DRN-5779444

## The complaint

Mr and Mrs N complain that an appointed representative of Openwork Limited mis-sold them a mortgage. In particular, they're unhappy that it recommended a two year fixed rate rather than a five year fixed rate, and they're unhappy about the length of the mortgage term.

## What happened

Mr and Mrs N took mortgage advice from Openwork in 2020. They discussed borrowing around £270,000 over 25 years with an initial two year fixed interest rate. That mortgage didn't go ahead. In 2021, Mr and Mrs N returned for further advice. They now wanted to borrow around £415,000.

Openwork recommended and arranged a mortgage for the amount Mr and Mrs N wanted, plus fees. The mortgage was over a 37 year term on a repayment basis, with an initial fixed rate of 1.23% for two years ending on 30 September 2023. The monthly payments were £1,164.13.

In December 2023 Openwork recommended that Mr and Mrs N move their mortgage to another lender. This time they took a two year tracker rate, 0.14% above Bank of England base rate for 24 months. The mortgage remained on the same terms otherwise. The monthly payments were £2,070.01 (based on the interest rate at the start; it has since decreased) – almost £900 higher than on the previous fixed rate.

In 2024, Mr and Mrs N complained about the advice they'd received in 2021. They said the mortgage wasn't suitable for them. They were wrongly advised to take a two year fixed rate – the benefits of a longer term weren't discussed with them, they were wrongly told they'd be able to take another rate at around 1% when the fixed rate expired, and they ought to have been given the safest, lowest risk option. They weren't advised of the risk they were taking and were told to ignore media reports of possible interest rate rises. They also complained that the mortgage Openwork arranged went beyond their retirement ages, and they worried they wouldn't be able to afford it in retirement.

Mr and Mrs N said that the impact on them has been severe. Mrs N had been in poor health at the time of the advice and they had relied on Openwork to arrange the best deal for them. But instead they ended up on a much higher rate when re-mortgaging in 2023. This has meant they've had to spend more money on the mortgage, eroding their savings and taking away money intended for their son's school fees. They say the poor advice has cost them around £32,000 in additional interest, as well as the cost of losing their savings and the return they would have got. This has caused them much stress and upset and impacted on Mrs N's health.

Openwork said it made a suitable recommendation. It arranged the two year interest rate that Mr and Mrs N wanted, and was appropriate for them, at the time. It didn't promise what would happen at the end of the two year period. It said that the loan term was also agreed with Mr and Mrs N to keep the payments affordable – and that in any case, they had said they intended to retire at 70 and the loan would end when Mr N would be 69 and Mrs N 67, so it didn't run into their retirement. However, it said that the adviser had not called Mr and

Mrs N in 2022 to discuss their mortgage despite agreeing to do so, and it had initially sent information about their complaint to an incorrect email address. It offered £200 compensation for the upset caused by these customer service failings, and a further £200 for delays in investigating and responding to their complaint.

Our investigator didn't think the complaint should be upheld, so Mr and Mrs N asked for an ombudsman to review it.

**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've noted what Mr and Mrs N have said, both about the evidence that is available and the evidence that isn't. There are no call recordings from the time of the advice – but I wouldn't expect there to be, given the passage of time. Even if calls were recorded at the time, there is no requirement to retain them indefinitely. The mortgage rules require firms to retain evidence relating to the suitability of advice for three years.

That said, much of the written evidence does survive. I've taken into account what Mr and Mrs N say about that. But it is contemporaneous, it's specific to their circumstances rather than generic, and I think it's reasonable for me to put significant weight on the documentary evidence.

The suitability report says:

> I have recommended the initial rate period [two years] for the following reasons:
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> The initial rate period recommended strikes the best balance between the need for stability versus the need to minimise the monthly payments.

The recommendation letter says:

> We have discussed tracker rates, and two, three and five year fixed rates, you feel at this time you would like to have the peace of mind and security of a known monthly payment over a two year period to take advantage of the current low interest rates available.
>
> …
>
> We selected a mortgage term of 37 years on a repayment basis which will give you a monthly payment of £1,164.13 which you have confirmed is comfortable and affordable, you selected a term of 37 years to keep your monthly payment to a minimum.

