

The complaint

Mr N and Mrs D's complaint relates to mortgage advice they received from a broker representing Openwork Limited trading as The Openwork Partnership. They believe Openwork caused months of delay in their plans relating to their buy-to-let and residential mortgages. These delays resulted in them paying more interest during that period and in the interest rate products they were able to arrange thereafter having higher interest rates attached to them. In addition, they believe they were given incorrect information about the timescales involved once applications were made and when a new interest rate product would be applied to their existing residential mortgage. They are also unhappy with the recommendation made for the re-mortgage of their rental property. Mr N and Mrs D consider they received poor service overall.

What happened

The evidence in the case is detailed, running to several hundred pages of documents. I have read everything and listened to all the call recordings provided. In what follows, I have, by necessity, summarised events in rather less detail than has been presented. No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I have ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

In April 2023 Mr N and Mrs D had a joint residential mortgage on their home and a consumer buy-to-let (CBTL) mortgage on a rental property they owned. They met with Openwork on 21 April 2023 and discussed both mortgages. They wanted to repay the CBTL mortgage of just under £300,000 from the proceeds of the sale of a third property and by borrowing more against their home.

The adviser has said he recommended that they should consider the effect of doing this on their tax situation and that they might be better using a limited company to limit tax liability on the income from the CBTL, but would need to look into this as he was not a tax adviser. Mr N and Mrs D have told us the adviser told them not to pursue their plan. The adviser provided illustrations for product transfers and re-mortgages for both mortgages.

Mr N and Mrs D decided to proceed with a re-mortgage of the CBTL property with lender B. Initially the application was declined due to the nature of the tenancy in place. It also appears that at that time Mr N and Mrs D had a potential buyer for the property. Mr N and Mrs D decided not to pursue the re-mortgage at that time. In the telephone call where Mr N informed Openwork that they wanted to revert to their original plan of borrowing against their home and repaying the CBTL mortgage; they confirmed that a sale was not going ahead. As such, they wanted to borrow as much as they could against their residential property with their existing lender and any shortfall would be paid using money from the sale of the third property.

At that point Openwork recommended Mr N and Mrs D take out a further advance on their existing mortgage for £160,000. Openwork also recommended that the application be made under a particular scheme run by the lender. Mr N and Mrs D accepted the recommendation.

Openwork was informed on the same day as the residential application was submitted that it had made two errors with the application. The first was that due to what Mr N and Mrs D wanted the additional money for, they were not eligible for the scheme that had been recommended. The second was that it had not understood that the lender would not take self-employed income into account for further advances that took the total lending above 65%. As such, the affordability assessment Openwork had done, which identified that Mr N and Mrs D might be able to borrow up to around £200,000 more, was wrong.

Mr N and Mrs D were not happy about the lender's decision and appealed it. A week later, on 8 June 2023, the appeal was rejected. Openwork submitted a new application that day for a further advance on a standard basis.

The residential lender considered the application, but it decided that it was only able to offer a further advance of just under £47,000 plus the product fee. Openwork sent Mr N and Mrs D a new illustration for the further advance that the residential lender was willing to grant.

Mr N and Mrs D raised concerns with Openwork about the reduced amount they were being offered and the timescales involved. They said they had been told by the lender that it might take six to eight weeks for the further advance to be released, and they might need to pay for a physical valuation, which Openwork had told them wouldn't be necessary if they stayed with the same lender. Mr N and Mrs D also said that they only wanted to pay the product fee associated with the fixed interest rate product they'd been recommended if it applied to both the main mortgage and the further advance. Mr N and Mrs B have confirmed the further advance was paid out on 20 July 2023.

The residential lender sent Mr N and Mrs D a mortgage offer in the middle of July 2023. It was for a further advance of £46,844 plus the product fee, over a term of 20 years, with a five-year fixed interest rate product attached.

The application for the CBTL was renewed and on 3 August 2023 lender B sent Mr N and Mrs D a new mortgage offer for a mortgage of £143,350 plus fees over a term of 20 years. They decided not to accept the offer. They told us in their complaint form that this was because of the breakdown in trust between them and the mortgage adviser at Openwork. Instead they arranged a new two-year fixed interest rate product with their existing lender themselves.

During its investigation into the complaint, Openwork obtained a report from the mortgage adviser. He said that he had raised the matter of tax implications of repaying the BTL mortgage and that Mr N and Mrs D should consider this, along with the potential of using a limited company to limit their tax liability. However, he stressed that he was not a tax expert and they should speak to their accountant, although given Mr N's profession, he might not have needed to. Following this Mr N and Mrs D applied for a re-mortgage of the CBTL property. This was declined because of the type of tenancy arrangements they had on the property.

