

## **The complaint**

Miss D has complained about the level of service she received from an appointed representative of Openwork Limited trading as The Openwork Partnership when she arranged a mortgage.

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

## **What happened**

Miss D first spoke to Openwork in February 2022. It completed an agreement in principle on 9 February 2022 and said Miss D could borrow up to £150,000. The adviser said she had also instructed a solicitor to act for Miss D and provided their details. She said the next steps were for Miss D to make an offer on a property, and then they would go from there.

As part of that, Miss D paid a £60 legal fee and her details were passed to the solicitor, with the solicitor writing to Miss D on 10 February 2022, enclosing various documents for her to complete and return and also enclosing an estimate of fees.

On 29 March 2022 Miss D contacted the adviser and provided an update on a potential property purchase. The adviser said she had completed a new agreement in principle based on it being a concessionary purchase, and that the maximum loan available would be around £148,000 based on a property valuation of £210,000, with the remainder being gifted equity (that is, Miss D would only pay £148,000 to buy the property, even though the market value was £210,000).

Nothing further happened until Miss D came back to Openwork a year later on 31 March 2023 when she said she was looking for up to date mortgage figures as they'd agreed a price on the property. The adviser spoke to Miss D on 1 April 2023, when she said that she would be buying a property from a family member for a concessionary price of around £167,000, against a full market value of £240,000, and that she would need a mortgage of around £155,000 to complete the purchase. The adviser obtained an agreement in principle on 2 April.

On 12 April 2023 Miss D sent an email to the adviser agreeing to proceed and to pay the broker's fee. In that email she said 'I will return the signed fee agreement and return it to you as soon as possible.'

The application was submitted to the lender on 12 April, with a valuation undertaken on 14 April and the mortgage offer issued on 17 April.

An application for buildings and contents insurance was also submitted to an insurer, with that accepted on 12 April 2023 and placed on hold pending exchange of contracts, when it would be put on risk.

Miss D complained to Openwork on 22 August 2023. She said her complaint consisted of four issues, I quote:

1. 'Poor quality updates
2. Mis-sold service
3. Recommending a solicitors that acts dishonestly
4. Behaving unprofessionally when requesting the complaints process'

In summary, Miss D said:

- She received contact from Openwork once a month providing a very basic update regarding the solicitor, all of which were positive. But when she spoke to the solicitor on 31 July 2023 she was made aware of a number of issues that had been ongoing for around eight weeks and that hadn't previously been brought to her attention.
- As a paid service she expected Openwork to push back or obtain more information for any updates from the solicitor, and she'd arranged the solicitor through Openwork because she'd been told that someone with experience would manage the solicitor to ensure things were dealt with in a timely manner.
- She said she was also unhappy with elements of the solicitor's service and costs, which she would be raising with the solicitor directly, but that Openwork shouldn't have recommended a solicitor that bullies and threatens people.
- Upon requesting the complaint process three times she received a call from the adviser who didn't apologise, but instead said it wasn't her fault if Miss D had misinterpreted the service that would be provided.
- The adviser said if Miss D wished to raise a complaint then the adviser would "wash her hands of this" which Miss D took to mean the adviser didn't want to provide the remaining aspects of the service. Miss D identified those aspects as notifying the insurance company that cover needed to be put on risk, and support on remortgaging once the two year fixed rate period ended.
- Miss D asked that Openwork confirmed as a matter of urgency if someone would be taking the adviser's place, or whether a refund will be given for the services no longer provided. She said if the work wasn't completed by Openwork then she would expect a refund and compensation.

After some further clarification on the complaint, and obtaining a statement from the adviser, Openwork responded by issuing its final response letter on 16 October 2023.

In the meantime Miss D had exchanged contracts on 4 September 2023 and completed a week later.

Our Investigator initially thought Openwork hadn't done anything wrong, but upon review she decided that £150 compensation was due for some poor service issues she'd identified.

Neither party agreed in full with our Investigator and so the case has been passed to me to decide.

### **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.

I'm aware my summary of the background above doesn't include every contact between the parties. Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

It's clear there was a breakdown in the relationship between Miss D and the adviser. Buying a house is a stressful time and it's understandable to want it to go as smoothly as possible.

Having looked at everything and kept in mind the regulatory requirements and normal industry practice, I'm not persuaded (as I must be if I'm to uphold this complaint) that this application was unreasonably and significantly delayed by anything Openwork did or didn't do.

It is understandable that Miss D sees error and wrongdoing in the broker's actions because she is so close to the situation. But I have to take a step back and look, impartially, at what happened, keeping in mind what I would normally expect to see. Brokers, lenders and solicitors have many customers so communications aren't instantaneous, either between themselves or with customers. Some things are done quicker than you would normally expect, but at other times things take longer.

The only part of the process Openwork had some degree of control over was the point up until the mortgage offer was issued. Miss D contacted Openwork to say she was ready to proceed on 31 March 2023 and she had a mortgage offer by 17 April 2023, which is a relatively quick timeframe for someone needing full mortgage advice and that is purchasing a property. Once the mortgage offer was issued things were entirely out of Openwork's control.

