

The complaint

Mr and Mrs G complain that a broker working under the umbrella of Openwork Limited trading as The Openwork Partnership failed to check when their Early Repayment Charge on existing lending ended. They wanted the broker to cover the losses they said this caused.

What happened

Mr and Mrs G said when they were considering taking out some additional mortgage lending, they spoke to a broker they have used before (whom I won't name here). They said this time he made a mistake, which ended up costing them £650.

Mr and Mrs G said they were interested in extending their mortgage to fund a home extension, but the broker said their mortgage was due for renewal so they could make a new application. So they met with the broker. They said they had all the paperwork about the existing mortgage at the time, and showed it to the broker. He then made a new mortgage application on their behalf, and it was accepted.

Mr and Mrs G said the broker also advised them to go ahead with planning the extension, as it takes a while to get through all the regulations. So they engaged an architect, at a cost of £1,000 to start the process of getting planning permission.

Mr and Mrs G told us that late in the process, the legal firm working on their new mortgage got in touch to say they would have to pay a very large Early Repayment Charge ("ERC") if they wanted to end their existing mortgage. They were very disappointed, and contacted their existing lender, who confirmed the ERC was still payable until September 2025.

Mr and Mrs G said their architect refunded £300, and their existing lender paid £50 for some wrong information on a website. They thought Openwork should pay the remaining £650 that they'd lost.

Mr and Mrs G complained to Openwork, and they said the broker lied, when dealing with their complaint. He denied seeing the paperwork that they had shown him, and even denied doing their last remortgage for them. Mr and Mrs G were very unhappy, and wanted our service to look into things.

Openwork said its broker hadn't arranged Mr and Mrs G's remortgage for them in 2020, so he had asked them for information about this lending, and had checked the website of their existing lender. The information about their mortgage on the lender's website was wrong, it said the ERC no longer applied on Mr and Mrs G's mortgage, whereas in fact it would apply until September 2025.

Openwork said Mr and Mrs G hadn't given its broker information on their existing mortgage, and it wasn't his fault that the previous lender's information was wrong.

Openwork said it understood that Mr and Mrs G had already hired an architect and drawn up plans before its broker became involved. And it said they could still use any plans drawn up, when they did remortgage in future. Openwork didn't uphold their complaint, and it wouldn't

offer any payment.

Mr and Mrs G said the broker was lying, and they had documentary evidence to prove it. They referred this complaint to our service, and sent us emails and messages between them and the broker.

Our investigator considered these, and he asked for the information Mr G said he had, which showed the broker did their 2020 remortgage. Mr G hasn't been able to send clear evidence of this to us. He suggested the broker may have acted fraudulently, pretending to be him to make changes to the mortgage. However, Mr G hasn't been able to evidence this claim.

Our investigator didn't think this complaint should be upheld. He said Mr G hadn't been able to show the broker did the remortgage in 2020. And he would have expected Mr G to have been aware when the ERC ceased to be payable, from the documents sent to him in 2020. But Mr G hadn't been able to show us he had shared this documentation with the broker. Our investigator thought it was fair and reasonable for the broker to rely on the only information he had, which came from the existing lender. And unfortunately that was wrong.

Mr G replied to disagree. He said he thought his broker should have realised there was an issue with the ERC end date, as his lender had suggested. Mr G didn't think we should get too hung up on the absence of documentation, he said emails and messages had just been lost. He maintained that the broker had done the 2020 mortgage product switch. He said he and Mrs G didn't think in 2022 that their existing mortgage deal was ending, they just wanted advice on more borrowing, but the broker said it was. Then he'd emailed them to say there was something confusing about the ERC end date, and he would investigate, but he never did that. And Mr G insisted that he'd given the broker the documents he needed at their first meeting.

Our investigator didn't change his mind. He didn't think the broker had been given Mr and Mrs G's mortgage paperwork, as he'd asked for that later in the process. And although Mr G said there was evidence the broker had done their 2020 product switch, our investigator said he hadn't seen anything that said this. Our investigator still thought the rate switch wasn't done by the broker, and that Mr and Mrs G would have been told about the ERC on their lending, when they got the paperwork for their new mortgage deal.