Following that, Mr N and Mrs D had reverted to their concept of raising money against their residential property to help repay the CBTL mortgage. In relation to how long the further advance application would take, the adviser said he told them it could be as little as three days, but it could take much longer. The mortgage adviser said that he didn't say the product would be backdated to the date of offer and, as far as he was aware, that was never the case with any lender. In addition, it was confirmed that Mr N and Mrs D had insisted that the

new product for the main mortgage not be attached until the further advance was advanced, and he had communicated that to the residential lender. The mortgage adviser also confirmed that Openwork had not received any payment from the existing residential lender for arranging the further advance or the new product, as such, it would usually charge a £299 fee, but given the circumstances it hadn't.

Openwork responded to the complaint in a letter dated 13 October 2023. It accepted there were shortcomings in the service it had provided Mr N and Mrs D due to the fact that it should have known the residential mortgage application made on 1 June 2023 would not meet the lender's criteria. As such, Openwork waived its fee of £299 relating to the further advance application and offered a further £250 compensation. In addition, Openwork offered Mr N and Mrs D £200 for how long it took it to respond to the complaint.

Mr N and Mrs D were not satisfied with Openwork's response and referred their complaint to this Service. When they did so, they added to their complaint that the recommendation for a re-mortgage of their BTL property had been inappropriate too, as it included conditions that prevented the borrowers living and working abroad, and required all alterations to be made via a broker. In addition, they said that in the more than seven years they had used Openwork for their mortgage needs, it had never charged them a fee, so it saying the fee had been waived, was 'utter nonsense'. Mr N and Mrs D also said they were misled by Openwork into believing the further advance application was a formality and would only take a few days, rather than it being dealt with as a whole new application.

One of our Investigators looked into the complaint. She concluded that some aspects of the complaint didn't fall within our jurisdiction – those relating to advice Mr N and Mrs D were given about their mortgage arrangements for the rental property and how Openwork had handled their complaint. In relation to the concerns about the advice and information that had been provided in relation to the further advance and new product for the residential mortgage, the Investigator acknowledged the errors that had occurred, and considered the compensation already offered was sufficient for the poor service. However, she was not persuaded to recommend the other aspects of the complaint be upheld.

Mr N and Mrs D said they were not happy with the outcome of their complaint. They said that they felt they had wasted their time complaining to this Service and the compensation offered was a 'pittance' and 'offensive' given the level of stress, time wasted, and financial troubles Openwork's advice had caused them.

There were further exchanges between Mr N and Mrs D and the Investigator, but agreement couldn't be reached. They asked that the complaint be considered by an Ombudsman.

I completed an initial review of the complaint and asked Mr N and Mrs D for some further information about their rental property. They confirmed that they'd bought it as their home and when they later moved home, decided to keep it as a rental property, rather than selling it. As such, I concluded that the mortgage should rightly be considered a CBTL and any advice relating to it would fall within our remit.

As this meant we could consider the advice Mr N and Mrs D had been given about the mortgage on their rental property, which we had not previously considered, the case was passed to another of our Investigators for further investigation and review. He explained the situation to the parties, neither of which raised any objection to the widened scope of our investigation, and he then obtained further evidence from Openwork and considered the complaint afresh. He didn't recommend that the complaint be upheld and concluded the compensation offered was fair in the circumstances.

Mr N and Mrs D didn't accept the Investigator's conclusions and asked that the complaint be referred to an Ombudsman for consideration. They reiterated their concerns about the recommendation to re-mortgage the CBTL with lender B. They also said that the Investigator was incorrect when he said that they were declined for a mortgage with lender B, rather they had decided not to take up the recommendation for the mortgage.

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.

The first issue I have considered is that relating to initial delays Mr N and Mrs D have said Openwork caused by advising them not to reduce the balance of the CBTL mortgage and to set up a limited company for tax purposes. Openwork has said that it suggested, before Mr N and Mrs D repaid the mortgage, they look into alternative options in order to benefit on a taxation basis, but it didn't give any specific advice, because it was not in a position to do so. As the second Investigator explained, where the accounts of a conversation are materially different, in order to uphold a complaint, I must be persuaded the complainant's account is more likely to be accurate than that of the financial business. I have read everything that both parties have said about the conversation, and while I don't doubt their integrity or recollections as they have given them, I can't find that Mr N and Mrs D's account is *more likely* than Openwork's. As such, I can't hold Openwork responsible for any consequences of the time taken when Mr N and Mrs D looked into their options for their rental property.

