

The complaint

Mr and Mrs C complain that they were mis-sold a mortgage by Openwork Limited trading as The Openwork Partnership (Openwork), as the broker did not advise them that they would need to pay an early repayment charge (ERC) on their existing mortgage.

What happened

Mr and Mrs C say that they enquired about whether there would be an ERC payable on their existing mortgage early on in the process but were advised verbally by the broker from Openwork that there would be no fee as they were within four months of their term ending. They say that they subsequently questioned the amount that they had to borrow for their new mortgage, and Openwork assured them that there would be funds left over to pay off any outstanding debt.

After they exchanged contracts on the new property, Mr and Mrs C's solicitor informed them that there was an outstanding fee of £13,358.86, which they later discovered was the ERC for the existing lender. Following this, the new lender agreed to lend an additional £13,000.

Mr and Mrs C say that the ERC should have been known and communicated by the broker at the outset. They say that the broker later attempted to shift the blame to their solicitor saying that the solicitor should have verified the funds before allowing them to exchange contracts. However, Mr and Mrs C say that it was the broker's responsibility to ensure that the borrowing from the new lender was sufficient to cover all costs, including any potential ERC.

Mr and Mrs C say that they could have avoided having to pay the £13,000 ERC with better advice, either by porting the existing mortgage or waiting until the ERC was no longer payable. They say that had they known about the ERC from the outset, they would not have taken out the new mortgage or moved house at that time. Mr and Mrs C say that they never budgeted for the additional amount and cannot afford it, but that they were left with no choice but to borrow this to avoid jeopardising their purchase and sale and they would have been homeless if they had not agreed to pay it. They say that this has caused significant distress and financial strain as the increased monthly payments are a significant burden in the current economic climate. They would like Openwork to reimburse them the ERC that they have paid.

Openwork says that during the initial conversations the broker asked Mr and Mrs C about the ERC that would apply and they said that they believed this to be 1% (equating to roughly £3,000) as they were in the final year of the mortgage. Openwork says that this would not have been an unusual ERC for the amount of time remaining on the mortgage.

Openwork says that the existing lender was unable to provide sufficient lending to purchase the new property, which meant that the mortgage could not have been ported and a new lender would be required. A mortgage offer for the new lender was provided on 19 April 2024. At exchange of contracts, Mr and Mrs C's solicitor made them aware that there was an ERC to pay, which they had not expected. As the additional cost could not be met by Mr and Mrs C's existing savings, the broker provided an amended mortgage offer on 18 June 2024. As the level of borrowing had to be amended and rates had changed, the mortgage payments increased.

Openwork says that its broker was reliant on the information provided by Mr and Mrs C regarding the ERC, as he would not have been privy to this without them seeking it from the existing lender. Openwork therefore says that it is satisfied that Mr and Mrs C received advice appropriate for their circumstances.

Our Investigator looked into Mr and Mrs C's complaint. She didn't think that Openwork had acted fairly. Having reviewed the emails, she thought that it was reasonable to assume that Mr and Mrs C were unaware that the broker had not fully considered the ERC. Whilst the broker had relied on the information provided by Mr and Mrs C, he did not request essential documents regarding the existing mortgage. The Investigator said that the responsibility for ascertaining the details of the ERC did not rest with Mr and Mrs C and that it was the broker's duty to gather comprehensive information regarding this before making any recommendations. The Investigator was of the view that if the broker had clearly communicated the existence of an ERC at the outset, Mr and Mrs C would not have proceeded with the new mortgage at a higher rate while also incurring the ERC, especially considering that they were only seven months from the end of their fixed rate at the time of the advice.

The Investigator concluded that Mr and Mrs C had been financially disadvantaged due to the broker's oversight regarding the ERC, lack of due diligence and unsuitable advice given. Once Mr and Mrs C were aware of the ERC, they were unable to back out of the purchase without incurring financial loss, so they therefore had to apply for an additional loan at a higher rate in addition to paying the ERC. In order to put things right, the Investigator recommended that Openwork calculate and refund the difference in the interest rate based on the amount that Mr and Mrs C would have originally borrowed; reimburse the amount of the ERC which arose due to the incorrect advice along with interest; and pay Mr and Mrs C £300 for the distress and inconvenience caused.

Openwork disagrees with this so the case has come to me to make a decision. It says that it is not reasonable to suggest that Mr and Mrs C would not have gone ahead if they had known about the ERC from the outset. This is because they had stated that they didn't want to jeopardise the sale or purchase, so delaying until November clearly would have jeopardised this. Openwork also says that there was a short exchange deadline from the developer of 28 days from their offer being accepted. The mortgage offer would also have expired before the ERC period ended so it would not have been an option for Mr and Mrs C to have waited until November 2024 to avoid the ERC and retain this rate. Openwork therefore says it is reasonable to assume that they would always have proceeded rather than waited.