Mr G was saying the broker asked for documentation about their mortgage later in the process to cover his mistake. But our investigator noted that there was a message from the broker asking for the documents, and there wasn't any reply from Mr G, saying the broker already had these documents.

Our investigator said Mr and Mrs G could still have applied for extra lending with their existing lender, which is what they'd said they wanted at first. Our investigator didn't think Openwork had to pay Mr and Mrs G £650.

Mr G replied again to disagree. He insisted that the broker was given all the information about his mortgage at the first meeting, that he took those away with him to copy, and then popped them back through the letterbox. Mr G said the broker only asked for this paperwork later, when he realised he had messed up. Mr G said he was in the process of asking his previous lender for calls made about the mortgage, so he could show if the broker had posed as him to make the arrangements in 2020. (Mr G hasn't provided further evidence on this point since.) And Mr G said that even if the broker hadn't arranged their mortgage in 2020, the email he sent about the ERC ending in October, showed he knew there was something wrong, and just hadn't done anything about that.

Because no agreement was reached, this case 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 one small part of this complaint. This is what I said then:

Some of the facts in this case remain in dispute. In particular, Mr G argues that his broker ought to have been aware of how long the fixed interest rate, and associated ERC, would last on his current mortgage, because this broker took out that mortgage for Mr and Mrs G in 2020, and because he was shown all the documentation he needed from that remortgage in 2022, when Mr and Mrs G discussed their future lending requirements with him.

However, the broker says that he didn't take out the 2020 mortgage. He says brokers weren't able to do product switches with this lender at the time. And he says he never saw paperwork for the mortgage. Rather, Mrs G told him in 2022 that their 2020 deal was a two-year fixed rate which was shortly coming to an end.

In response to the broker's statement that he didn't do the remortgage, and that he wasn't given the relevant paperwork, Mr G accuses the broker of lying.

In circumstances where there is no direct evidence on particular issues, I have to decide what's most likely to have happened, based on the evidence and testimonies I do have.

I note that Mr G has mentioned having a number of emails showing that the broker arranged the two year fixed rate mortgage for him in 2020. However, he hasn't been able to show us those. Mr G says these have been lost since. It's unfortunate that Mr G made clear claims to have these in his possession, early in this complaint, and now hasn't been able to show us them. It's also unfortunate that the only message he can show us sent to the broker about his 2020 remortgage, then doesn't show any reply from that broker until 2022, when this remortgage and additional borrowing was being discussed. Mr G has also not been able to provide our service with evidence from his lender that this broker was involved in the 2020 product switch.

We do have some evidence on the 2018 mortgage, and the 2020 switch, from Mr and Mrs G's existing lender. I have seen the product switch information, and Mr and Mrs G appear to have signed to say that they had not received advice on the new mortgage deal they were taking out. This was signed on 9 June 2020, and took effect from 1 August 2020.

I think, on the evidence I have seen, it is not likely the broker did arrange Mr and Mrs G's 2020 product switch, when they took out a five year fixed interest rate mortgage.

The information on their new mortgage deal is clear they were signing for a five year fix, running until 30 September 2025. I would have expected Mr and Mrs G to have access to this documentation. It does appear to have been sent to them. And their existing lender also showed us annual statements which contained the same information.

Mr G also says that he and Mrs G provided the broker with the documentation from their existing remortgage, when he visited them at home. But I note that what Mr G says about this appears to have changed. In his initial complaint to the brokerage, Mr G said this, about the meeting at his home –

During this meeting [the broker] asked for the documents from [the existing lender] which were presented to him in its entirety. [He] briefly read them and said that he didn't need them as the information he needed he could get online using our mortgage account number which was given to him. Had he taken them, read them or photocopied them like I imagine he should have done - this situation would have come to light earlier.

