

## **The complaint**

Mr A and Mrs H complain about advice given by a mortgage broker working under the umbrella of Openwork Limited. They said they were wrongly told they could reclaim an Early Repayment Charge, and they lost money as a result of this.

## **What happened**

Mr A and Mrs H bought a house in 2021 with the help of a mortgage broker working for Openwork. They complained that they were not given any terms of business then, but were asked to pay a fee, so they thought this fee should be refunded. They also said they didn't think their broker had chosen the best value mortgage for them. But the core of Mr A and Mrs H's complaint was about what happened in 2023, when they decided to sell the house they'd bought less than two years before.

Mr A and Mrs H said they had to pay an Early Repayment Charge ("ERC") on their mortgage when they sold their home. Theirs was an expensive home, with a large mortgage, so the ERC was a considerable amount as a result of this. But they showed us an email sent on 21 February 2023 where Openwork said that this money could be reclaimed, if they applied to port their mortgage to a new home within six months of selling their old home.

Mr A and Mrs H said that turned out not to be true. They now understand that if they had wanted to port their mortgage, they had to put in an application with their lender before redeeming their existing borrowing. Mr A and Mrs H say they lost a considerable amount of money, because of the advice that Openwork gave. Mr A and Mrs H wanted Openwork to pay them the ERC they had paid.

Openwork said it had previously confirmed, correctly, to Mr A and Mrs H that if they wanted to port their mortgage with this lender, they would need to make a purchase application before selling their home and redeeming their mortgage. Openwork said it told Mr A and Mrs H this in late 2022, when they were first exploring the sale of their home and the purchase of a different property. But Mr A and Mrs H didn't engage Openwork's broker to work on this at the time. Openwork said it asked Mr A and Mrs H to pay a fee, and they didn't pay.

In late February 2023, Mr A and Mrs H told the broker they were selling their home. Openwork said this lender's website for brokers confirmed a porting application can be booked up to six months in advance. Openwork didn't comment on the advice its broker gave Mr A and Mrs H in the email dated 21 February 2023. But it said that on 28 February 2023 its broker told Mr A that he had three months to complete any new purchase, and also that Mr A should call the lender to discuss why he was redeeming the mortgage now.

Openwork said it hadn't heard from Mr A and Mrs H again until the start of May, when Mr A discussed other properties he was interested in. Openwork said Mr A and Mrs H only told it then that they'd sold their home already, and were living in rented accommodation while they looked for somewhere else to live. Openwork said although its broker chased Mr A and Mrs H for an update after this, she didn't hear back until 10 July 2023. Mr A contacted her then to say he'd applied directly to a different lender, and been refused. The broker then managed an application to the lender who had provided the mortgage for Mr A and Mrs H's previous

property. This wasn't a port of their previous lending. Mr A and Mrs H had asked the broker to see if their previous lender would then refund the ERC, when they took out their new mortgage, but the lender wouldn't do that.

Openwork didn't accept it had told Mr A and Mrs H that they could get their ERC back if they bought somewhere else within six months. It said Mr A and Mrs H had received a mortgage offer for their previous lending which said porting would only be possible if they applied to port their mortgage before they sold their property, and they hadn't done that. Openwork also said Mr A and Mrs H hadn't told its broker what they were doing, before they sold their home. Openwork didn't think it was responsible for Mr A and Mrs H's loss, and it wouldn't pay them the money they'd paid to their lender as an ERC.

Our investigator didn't think this complaint should be upheld. She said there were no grounds to ask Openwork to repay the fee it charged in 2021. And she didn't think Openwork had suggested a mortgage for Mr A and Mrs H with a higher interest rate than necessary, or that the mortgage it recommended wasn't the best choice for their circumstances. She accepted Openwork gave Mr A and Mrs H incorrect information about reclaiming their ERC in an email dated 21 February 2023. But she said the sale was already in progress at the time Mr A and Mrs H contacted Openwork, with exchange due on 10 March. So she didn't think Mr A and Mrs H's decisions about the sale of their home had been based on this incorrect advice. And she didn't think things would have been different if the advice had been right.

Our investigator thought Openwork should pay Mr A and Mrs H £250 to make up for their disappointment when they realised they wouldn't be able to reclaim their ERC. She didn't think it had to pay more than this.

Openwork agreed with that, but Mr A and Mrs H didn't. They still thought they'd lost around £27,000 because of what Openwork did. They said if it hadn't been for this mistake by Openwork, they wouldn't have completed the sale and purchase at that time. Their representative said they could have negotiated a different price for the property they were purchasing to account for the cost of the ERC. Or they could have delayed the sale of their property, allowing them to submit their porting application before the sale went through. Or they could have changed their minds, and not sold the property.