The fact find records Mr and Mrs N's intended retirement ages as 70. Based on their dates of birth, that is 38 and 40 years after the mortgage began – so the mortgage term did not run beyond the retirement date recorded in the fact find.

There are also emails, mainly between Mrs N and the adviser. Before this mortgage was recommended, she asked about the possibility of taking a five year rate, and the adviser replied that they could discuss this when they met. So Mr and Mrs N knew that a two year rate was not the only option open to them.

Mr and Mrs N wanted to borrow to purchase a new property, repaying an old mortgage in

Mr N's sole name. The new mortgage they wanted to borrow in 2021 was significantly larger than the old one, and significantly larger than the one they had contemplated – but not taken – in 2020. In her emails before the recommendation, Mrs N said they understood it was likely the term might need to be extended to 30 years or more to accommodate the increased borrowing. Their combined income at the time was around £75,000, so they were looking to borrow around five and a half times their income – right at the limit of what was acceptable lending at the time.

The monthly payment on Mr N's older, smaller, mortgage was £1,135. The new mortgage kept the monthly payment broadly the same, while significantly increasing the borrowing. The fact find records twin priorities of keeping the monthly payment as low as possible and of stability. A fixed rate achieves stability. And at the time, two year fixed rates were lower than longer fixed rates. The fact find records that the recommended rate achieved a balance between the two priorities, and I don't think that's unreasonable. A longer fixed rate would give longer stability, but a higher payment.

Since the advice was given, interest rates have increased. That means that when the two year fixed rate came to an end, new interest rates were much higher and so Mr and Mrs N's monthly payments increased. I can understand why, with the benefit of hindsight, they now wish they had been tied in for longer than two years – and have come to believe that their sole priority was fixing a rate for as long as possible to remove the risk of paying more for as long as possible. I don't doubt that they now sincerely believe that this was their view at the time. But memory of past events is fallible, especially where influenced by later events. The documentary evidence from the time records that their twin priorities were stability and low payments, the recommended rate – based on what was known and knowable at the time and without the benefit of hindsight – achieved a reasonable balance between those priorities, and I'm not persuaded it was unsuitable. I agree that Mr and Mrs N would be better off now if they'd taken a longer fixed rate. But, without the benefit of hindsight, that doesn't mean that taking a two year rate was unsuitable at the time.

Just before completion, on 11 October, Mrs N emailed the adviser. She said:

> "I keep seeing news about interest rates potentially rising sooner than expected. Are we too late to potentially change our mortgage, as I can see interest rates with [lender] have dropped again since taking ours? Also, is it worthwhile taking on a 5-year fixed instead of the 2-year if rates are likely to increase?"

Again, this shows that she was aware of the option of taking a longer fixed rate at the time of the advice. Nothing in this email suggests that Mr and Mrs N had any concerns about the suitability of the recommendation when it was made – but since then they were becoming concerned about the possibility of rate rises and so wanted to revisit the recommendation.

However, by then it was too late. Their solicitor had requested funds from the lender on 5 October and the mortgage was due to complete on 15 October. It's not possible to simply switch a mortgage offer from one rate to another. The only way to do that would be to reject the offer of a two year rate and start again, with a fresh application for a new mortgage with a five year rate. That couldn't have been done in time for completion on 15 October, four days later. And in any case by requesting funds from the lender, Mr and Mrs N had committed to going ahead. I'm not persuaded there was any realistic way that Openwork could have changed the mortgage at this stage without Mr and Mrs N losing out on completing on their purchase.

The other factor that Mr and Mrs N raise is the length of the term. They now say that the mortgage extends beyond their retirement age, because they intend to retire at state pension age. But that wasn't their intention at the time.