But in his later response to our service, he said this –

In the initial meeting we had that February [...the broker] physically took our product switch document (the one you have with all the information on including the ERC) and our latest mortgage statement (which also had the ERC on) so that he could photocopy them at home. Over the next few days he posted them back through our letterbox.

As Mr G's recollection on this issue appears to have changed, I've not been able to place the weight that Mr G would like, on the statements he's made about what documentation the broker was initially given.

In contrast, the broker says that he checked online, and the lender's portal indicated that Mr and Mrs G's ERC had finished in October 2021. I've seen screenshots of this, and the lender accepts this was the case. The broker queried that at the time, saying it didn't look right. The meeting at Mr and Mrs G's home was after this, and the broker said Mr and Mrs G didn't have the details for their current deal then.

I do think the 2020 documentation, and the statements issued by Mr and Mrs G's lender since, are clear that an ERC applies until 30 September 2025. I think if Mr and Mrs G had this documentation available when their broker visited them at home, either they or the broker were likely to have noticed the issue with the ERC date.

I think it's more likely the broker was not given any documentation showing Mr and Mrs G's pre-existing mortgage deal, and detailing the ERC in place on that lending. So that after the meeting on 15 February, he still wasn't aware that the ERC was still in place.

The broker was, however, aware of an anomaly with the mortgage information he could see for Mr and Mrs G online, and after his meeting with them, this hadn't been resolved.

In late February 2022, Mr and Mrs G have shown us a series of messages and emails between them and the broker, all of which would indicate the broker was looking for a new mortgage deal for them elsewhere, and in early March he had secured an offer.

I've also considered the evidence our service received when Mr and Mrs G complained about their previous lender, and the incorrect information available on that lender's portal. There, the lender accepted that the information shown on its product switching web page about Mr and Mrs G's mortgage, was wrong, but said the right information had been sent to them on their annual statements, and also that the correct information was sent to their broker on 25 March 2022. However, the letter of this date which is on file, and which does include information on an ERC of almost £8,000, appears to have been sent to the legal firm working for Mr and Mrs G, not to the brokerage.

I haven't been able to see that the broker in this case did have paperwork which clearly set out when the ERC would end on Mr and Mrs G's mortgage. And I have been able to see that he was given incorrect information on the lender's website. The lender accepts that was a mistake.

But I also note that the broker had expressed concerns in early February about the ERC date available on the lender's website, and said he would "...need to see when the current deal ends ... to ensure you don't hit any early repayment charges." This doesn't seem to have been done, before a further mortgage application was made on behalf of Mr and Mrs G, and lawyers were instructed to transfer their lending.

I think this problem should have been resolved before further mortgage applications were made by the broker. Because this wasn't done, Mr and Mrs G were put to some trouble, in gathering information for a new mortgage, which wasn't actually affordable for them because of the existing ERC. And they were disappointed when their additional lending wasn't able to go ahead. I think Openwork should pay £100 to make up for that.

Mr and Mrs G wanted Openwork to pay £650, because they said they'd paid £1,000 to an architect to begin the process of obtaining planning permission for a home extension, and now didn't have the money to complete that work. They have told us they have recovered £350, and wanted Openwork to pay the rest.

I haven't been able to see anything in the emails or messages that Mr and Mrs G have shared, to suggest that the broker told Mr and Mrs G to apply for planning permission before securing their additional mortgage lending. There are only passing references to planning or costings, which doesn't seem to me to be consistent with the broker having encouraged Mr and Mrs G to engage architects and offering to recommend people.

These messages don't seem to me to demonstrate the involvement with the planning process that Mr G said the broker had. So I don't think it's likely that the broker offered this advice, I think that's more likely to be a decision that Mr and Mrs G took themselves. I don't think the broker is responsible for that decision.

I also don't think that the broker is then responsible for Mr and Mrs G's decision not to fund this work using additional lending with their existing lender, but instead to cancel their plans to extend their home. For those reasons, I don't think that the brokerage has to pay towards the fees that Mr and Mrs G were then unable to recover.

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.