Openwork says that it did not arrange Mr and Mrs C's previous mortgage, so without confirmation or evidence from them detailing their ERC, the broker would not be expected to know what this was. It questions why the screenshot from the existing lender's app setting out the ERC was only provided in June and not when the broker was enquiring about the ERC in March 2024.

I set out in my provisional decision dated 18 June 2025 (reproduced below) why I was not minded to uphold the complaint, as I was of the view that Openwork had not acted unreasonably in the circumstances of this case.

I invited both parties to let me have any further comments and evidence by 2 July 2025.

Openwork responded to say that it agreed with the provisional decision and had nothing further to add. Mr and Mrs C made some further submissions and I have referred to these in more detail below.

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.

Having considered the responses to my provisional decision dated 18 June 2025, I remain of the view that Openwork has not acted unreasonably or unfairly in the circumstances of this case.

In my provisional decision, I set out the following:

“There is clearly a factual dispute between Mr and Mrs C and the broker about what was discussed between them regarding any ERC.

Mr and Mrs C said in their initial complaint to Openwork and this Service that they were told verbally by the broker that there would be no ERC as they were within four months of the term ending. In their email to this Service of 24 November 2024, they say that they were told by the broker that due to the mortgage expiring within months of their move “*there would be little to no ERC*”. They say the broker never asked them to look into the ERC “*as he was so sure there wouldn’t be one*”.

I have also considered what Openwork and its broker have said about what was discussed surrounding the ERC. The broker says that he asked Mr and Mrs C about whether there was an ERC and they said that they believed this to be 1% as they were in the final year of the mortgage, which would equate to around £3,000. The broker says that this amount did not seem unusual but advised Mrs C to speak with the existing lender regarding the ERC and let him know if it was higher than 1%. However, she did not come back to him in relation to this. I’ve also seen a note from Openwork’s internal system which states “*ERCs with [current lender] fixed rate expiring October client believes could be 1% of balance so around 3k*”.

I have also seen an internal note regarding the mortgage which states “*Last minute change to the figures on this case due to [the existing lender] confirming to the solicitors... that they had in fact early repayment charges of £13,000 not the £3,000 originally stated by the client, I did ask her to speak to [the existing lender] previously to confirm this*”. Following the complaint being made, the broker said on 1 July 2024 that he would “*always tell clients to check [the ERC] directly with their existing lender! I had to go back to [the new lender] and borrow more money which took them to a higher LTV and a much higher rate which then increased their monthly payments by £150!!*”.

Mr and Mrs C have disputed that they told the broker that the ERC was 1% and say that it is clear from subsequent emails that they were not aware of the ERC and had not ever been made aware of it. They say that the broker left them with the impression that there was no ERC due to the small amount of time left on the mortgage.

I have carefully considered what both parties have said. Clearly, I was not present during the discussions, so I have to base my conclusions on what I think was most likely to have happened.

Mr and Mrs C have complained that the broker did not make them aware that there was an ERC. But the broker in this case was not involved in the sale of Mr and Mrs C’s existing mortgage, so I would not expect him to have any knowledge or whether there was an ERC and, if so, what this was. Any information about the existence of an ERC would necessarily have to come from Mr and Mrs C. So I think that it is unlikely that the broker told Mr and Mrs C that there would be no ERC, as he would have no knowledge of this.

Mr and Mrs C seem to accept that the broker was aware that they were in a fixed rate period on their existing mortgage. So it appears this information must have come from Mr and Mrs C. In these circumstances, I would expect a broker to have asked

about whether there was an ERC on the existing mortgage in order to make their recommendations. And I note what appears to be contemporaneous records on Openwork's system of the broker being told by Mr and Mrs C that they believed the ERC to be 1%. As set out above, the broker would have no knowledge of what the ERC was on Mr and Mrs C's mortgage, other than what he was told by them. Therefore, on balance, I think that the broker was given this information by Mr and Mrs C.

Mr and Mrs C refer to an email sent from Mrs C to the broker on 31 March 2024 stating "*We were just wondering what we do about ending the [existing] mortgage early? Will there be a fee involved with that?*". They say that this shows that they were not aware of the ERC. The broker replies on 2 April 2024 asking "*Are you free for a call?*". Unfortunately, there are no records of the call that took place, although it may be that the notes on Openwork's system were made as a result of this call. In any event, this does not change my view as – as set out above – it would be for Mr and Mrs C to provide the information about the ERC to the broker and not the other way around.

I also note that Mr and Mrs C have provided a copy of an annual mortgage statement sent to them by their existing lender in January 2024 – two months before the appointment with the broker. This clearly sets out that an ERC would apply until 2 November 2024 and that this would be £13,554.25. The statement explains that this shows what Mr and Mrs C might pay if they wanted to pay off the loan. So, although Mr and Mrs C say that they were not aware of the ERC until they exchanged contracts, I think that the correspondence they were sent by their existing lender ought to have made them aware that an ERC would be payable if they wanted to pay off the loan and re-mortgage elsewhere.