While Mr N and Mrs D were investigating their options and the tax implications of them regarding the CBTL property, a re-mortgage application for the CBTL property was made. I haven't seen any evidence that the initial reticence of lender B to offer a mortgage on that property was due to a mistake by Openwork. While I note Mr N and Mrs D's concerns about the terms and conditions of the mortgage in relation to living abroad, I don't consider they made the mortgage an unsuitable recommendation. The condition that has been referenced says that if a borrower moves abroad, and that means that the lender would be in breach of any laws or regulator's rules, it might have to ask for the mortgage to be repaid. It does not prevent the borrowers living abroad as Mr N and Mrs D have interpreted it, rather it makes them aware that in certain circumstances that might cause problems. However, there will conditions in all mortgage contracts that allow the lender to require the mortgage to be repaid. As for the fact that lender B requires the involvement of a broker to make alterations to a mortgage with it, that would again not make the recommendation inappropriate. Mr N and Mrs D have confirmed that they were familiar with using mortgage brokers, and so in the situation Openwork would have had no reason to think doing so again in the future would be an issue.

At the point the CBTL mortgage application was initially declined, Mr N and Mrs D decided to go back to their initial plan of repaying the CBTL mortgage with the proceeds of an overseas property sale and by releasing equity from their home. Openwork has acknowledged that it made mistakes when it gave advice about the residential mortgage. Those mistakes should not have been made, as Openwork should have checked the eligibility for the scheme recommended and the income criteria for the residential lender before making a recommendation. The mistakes raised Mr N and Mrs D's expectations and it caused around a week's delay in the process. As Openwork has admitted its mistakes, I only need to consider whether the offer made in this respect was sufficient to compensate them. I will do so later in this decision.

Mr N and Mrs D have told us that they were told by Openwork that the interest rate product on their mortgage would be backdated to when they signed the product acceptance. I have

seen no evidence that supports that statement and their own instructions confirmed that they didn't want the rate attached to their mortgage until they had confirmation that the further advance had been agreed. There was nothing in the exchanges at that time indicating that Mr N and Mrs D were told, or were led to expect, the interest rate product to be applied as at the date they signed the product transfer offer. Indeed, that was not something that could have happened due to the residential lender's procedures.

I have listened to the call recording in which the timescales for the residential further advance were discussed. While Openwork said that it could take only a few days, it said it was more likely to take a week or so for the assessment of the application to be done, and if a valuation had to be done, it could drag out longer. Openwork didn't provide any guarantee about how long the application would take to be accepted or for when the money would be paid out. While obtaining a further advance from an existing lender can be a much shorter process than applying for borrowing from a new lender, the timescales will depend on the application and what position the lender is in. Lenders will periodically experience periods of high demand for their services and during those times, the time for an application to be assessed and processed will be longer. Mr N and Mrs D made their application when interest rates had started to rise and demand for lender's services had started to increase. I also note that Mr N was told the lender's timescales within a week of the revised application being made to the residential lender. So while Mr N and Mrs D may have understood that the timescales would be a lot shorter, those expectations were short-lived.

Overall, I am not persuaded Mr N and Mrs D suffered any financial losses that Openwork can reasonably be held responsible for. However, I am satisfied that the mistakes it made would have caused their expectations to have been raised and they did not receive the service they had a right to expect. Openwork offered Mr N and Mrs D £450 compensation and waived the £299 broker fee for the poor service they received during their dealings with it.

I note that Mr N and Mrs D have said the offer to waive the broker fee is disingenuous as they have used Openwork's services before and have not been charged a broker fee. While that may be the case, most broker's income is received in two forms – commission payments from lenders and broker fees charged to customers. It is usual that broker fees will become payable when an application is accepted and a mortgage is offered. As Mr N and Mrs D received mortgage offers for both of their properties, it is likely they would have been due to pay a broker fee.

Mr N has provided evidence that his mental health suffered around the time of these events. I can consider the affect of the mistakes a financial business has on a complainant's health, but I must be persuaded that the deterioration in health was due specifically to the errors or omissions made by that business. In this case, I think it likely that the mistakes Openwork made would not have helped Mr N's situation, but I don't think I can hold it responsible for the situation as a whole, based on the comments of the medical practitioner that have been provided.

Openwork has offered, overall £450 payment and waiver of the £299 broker fee. Given the circumstances; the limited errors and the timescales involved, I am satisfied that the offer Openwork has already made is fair and reasonable.

My final decision

Openwork Limited trading as The Openwork Partnership has already made an offer to pay Mr N and Mrs D £450 and waive its fee to settle the complaint and I am satisfied this offer is fair in all the circumstances. As such, my final decision is that Openwork Limited trading as The Openwork Partnership should settle the complaint as it has offered to.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr N and Mrs D to accept or reject my decision before 11 October 2024.

Derry Baxter
Ombudsman