Because no agreement was reached, this case then came to me for a final decision. And I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I only proposed to uphold it in part. This is what I said then:

Firstly, Mr A and Mrs H have said there was no fee agreement with Openwork. I have seen that Openwork had submitted two mortgage applications in 2021, without payment of a fee. On the third application, it asked Mr A and Mrs H to pay £500, which I understand they paid. I don't think it would be fair and reasonable to ask Openwork to pay this back.

Mr A and Mrs H have also suggested Openwork didn't recommend the best value mortgage for them. I've seen the comparisons that Openwork did, and it has explained why other, potentially cheaper mortgages weren't available to Mr A and Mrs H. I haven't seen anything to make me think that Openwork didn't recommend the best value mortgage it was able to secure for Mr A and Mrs H.

Before I turn to the issue of the ERC which was payable on the lending Mr A and Mrs H secured in 2021, and redeemed in 2023, I should mention that Openwork's notes for Mr A and Mrs H's 2021 lending say that they had an existing mortgage at that time, but chose to pay off that mortgage, and pay an ERC then, because they were unable to secure the extra money they wanted through that lender.

I do not need to detail the earnings of Mr A and Mrs H here, but I note that their combined income is high, however their circumstances mean it can be more difficult to secure lending which is commensurate with those earnings.

I understand that in early 2023, Mr A and Mrs H had decided to sell the property they had purchased in September 2021. This is within the period during which an ERC was payable on their mortgage lending. They emailed Openwork on 24 February 2023, and in the reply, Openwork confirmed that its broker could reclaim this ERC for them if they completed an onward purchase within 6 months.

Both sides do seem to me to accept that this email was sent. And it's clear that this advice was wrong. Openwork has shown us this lender's policy was that any application for porting had to be made before the mortgaged property was sold, and also that porting was only possible if a subsequent purchase was completed within three months of the sale, not six.

Openwork says it then told Mr A and Mrs H that the period they had to reclaim the ERC paid was only three months from their sale. Mr A and Mrs H accepted, in their complaint form, that they were told this, but say this happened "*later*". Their representative subsequently said that they found out that they would not be able to recover the ERC, because they had not applied before selling their home, in either April or May.

Openwork has shown us telephone contact notes dated 28 February which say Mr A and Mrs H were told then that their porting window was only three months, not six, and that they should speak to their lender about why they were redeeming. These notes do not seem to me to explain that Mr A and Mrs H would also need to put in their porting application before redeeming their existing lending.

Openwork also sent us an email to Mr A from 4 May 2023, which includes this "*What date did your mortgage complete ? just wondering if we will be in the 3 month window to reclaim your early repayment charge.*" Having weighed up the evidence here, I think it's more likely that Mr A and Mrs H were told on 28 February 2023 that if they wanted to port their mortgage, they had to purchase their new home within three months of their sale, but were not then reminded that they would need to make any porting application before they sold their home.

I should say here that I think the advice Openwork gave Mr A and Mrs H on 28 February was at best, incomplete. I haven't been able to see that Mr A and Mrs H were told then that their lender required them to make a porting application before the sale of their mortgaged property. So they had not made any such application before their property was sold on 15 March 2023.

I don't think there's any doubt that Openwork provided incomplete and unhelpful advice to Mr A and Mrs H. And I agree with our investigator that Mr A and Mrs H should receive some compensation from Openwork, to make up for the impact this advice had on them. But that doesn't automatically mean that Openwork has to pay the ERC that Mr A and Mrs H paid. For me to say that it was fair and reasonable for Openwork to pay this money, I would have to see that without this incorrect advice, Mr A and Mrs H would have been likely to get their ERC back.

Mr A and Mrs H have engaged professional representatives, who have sought to persuade us that if Mr A and Mrs H had been properly advised, they would have taken some steps to mitigate their loss, either by delaying their sale to make a porting application, or by renegotiating their purchase price, or perhaps not going ahead at all.

I think there are two concerns with those arguments. The first is that when Mr A and Mrs H made their purchase in 2021, they prioritised achieving the lending they wanted, over avoiding payment of an ERC. So what Mr A and Mrs H's representatives say they would have done in 2023, isn't what we know they did in 2021.