Miss D has said Openwork told her, before taking the £60 fee, that it would be managing the solicitors, with her understanding of that being that Openwork would ensure work was completed in a timely manner, and that she didn't come across any issues. And she said she wouldn't have used that solicitor had she known. That fee was taken over a year before she applied for the mortgage, and I must keep in mind it would be unusual for a broker to make such a promise as, quite simply, that isn't their role and it is something they have no power to control. All I would expect a broker to do is to contact the solicitor every so often to see if an exchange date has been arranged. The contract is between the customer (Miss D) and their solicitor and it is up to the customer to keep in contact with their solicitor to ensure things are moving along, it isn't the broker's job to do so on the customer's behalf.

It seems the broker tried to help Miss D when she had questions about the solicitor's charges, albeit there was nothing the broker could do as the solicitor was an independent third-party company that Miss D had entered into her own contract with, so she needed to raise any dispute about the fees with her solicitor directly. The broker also maintained contact with the solicitor, passing on any updates it received. I can't hold the broker responsible if any of those updates were inaccurate as it could only pass on what it had been told by the solicitor. The fact Openwork referred Miss D to the solicitor doesn't make it responsible for the solicitor's actions or omissions.

Miss D told Openwork and our service that the solicitors wanted to exchange on the Friday, but couldn't as the home insurance wasn't in place. She said she took out alternative home insurance on the Friday, so exchange could take place on the Monday.

But having considered all of the evidence, I'm satisfied the lack of a live home insurance policy didn't cause a delay in exchanging contracts. On the afternoon of 1 September, Miss D's solicitor sent her an email saying:

'Further to our telephone conversation earlier, we tried to contact your seller's solicitors and have been told that the solicitor working for the file is out of office, and there is no else at their office can do the exchange today. As such, we will contact them again on next Monday for exchange of Contracts.

As discussed, please may we have a copy of your building insurance schedule once you have arranged the same. Please action the policy starting from the exchange date (i.e. 4th September 2023).'

It is clear from this the reason why contracts couldn't be exchanged on the Friday as planned is that the seller's solicitor wasn't available. It was nothing to do with the home insurance policy. The only mention of the home insurance policy was Miss D's solicitor asking her to get the policy put on risk from 4 September and to send a copy to them.

It also seems that Miss D didn't already have a different policy arranged on 1 September as she told the adviser and the Openwork complaints team, as she's provided a copy of the policy schedule and that shows she set it up on 2 September, which is the same day she emailed it to her solicitor. Miss D has said she got a quote on 1 September and had been told the insurer would call her back on 2 September with a better quote, but that isn't what she told the adviser and the Openwork complaints team. She said she'd taken out an alternative policy on 1 September.

All that said it is clear there was a breakdown in the relationship and when Miss D asked, on 22 August, for an alternative contact for the remainder of the transaction (especially mentioning the home insurance needing to be put on risk) Openwork ignored that request. It may have felt a different adviser wasn't needed, but it didn't let Miss D know that or give her an alternative contact for her to use to get the home insurance put on risk. Openwork has said, in its response to our Investigator, that Miss D didn't need another adviser to finish the transaction, but it didn't tell her that or say what contact details she should use until the transaction was finished (bearing in mind the breakdown in the relationship with the adviser).

All it needed to do was respond with a name, contact number and email address she could use for any final parts of the transaction (such as getting the home insurance policy on risk), but it didn't do so. As I've said, home buying is a stressful time, and as a first time buyer Miss D may have needed more attention and guidance than other customers. It wasn't an unreasonable request on the part of Miss D for an alternative contact for the final part of the transaction, and responding to that request in a positive way could have gone some way in trying to heal the relationship.

Finally Miss D has said she didn't sign the fee agreement document, and she's also provided a fee agreement in the name of a different consumer that she says she was sent first by the adviser. She's said Openwork must have signed the fee agreement for her, something she's referred to as an illegal act.

I can't comment on either of those points specifically as they didn't form part of her original complaint so haven't been investigated by Openwork. But as far as this complaint goes, I'm satisfied Miss D agreed to pay the fee in her email of 12 April and arguably if she is saying she didn't sign and return the document then she is the one in breach of an agreement as, in that email, she declared that she would return the signed form. Either way Miss D agreed to pay the fee (in her email of 12 April) and then paid it, so there are no grounds for me to order it be refunded to her. There's nothing in the regulator's rules that says a fee agreement must

be signed, and if Miss D didn't want to pay a £495 fee then she had the option to walk away right at the start before applying for this mortgage, rather than paying the fee.

In summary, I don't uphold the main thrust of Miss D's complaint, but I do feel Openwork could have done more at the end when Miss D asked for an alternative contact. As I've said, house buying is an already stressful time and Miss D was a first time buyer who was clearly worrying about what was happening. She's said she tried to put the policy on risk herself but was told she couldn't, so then she needed to arrange quotes for her own policy as she hadn't heard back from Openwork with a different contact she could use. Having considered everything very carefully I agree with our Investigator that a payment of £150 for the distress and inconvenience caused is fair and reasonable.

### **My final decision**

I uphold this complaint in part and order Openwork Limited to pay £150 compensation to Miss D.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 30 December 2024.

Julia Meadows

**Ombudsman**