Both sides have provided detailed responses to my provisional decision, which were keenly argued. I'm aware I've summarised those responses here in less detail than the parties involved. No discourtesy is intended by my approach which, here as elsewhere in this case, reflects the informal nature of this service. I want to assure all parties I've read and considered everything on file. I'm satisfied I don't need to comment on every point raised to fairly reach my decision. And if I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues.

Openwork replied, to say it was shocked by my decision to uphold this complaint, given what it considered to be the dishonest nature of the allegations made. Openwork thought it was surprising and very disappointing that I would make an award in these circumstances.

Openwork said it thought the remaining point of contention was the broker was incorrectly informed of the ERC date by the clients and then provided with incorrect ERC information by

the lender itself. Openwork said it thought a broker should be entitled to accept this information as fact. Here, Openwork said it was to the broker's credit that her suspected the information was not right, but the client didn't supply the paperwork which was needed to verify the ERC. Openwork said it wanted to know what more the broker was expected to do.

Openwork wanted me to review the broker's own comments, which it provided, and then reconsider my provisional decision, which it felt was unjust.

The broker then set out his view of the case in some detail. He expressed strong feelings about the complaint. He said he felt one email, sent to Mrs G to show that he had queried the end date of their existing mortgage deal, seemed to be held against him. He felt this should be seen as only part of the whole advice. The broker wanted to stress that when this email was sent, Mrs G had already told him she didn't have information on the existing lending, and the information available to him from their lender was, it was accepted, quite wrong. If this had not been wrong, the problem would not have occurred. The broker felt it was unfair this lender had apparently encouraged Mr and Mrs G to complain about him.

The broker said he asked for further information on the mortgage, but when he visited the clients, he was given nothing at all. The broker said Mr G was not correct to say otherwise.

The broker said he'd also been accused of acting fraudulently in arranging a remortgage for Mr and Mrs G in 2020, which he expressly denied. He said Mr G's allegations just didn't stack up. The broker said he'd also been accused of rushing the clients, and proposing surveyors etc, but again there was no evidence of this. He said if anything, the clients were rushing him to get things processed, as they had already lined up a builder.

The broker said on the day he submitted the application, he checked again with Mrs G if she had the documentation for their existing mortgage, and was told she hadn't. The application was done that evening, the broker said Mrs G wanted to get the builder signed up. The broker said he wasn't concerned about the ERC, because Mrs G had said their existing lending was on a two year deal, and their existing lender said the ERC had ended. The broker said he did mention then that the end date was unknown at this time so they really needed to check this so they could confirm with the builder. The broker said he didn't know what else he could have done.

The broker stressed that when the ERC issue was clarified, he had offered to obtain the extra lending the clients wanted from their existing lender, but they decided against this.

The broker stressed the effect on him of false allegations, which he'd had to rebuff, and the part Mr and Mrs G's existing lender played, by providing false information. He said for those reasons he felt that that any ruling against Openwork or himself would be completely unfair.

I appreciate that the broker, and Openwork, feel very strongly about this case. Their argument rests on two points, firstly, that they feel the allegations made against the broker have been so outrageous, that it would be wrong in any sense to uphold this complaint. However, the role of our service is to provide an independent informal dispute mechanism. I have to step back from the strong feelings this case has evoked, and take an overview of what's happened here.

I do think something went wrong here, as Mr and Mrs G ended up making an application to remortgage with a different lender, long before their existing fixed rate deal ended. And if I think something has gone wrong, and also that Openwork or its broker was wholly or partly responsible for that, then I do not think it would be fair and reasonable here to ignore that, solely because a number of (arguably more serious) allegations have not been upheld.

That brings me to the broker's second argument, that he couldn't reasonably be held responsible for anything having gone wrong. The broker argues that he has done all that he could in this case, and points to the other causes of the mistake here, both Mr and Mrs G themselves, and their existing lender.

I should be clear that I do not think that Openwork is the sole cause of what went wrong here. I don't think Openwork's broker is necessarily even the main cause of what went wrong. My findings are that the broker was given incorrect information on the lender's website, about the end of the ERC on Mr and Mrs G's fixed rate mortgage deal. But I can also see that the same page shows the current interest rate on the mortgage, and the rate shown does seem to me to be inconsistent with the ERC already having ended.