But the second concern is, in my view, more significant. Here, we have to bear in mind that my findings are, as set out above, that from 28 February 2023, Mr A and Mrs H were working under the mistaken impression that they could reclaim the ERC they'd paid, if they completed a purchase within three months of their sale. That would mean completing by 15 June. I think that when Mr A and Mrs H learned of this new deadline, it would still have been possible to achieve a completed purchase within this timescale.

Mr A and Mrs H didn't do that. They asked Openwork in May 2023 to explore other lenders for them, and then made a purchase which completed in early September. Openwork was contacted to help with their mortgage for this purchase in July, at which time Mr A and Mrs H said they had already applied to a different lender, and had been refused the lending they wanted to secure their new home.

That makes me think that Mr A and Mrs H didn't see reclaiming the ERC they had paid as a priority. I can understand why they would choose, instead, to take the time to look for a new home they really wanted. But that does mean it's difficult to accept that Mr A and Mrs H would have taken the steps that their representatives argue for, if they were not already working to speed up their purchase in order to secure repayment of the ERC (as they then believed was possible).

For those reasons, I don't think it's likely that the incomplete advice given to Mr A and Mrs H by Openwork, is the root cause of them not being able to reclaim their ERC. And that means it wouldn't be fair and reasonable for me to ask Openwork to pay this sum to Mr A and Mrs H now.

Like our investigator, I do think Openwork should pay something to Mr A and Mrs H to make up for the impact its advice had on them. I can see Openwork has already agreed to pay the £250 that our investigator suggested. I understand Mr A and Mrs H will be disappointed by this, but I do think that would provide a fair and reasonable outcome to this complaint, so that's what I currently propose to tell Openwork to pay.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

### **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.

Openwork said it didn't want to comment further.

Mr A and Mrs H's professional representative sent a reply on their behalf. That reply said Mr A had told his broker he intended to sell their then home in November 2022, and was simply told the ERC would be refunded, with no caveats or time limits. Mr A also said he'd told the broker about the sale and provided details for the planned exchange of contracts at least a

month prior, and still wasn't told he needed to make his new, mortgage porting application before his old property was sold.

Mr A and Mrs H's representative said if they had been provided with the correct information, they could have delayed the exchange of contracts, could have renegotiated the price or even delayed their plan to sell the property. But rather Mr A said this sale was discussed repeatedly, and the broker negligently advised them, which directly resulted in their loss.

Mr A said he'd spoken to the bank after the broker said the ERC couldn't be recovered. The bank said it should have been sent a formal application, and if that application had been received prior to exchange of contracts, then the mortgage could have been ported. So Mr A and Mrs H said if they'd been provided with the correct information, they could have made the formal application to the bank and delayed the exchange of contracts to ensure the mortgage was ported. Then no loss would have been incurred in relation to the ERC.

Mr A and Mrs H said they didn't understand how I could say wrong advice was given, but that didn't cause a loss to them, and that Openwork wasn't to be held responsible. They wanted me to reconsider.

I'm happy to set out my reasoning again here, in the hopes that may assist. I should say at the outset that I understand Mr A and Mrs H are now arguing they would have taken different steps at the time of their house sale, if they'd been given different advice. But I think the best guide to what someone would have done, in slightly different circumstances, is to look at what actually happened at the time. So here, I looked to see if Mr A and Mrs H had prioritised recovering the ERC, when they sold their home in early 2023.

My finding above was that on 28 February 2023, Mr A and Mrs H were told by their broker that they had three months to port their mortgage. I can see that this advice was then confirmed in an email dated 4 May 2023.

We now know that advice was wrong – they also needed to make an application for a purchase before completing their sale. But there's nothing to suggest Mr A and Mrs H realised that at the time. So, if it was very important to Mr A and Mrs H to get their ERC back, I'd have expected them to try to get a purchase arranged within three months of their sale. They didn't do that.

Mr A and Mrs H's representative says that if they'd been given the right advice, they would have followed it, to get their ERC back. But they did get some (wrong) advice from Openwork on how to get their ERC back, and they didn't follow it at the time.

That, plus the other considerations that I've set out in my provisional decision, makes me think that recovering their ERC wasn't a priority for Mr A and Mrs H at that time. So I don't think it's most likely that if Openwork had given them the right advice, they would have complied with those requirements, and recovered their ERC.

I think Mr A and Mrs H had other priorities, like finding the right house for them. That's a perfectly reasonable position for them to take, but it does mean that, although Openwork did make mistakes, those mistakes aren't the reason why Mr A and Mrs H didn't get their ERC back.

I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that Openwork Limited must pay Mr A and Mrs H £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs H to accept or reject my decision before 30 April 2025.

Esther Absalom-Gough  
**Ombudsman**