Contrary to what the Investigator has said, I also think that the broker was entitled to rely upon the information provided by Mr and Mrs C when making his recommendations. This is particularly given that – from the information I know about the existing lender – this would not have been an unusual amount for an ERC. The broker has said that he asked Mr and Mrs C to contact him if the ERC was more than 1% (around £3,000), however they did not do so, despite the fact that the annual statement from their existing lender told them that the ERC would be over £13,000.

In light of the above, I am not persuaded that the broker has acted unreasonably in relying on what he had been told about the ERC without requesting anything further in these circumstances.

Whilst I don't think the broker has acted unreasonably, I have also gone on to consider what Mr and Mrs C would have done had the broker been given the necessary information to factor in the ERC from the outset when making his recommendations.

Mr and Mrs C say that when they found out about the ERC they did not want to jeopardise the purchase and sale so felt they had to go ahead at that point as they would have been homeless. They have said that if they had been aware of how much the ERC was going to be at the outset, they would not have taken out the mortgage or moved house at that time and would have waited for a few months until the ERC was no longer payable. Mr and Mrs C say that they have moved to a new build estate and that there are still plenty of similar houses on the market. They say that their previous mortgage was around £1,100 a month and they cannot afford the additional amount they now have to pay because of the ERC.

I have considered the mortgage offer from 19 April 2024, which was for a loan of £484,999 fixed at 4.48% until 30 June 2029, giving a monthly repayment of £2,280.77 over that period. The offer expired on 31 October 2024. The later offer of

18 June 2024 (taken by Mr and Mrs C) was for a loan of £497,999 fixed at 4.71% until 30 September 2029, giving a monthly repayment of £2,420.19 over that period.

Openwork has explained that Mr and Mrs C's existing lender was unable to provide sufficient funding for the purchase of the new property, so they would always have had to change lenders if they wanted to do this. This would have meant that they would also have had to pay an ERC if they had wanted to do this before 2 November 2024.

It appears from the documents I have seen that Mr and Mrs C first contacted Openwork on 26 March 2024 and the broker requested information regarding their income. The same day, Mrs C responded asking if it was only once this had been provided that they could go back to the property developer with how much they could offer and the broker confirmed that this was correct. The following day, Mrs C asked if the broker was able to submit the qualification for the purchase price to the developer without this. She also confirmed that they had sold their house for £525,000, along with confirming the amount outstanding on their current two mortgages and their income. On 27 March 2024, Mrs C asked if they could add £20,000 stamp duty to the borrowing and the broker advised that he would not be able to confirm this until he had the income details for Mr C.

In an email dated 11 April 2024, Mrs C apologises for "badgering" the broker and says, *"We are feeling anxious as you can imagine!"*. On 12 April 2024, Mrs C says that she was *"super nervous at how it's all going"* and in a later email that she was *"anxious"* about whether the new lender was happy with everything. On 15 April 2024, Mrs C emailed the broker asking if there was any news.

Following the receipt of the mortgage offer on 19 April 2024, Mrs C sends a further email asking where the £484,999 is going and saying; *"obviously we are extremely happy we have got it! We just want clarity on fees & what we'll be expected to pay next out of the breakdown on the money we're borrowing"*.

I can see in an internal note regarding the mortgage that this states that the new lender was *"able to meet the time frame of issuing a mortgage offer in time for you to be able to exchange contracts as this is a new build purchase with a short exchange of contract deadline."* The internal note also states that Mr and Mrs C wanted a five year fixed rate *"as they were concerned interest rates would rise in the first 2 years"*.

In Openwork's suitability report dated 18 June 2024, it sets out that the reason for recommending the new lender was that *"It was important to you that the chosen lender was able to handle your application quickly"*.

I have also looked at the mortgage affordability calculator completed by Openwork, which shows that Mr and Mrs C's income less expenditure was calculated to be £5,075.99 once they had moved to the new property. The mortgage payment of £2,412.52 (on the higher rate with the additional £13,000 for the ERC) amounted to 47.53% of their available income.

Although Mr and Mrs C have referred to the email they sent to the broker enquiring about whether there would be an ERC, I'm not persuaded that this indicates that they wouldn't have proceeded had this been factored in at the outset. I say this as the additional £13,000 would have added just over £60 (based on the interest rate of 4.48% at that time) to their monthly repayments. Whilst I understand that their new mortgage was significantly higher than their existing mortgage, this was still easily affordable for them based on the calculations done at the time.