I would have expected the broker in this case to notice this. And we know he did notice this. He says he asked Mr and Mrs G for information on their mortgage, and they simply didn't have it. However, there's no other evidence that he sought to resolve this issue before proceeding with Mr and Mrs G's new mortgage application, perhaps by verifying this with the existing lender, or indeed by asking Mr and Mrs G to do so.

I think this was a missed opportunity to avoid the problems that then arose, and that's why I have upheld what I have also described as one small part of this complaint. I continue to think it's fair and reasonable to do that.

Mr G replied on behalf of himself and Mrs G. He said he'd been trying to trace the evidence needed to prove his points, but had not succeeded. He wanted to make some final points.

Mr G said he could see judgments had been made on what was likely to have happened, but Mr G felt those decisions favoured the broker. He said that was frustrating, as he knew the broker's evidence was fabricated.

Mr G repeated the assertion that he had not hired an architect before the broker became involved, and said he could prove this. Mr G also said neither he nor Mrs G had ever told the broker their existing mortgage deal was coming to an end, and said they knew it wasn't.

Mr G said because of this, he found it hard that I had believed what the broker said about not having seen the 2020 mortgage paperwork. Mr G repeated that the broker had seen the paperwork, and just hadn't read it. Mr G said that he understood his versions of events had differed on this point, but he said that Mrs G had remembered they received documentation back in the post with other items the broker needed, and Mr G then thought that was right.

Mr G repeated that the broker was the one who told them their ERC had finished, and he would have realised his mistake if he'd read the documentation available to him. Mr G thought that the broker also ought to have checked on their mortgage portal. Mr G repeated his earlier views about the broker's competence and honesty.

Mr G also said he and Mrs G were upset I'd believed the broker didn't do the mortgage product switch in 2020, although he accepted this was another point where the evidence wasn't there. Mr G said he had thought he would have evidence of this, but didn't. Mr G said that the lack of any reply from the broker to the 2020 message should show that this was all then done by phone, as the broker didn't want a paper trail on this matter.

Mr G also felt it was unfair that I'd decided it was not likely the broker offered them advice about the planning process. He asked how he could make decisions about this, if he didn't know what he could borrow? Mr G repeated that he had been given advice.

Mr G also said he and Mrs G then decided not to use additional lending with their existing lender as the deal wasn't as good and they couldn't afford it. They still felt the broker was responsible for their losses.

Mr G said I was right to award compensation, but the amount was not enough. He felt the broker had failed on one of the very basic parts of his role, and so the compensation should be much more. And he also said he thought it was important to record how unfair he felt it was, that decisions made by judgement had fallen in the broker's favour.

I appreciate that Mr G will be greatly disappointed by my decision, which, as he has identified, doesn't wholly accept his version of events. I've recognised that there are strong feelings on both sides in this case, and it's understandable that Mr G would feel this way when many of the concerns he has expressed have not been upheld. However, all I am able to do in resolving a complaint is to consider the evidence that our service has been sent. It has, unfortunately, not assisted Mr G's case that he has repeatedly asserted he had evidence, which he was then unable to show to our service, and that his recollection on at least one point has clearly changed over time.

I set out in my provisional decision above the reasons why, having considered all the evidence our service has been sent, I reached the provisional conclusions recorded there. I don't think it would assist now to reiterate those conclusions. I should simply state that while I acknowledge Mr G's strong feelings on this matter, and I'm sorry he feels this is unjust, Mr G hasn't offered any further evidence to support his views. And, without further evidence, I do not feel that those conclusions set out in my provisional decision should be changed.

For all of the above reasons, I haven't changed my mind about what would provide a fair and reasonable outcome in this case. So I'll now make the decision I originally proposed.

My final decision

My final decision is that Openwork Limited trading as The Openwork Partnership must pay Mr and Mrs G £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 22 March 2024.

Esther Absalom-Gough

Ombudsman