Mr and Mrs N say that this should have been challenged. Suitability requires not taking things at face value. But I don't agree. A suitable recommendation is one that is appropriate to the needs and circumstances of the customer. The mortgage rules say that an adviser may rely on information provided by the customer unless, taking a common sense view, it has reason to doubt it.[1] They told the adviser they intended to retire at 70. That was plausible, and I wouldn't expect the adviser to have questioned or challenged that, even taking into account what he knew of Mrs N's health concerns. It was reasonable to accept what they said their intentions were. The mortgage therefore did not run into their intended retirement.

Even if it did, that wouldn't mean it was unsuitable. It would mean that the lender – not Openwork – would be required to consider affordability beyond retirement. But the reality is that this is still more than thirty years away. Even if the mortgage runs a year or so beyond when they now intend to retire, much can happen in the meantime. Mr and Mrs N might overpay, or re-mortgage and shorten the term, or change their retirement plans again. The 37 year term didn't run into their retirement as planned at the time of the advice, and it enabled the monthly payment to be kept as low as possible, around the same level as Mr N's previous mortgage. I'm not persuaded anything about the term length made this an unsuitable recommendation.

Mr and Mrs N say that the adviser assured them they would be able to take an interest rate below 1% when the two year rate ended. There's no record of that. And while I don't doubt the sincerity of their recollection, as I've said memory of things that happened four years ago is fallible and unreliable. There's no way the adviser could have been able to predict in 2021 what interest rates would be in 2023, and I don't think it's likely he would have promised a 1% rate would be available.

Mr and Mrs N also say that Mrs N was vulnerable, and that therefore the adviser had additional obligations to explain things clearly and make sure she understood. I agree that he should have made sure Mr and Mrs N understood and agreed to his recommendation. The emails from the time show that he primarily dealt with Mrs N – and they show that she had a good understanding of mortgages and of the specific mortgage she was taking. I'm not persuaded that there were further adjustments the adviser should have made, but didn't make, to help her understand his recommendation.

On 22 May 2022, Mrs N emailed the adviser. She said:

> "I wanted to touch base, as we are nervous at the increasing interest rates and news about them further increasing, especially as we are only tied into the recommended 2-year fixed term. Any advice please? I see that [the lender] are offering a fixed 10-year term and so we wondered if it's worthwhile switching to that to provide ourselves with reassurance instead of risking ever increasing rates!"

The adviser replied to arrange a time for a phone call. However, no call took place at the time. Openwork says that in any case Mr and Mrs N weren't eligible for a ten year rate at that time with their existing lender – it only offered that rate to new customers. As existing customers, the only fixed rates available to them at that time would have increased their monthly payments to around £1,500 per month, and would have required them to pay an early repayment charge (ERC) of over £8,000 first to bring their existing rate to an end.

I accept what Openwork says about the options open to Mr and Mrs N at the time. At that time, interest rates had begun to rise, and were expected to continue to rise gradually. But the sharp increases in later 2022, around the time of the mini-budget, couldn't have been

[1] MCOB 4.7A.23 G

foreseen at this time. I don’t think it’s likely that if Openwork had discussed things with Mr and Mrs N in 2022 they would have decided to pay an £8,000 ERC and an extra £350 per month to end their existing interest rate early.

However, Openwork should have made sure that Mr and Mrs N were contacted to discuss their mortgage at this time, as they had requested. I’m not persuaded this failure caused any loss, because as I’ve said I don’t think it’s likely they would have paid an ERC to increase their monthly payments at that time. In the circumstances, I’m satisfied that Openwork’s offer of £200 compensation for failing to follow this request up is fair. It’s also offered £200 for delays in responding to their complaint, and I also think that’s a fair offer. It should pay that compensation now if Mr and Mrs N choose to accept it. But other than that, I don’t require it to take any further action because I’m satisfied that the recommendation it made in 2021 was suitable for Mr and Mrs N based on their needs and circumstances, and what was known, at the time.

## My final decision

My final decision is that Openwork Limited should pay Mr and Mrs N £400 compensation – taking into account any payment it has already made.

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

Simon Pugh
**Ombudsman**