I can also see from the contemporaneous documents that Mr and Mrs C were keen to fix a rate as they were concerned about the interest rates rising in the near future. The offer based on the fixed rate of 4.48% would have expired by the time Mr and

Mrs C's existing fixed rate had ended. So, although they would have had to pay the ERC, they would have had to weigh this up against the fact that if they waited until this was no longer payable, there was a risk that their mortgage rate would have been higher over the fixed rate period.

I have also considered the fact that Mr and Mrs C told the broker at the outset that they had already sold their property and they were keen to progress the purchase of the new property swiftly, which was one of the reasons that the new lender was recommended. I note that the property was a new build, so it may be that Mr and Mrs C had also put down a reservation fee. So I don't think that they would have wanted to risk losing the buyer for their property, losing the property they wanted and potentially a reservation fee by waiting until the ERC was no longer payable.

In light of the above, and having considered all of the evidence, I am persuaded that it is more likely than not that Mr and Mrs C would still have gone ahead with the mortgage had the ERC been factored in at the outset."

As set out above, Openwork has confirmed that it agrees with the provisional decision.

Mr and Mrs C have made some further representations in response to the provisional decision. I have given careful consideration to all the submissions made, but I won't address each and every point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome in keeping with the informal nature of our service.

Mr and Mrs C say that they have provided evidence of all communication from their side but that Openwork's response is based on undocumented discussions about the ERC. They say that there was no logged correspondence where they have told the broker that the ERC was 1% or where the broker has asked them to check the ERC, which has left them in a position of 'us against them'. Mr and Mrs C question why – if the information had to come from them – they were not asked to supply it.

As set out in my provisional decision, I have considered all of the evidence available in deciding what I think is most likely to have happened. The fact that there is no reference to something in the email correspondence doesn't mean that this was not said, as there were clearly calls between Mr and Mrs C and Openwork in addition to email correspondence. The notes regarding the ERC are recorded on Openwork's system and appear to be contemporaneous. Therefore, on balance, and for the reasons set out in the provisional decision, I think that the broker was given this information by Mr and Mrs C.

Mr and Mrs C have referred to the Investigator's view regarding the broker not requesting essential documents about the existing mortgage. In this regard, they question why these documents were not requested if they were essential. Mr and Mrs C say that if the ERC had been factored in originally, when the essential documents were not asked for, they would have been able to make an informed decision on whether they were prepared to go ahead and would have been able to borrow the additional money at the original rate.

As set out in my provisional decision, I disagreed with the Investigator on this point. I remain of the view that the broker was entitled to rely upon the information provided by Mr and Mrs C when making his recommendations and therefore I don't think it was unreasonable for him not to request further documents in the circumstances.

Mr and Mrs C have suggested that I have indicated in my provisional decision that the 1% ERC would be well under what would be a usual ERC for their existing lender and should therefore have been questioned by the broker. This is incorrect. I explained that the 1% ERC – which is what I have found Mr and Mrs C informed the broker – would *not* have been

unusual for the existing lender. Therefore, this supported the fact that the broker was entitled to rely on what Mr and Mrs C had said about the ERC being 1%.

Mr and Mrs C say that the mortgage statement they received was from January, and that they weren't considering selling their house then. Therefore, when they decided to sell, they say that they were reliant on Openwork to give them full and thorough advice on what they should do.

Whilst Mr and Mrs C may not have been looking to sell their property at the time the annual statement was received, this ought to have made them aware of what the ERC would be if they decided to redeem the mortgage in future and prior to 2 November 2024. In any event, for the reasons set out above, it is my view that Mr and Mrs C gave the broker the information regarding the ERC, as he would have had no knowledge of what the ERC was on Mr and Mrs C's mortgage, other than what he was told by them.

Mr and Mrs C say that it is an assumption that they wouldn't have wanted to risk losing the buyer for their property, losing the property they wanted and potentially a reservation fee by waiting until the ERC was no longer payable. They confirm that they did put down a reservation fee but say that this was on 28 March after they had started the mortgage process.

As set out in my provisional decision, I have to base my conclusions on what I think was most likely to have happened. The fact that the reservation fee was paid after the preliminary discussions about the mortgage had taken place does not change my view in respect of whether I think Mr and Mrs C would still have gone ahead if they had been aware of the ERC at the outset. The other factors I considered in coming to this view included the fact that they would not have wanted to risk losing their buyer or the property they wanted, the risk of interest rates increasing and the fact that the mortgage was still affordable for them with the ERC. In any event, I do not think that the broker acted unreasonably in relying on what he was told about the ERC by Mr and Mrs C.

I know that my decision will come as a disappointment to Mr and Mrs C, but I can't say that Openwork has acted unreasonably in the circumstances of this case, and I do not uphold this complaint.

My final decision

For the reasons I've explained in my provisional decision and above, my decision is that I do not uphold this complaint against Openwork Limited trading as The Openwork Partnership or require it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 8 August 2025.

Rachel Ellis
Ombudsman