussed a mortgage product with Openwork – both in 2020 and 20 September 2022. Openwork didn't give Mr M any reason to think that, contrary to what was expected of it and that it had done in the past, on this occasion he wouldn't be sent a mortgage illustration or be given time to consider the formal mortgage offer before Openwork gave that final acceptance, and everything the lender sent Mr M confirmed his understanding that having now been sent the mortgage offer he needed to confirm his acceptance with Openwork, before the rate would apply.

If Openwork had explained to Mr M that he would be agreeing to a five-year fixed rate product based only on the information in its email of 18 October, I'm not persuaded he would've agreed to proceed on this basis. Rather I think he would've withheld his agreement until he had seen the mortgage illustration and mortgage offer.

Then, if things would've progressed on that basis, I see no reason why things wouldn't have gone exactly as they did. After reviewing the mortgage illustration and/or mortgage offer, Mr M would've confirmed that, on reflection, it wasn't the product he wanted. The only difference now being Openwork would have waited for Mr M's final confirmation (once he had seen the key facts illustration and formal mortgage offer), as I think he'd have expected would happen and so he wouldn't have been committed to the five-year fixed rate.

Openwork has said that Mr M ended up wanting the product – a two-year tracker – that it had recommended originally. It said Mr M chose to ignore this recommendation and instead selected the five-year fixed rate, only for him to regret this decision based on the changing economic environment.

Openwork did provide details of a two-year tracker rate – including a key facts illustration, although still based on rough data Openwork said it would provide a more accurate one once it had the accurate figures – but I've not seen any document that explains it recommended this product, or how it suited Mr M's stated needs. And while Mr M did decide against the two-year tracker rate, I can't see this was because he'd found his own product and positively elected to proceed with arranging it himself or that he formally rejected Openwork's advice (which is what is required under MCOB). Rather he asked Openwork about fixed rate products instead, it gave him details of just one two-year fixed rate and one five-year fixed rate product and Openwork went on to say it had recommended the five-year fixed rate for the reasons given in its 28 October 2022 advice and recommendation document.

Openwork expressed doubt that the difference between the monthly payment figures quoted in its email and the mortgage illustration was something that would've prompted Mr M to change his mind. I agree that wasn't the reason Mr M gave initially for deciding against the five-year fixed rate, which was that due to the economic climate he wanted to stay on the variable rate as he was still considering his options. But, I think the £70 a month difference in payments is one of the reasons why MCOB is clear that an accurate key facts illustration must be provided by a broker before the consumer is committed to taking out the mortgage. Mr M asked what the next steps were, and provided the information required for an application to be submitted, on the basis of a monthly payment of £2,030. But Openwork then committed him to a monthly payment of £2,102 without checking first with Mr M. It may be Mr M was still willing to have an application submitted originally if the correct figure had been given, but we just can't know that because Openwork denied him the opportunity to make that informed decision.

In any event, this complaint doesn't turn on that difference in monthly payments. As I've said, at no time did Openwork make it clear to Mr M that it would be entering into the contract and he would be tied in, instead it is understandable that Mr M simply thought an application would be submitted and he would then make the final decision once he'd received and reviewed the paperwork. Having considered everything very carefully I'm satisfied it is more likely than not that if things had gone as they should – that is, an accurate key facts illustration was provided before the application was submitted, and that Openwork didn't accept the formal mortgage offer without checking that Mr M was willing to enter into the contract having reviewed that offer – then Mr M would have chosen not to proceed. That means he wouldn't now be tied into that five-year fixed rate mortgage product.

Finally, the broker said that Mr M wanted to remain on the SVR, and a more accurate comparison would be the five-year fixed rate versus the SVR. But I don't agree. After Mr M indicated he'd rather remain on the SVR, the broker emailed him on 26 October to set out a two-year tracker rate option. After some back and forth over that, Mr M confirmed (on 26 October) that he wanted to move to that product.

If Openwork hadn't accepted the five-year fixed rate mortgage offer on Mr M's behalf without checking with him first, then I think he still would have emailed on 26 October to say he didn't want to go ahead with it, and the same conversation would have taken place about the two-year tracker. The only difference being Mr M could have moved to that product, rather than being told on 28 October that couldn't happen because Openwork had already locked him into the five-year fixed rate.'

I set out what I proposed should be done to put things right and gave both parties a chance to make any comments on both my provisional findings and proposed redress.

Openwork confirmed it had nothing further to add. Mr M, despite a reminder of the deadline, didn't respond.

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, and having considered the full file afresh, I see no reason to depart from my provisional findings and proposal on what should be done to put things right.

**Putting things right**

Openwork should do the following:

- Openwork should arrange a mortgage review with Mr M – either with the broker that arranged the existing five-year fixed rate or another broker under its umbrella.

- Openwork should carry out a full mortgage review and make a recommendation (in line with its MCOB requirements) to Mr M of a new interest rate product with his existing lender or any other lender the broker can advise on – and there should be no broker fee charged for this service. That advise should be given on the basis he would currently be on a tracker rate of Bank of England base rate plus 0.69%, with no ERC, until 31 October 2024 (not that he is currently on a five-year fixed rate with an ERC).

If Mr M decides not to take the new product, as he thinks he is better off continuing with the five-year fixed rate then, regardless of whether Openwork had acted in error, Openwork wouldn't need to take any steps to rectify his interest rate product and Mr M would remain on the existing five-year fixed rate.

Alternatively, if Mr M does decide he'd want to take the new product then, rather than the inconvenience of ending the existing mortgage and arranging that new mortgage, I think it would be better for both sides if Openwork calculates what the overall difference in cost is (over the preferential rate period) and pays that to Mr M as compensation as a lump sum. Mr M would then remain on his five-year fixed rate until that ends on 31 March 2028. In that case Openwork would need to do the following:

- Compare the difference in what Mr M has actually paid each month, with what he would have paid if the two-year tracker rate he selected on 26 October 2022 had been applied to his mortgage instead, up to the point the newly selected product would have come into effect. As the five-year fixed rate and the two-year tracker rate both had £999 fees those cancel each other out, so nothing needs to be done in respect of those fees.

- Then it should calculate the difference in monthly payments between the new product Mr M would have been moved onto, and the five-year fixed rate up to 31 March 2028 (when the five-year fixed rate is due to end) unless the new rate has a shorter-term preferential rate in which case the calculation should run until that new preferential interest rate product ends.

- If as a result of the above Mr M will pay more over the calculation period then Openwork should refund him this difference – after deducting any additional fees Mr M would have incurred securing his new chosen product. Interest doesn't need to be paid on any loss Mr M may have incurred in the past as he'll also be receiving other funds in advance of when those payments will fall due in the future.

- Mr M has three months, from the point he accepts my final decision, to carry out that review with Openwork (and Openwork should ensure that review is carried out without any undue delays its end). If Mr M hasn't carried out the review and a new product hasn't been selected within these three months, then Openwork would no longer be required to carry out the steps above. This allows plenty of time for Mr M to agree a way forward with Openwork, while also having time to properly consider his options.

Regardless of what Mr M decides to do, Openwork should pay him £250 for the trouble and upset caused by its poor handling of his interest rate switch. This is to account for both the shock of Mr M learning he'd been tied to a product he didn't want, and also the inconvenience in resolving it.

## My final decision

For the reasons given above, I uphold this complaint and order Openwork Limited trading as The Openwork Partnership to pay compensation as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 June 2024.

Julia Meadows
**Ombudsman**