

The complaint

Mr G and Miss W complain about the advice and service they received from Openwork Limited (Openwork) in relation to their mortgage application.

What happened

In November 2023 Mr G and Miss W wanted to buy the property they were renting – which was owned by Mr G's parents. They met with Openwork and following receipt of an agreement in principle from a high street lender, submitted an application. Mr G and Miss W paid a broker fee of £595 to Openwork for its work in making the submission.

Unfortunately, the lender declined the application but didn't provide either the adviser or Mr G and Miss W with any reasons for its decision.

Mr G and Miss W said that the adviser gave them the impression that any further applications to alternative lenders would also be declined without understanding the reason for the first lender's decision, so they decided not to continue with the process.

Subsequently Mr G and Miss W were able to secure a mortgage directly through another provider, so they complained to Openwork about the service they'd received and wanted a refund of the broker fee because they didn't believe Openwork had done what it said it would to justify the fee. They said they were also unhappy with the adviser as she didn't seem to value them as clients and suggested there would be little point in exploring other lender options.

Openwork said it saw no evidence to support the claim that its advice was unsuitable. It said a decision in principle was obtained with a lender that was suitable for Mr G and Miss W's situation, and it was unfortunate that the lender declined the application at underwriting stage – without providing any reasons. It said it also offered to continue the process by trying to obtain a loan with an alternative lender, but Mr G and Miss W didn't want to proceed further at that time.

Mr G and Miss W felt a partial refund of the fee was justified so they brought their complaint to us where one of our investigators looked into the matter. They didn't think the complaint should be upheld as they believed Openwork had made Mr G and Miss W aware of the work it would do in relation to its fee – and that the fee wasn't refundable after submission of an application(s). They also thought there was no evidence to show that the adviser had acted unprofessionally or had been misleading.

Mr G and Miss W didn't agree. They said we'd misunderstood their complaint. They accepted that they agreed to pay the £595 broker fee but that was on the understanding the adviser said their situation was straightforward and there shouldn't be any problems getting a loan agreed. They also thought the adviser was clear that she would try alternative lenders in the event of a declined application. They thought Openwork should accept some (financial) responsibility for the "promises" it made, and the adviser ought to have remained more professional and followed its agreed process after the application was declined.

The investigator wasn't persuaded to change their view. They said there were no video or phone recordings of the advice available so had relied on the written correspondence between both parties. They thought Openwork had been prepared to submit further applications, but Mr G and Miss W had asked it to "*hold fire for now.*" They also didn't think that the adviser had done anything wrong in the way it had communicated with Mr G and Miss W after their application was declined.

Mr G and Miss W said it was disappointing that no video or call evidence was available because they thought this better supported their claim that the adviser did suggest the mortgage application would be "straightforward" and wasn't fully engaged on submitting further applications. They wanted their complaint to be referred to an ombudsman – so it's been passed to me to review.

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.

And having done so I've reached the same conclusion as the investigator. I imagine this outcome will disappoint Mr G and Miss W, so I'll explain my reasons.

The suitability of the advice

I first looked at the fact find document and recommendation letter Openwork provided Mr G and Miss W to ascertain the suitability of its advice. In my view, based on the information that was gathered, the mortgage that was recommended appeared to be suitable for Mr G and Miss W's circumstances at the time. The adviser recommended a lender which in her experience usually accepted the gifted equity deposit that was provided in this case and a decision in principle was obtained.

Mr G and Miss W have said that the mortgage they obtained themselves was a lower rate of interest and would cost them less interest – so they might say it was a better deal for them. But I don't think that means that Openwork's recommendation was unsuitable, I think it acted reasonably to this point and provided a suitable recommendation – which was acceptable to the lender in principle at least.

But a decision in principle isn't a firm commitment from a lender that it will make a mortgage offer. That only comes when an application is submitted and further lender checks are carried out. Unfortunately in this case, for reasons that are unknown, the lender declined the application. There can be a number of reasons for an application to be declined at application stage and it isn't unusual for a provider not to give a reason for the rejection. But based on the information it was provided with initially I don't think it was unreasonable for Openwork to think Mr G and Miss W's application would be successful. In any case it wasn't Openwork's responsibility that the application wasn't successful which I think is supported by the surprise its adviser showed in the email she sent Mr G and Miss W to confirm the outcome.

Openwork's broker fee

Prior to acting for Mr G and Miss W Openwork issued its "*fee agreement*" document. This set out the service it would provide and the charge it would make for that service. It said:

"you engage them to act for you to help you obtain the loan.

In return for providing these services to you, you will pay the following to the adviser:

A fee of £595 which is payable once your loan application has been submitted to a lender. In the event that the loan does not proceed to completion for whatever reason a fee of £595 will be due."

So in the first instance, as Mr G and Miss W signed the agreement, I think they were aware that a fee would be due if an application was submitted. The agreement doesn't state that the fee is non refundable but at the same time it doesn't set out any circumstances in which it might be refunded. Indeed the document states that Openwork are engaged to help Mr G and Miss W obtain a loan and that for this service they would have to pay the appropriate £595 fee. So I don't think there's any evidence to support the idea that a refund would be due in any circumstances as it states that the fee is payable if the "*loan does not proceed to completion for whatever reason.*"

There's no mention in the fee agreement of Openwork making multiple applications in the event of any rejection but the evidence would suggest that the adviser made it clear she would pursue new applications from the panel of lenders Openwork could use if required. The adviser did ask Mr G and Miss W to investigate if there were any reasons they could uncover which might have caused the declined application, but I think that was a reasonable request in the circumstances as it would make further applications more likely to succeed if any potential issues could be discovered before submitting them.

In any case I've seen nothing to support the idea that the adviser wouldn't continue with the process of further applications as long as all possible reasons for the problem that may have existed were explored, and she was still able to demonstrate that she had given suitable advice in terms of a further recommendation. Ultimately it was Mr G and Miss W who said in an email that they "*have decided to hold fire for now and try to understand why (the lender) would have declined our application.*" So I can't reasonably say that Openwork didn't fully provide the service it said it would in order to justify its fee.

The adviser's communication with Mr G and Miss W

Mr G and Miss W say that they were aware of the need to pay a fee to Openwork but the adviser's confidence that obtaining a loan would be straightforward led them to think the question of not getting a loan wouldn't occur. They also say the adviser didn't seem "interested" in trying alternative lenders after the first application was declined and that she was unprofessional in the way she dealt with them at that point. They feel that a partial refund of the fee is fair and reasonable compensation for the way they believe they were treated.

Mr G and Miss W suggested that the video recording of their meetings with the adviser and call recordings of their discussions would support their claim as they believe things were said during those events which aren't supported by the emails between them from the time the application was rejected until they decided to "hold fire" with the process.

Unfortunately, no recordings of either medium are available, so I have to make my decision based on the contemporaneous evidence I've been provided with and Mr G and Miss W's recollections of their communication with the adviser – which I've no reason to dispute. The emails don't support the claim that the adviser was unprofessional or "rude" and there's nothing to suggest she wouldn't continue to seek alternative lenders on Mr G and Miss W's behalf. She did say, "*I think it would be a good idea for you to investigate this further at your end to try to figure out what the issue may be. Sadly I can't know which lender is best to try next until I know what is causing the problem. I feel like it may come up wherever we apply.*"

But that isn't to say she wouldn't continue with the process, simply that it would be advisable not to suffer the same outcome – which might have impacted Mr G and Miss W's credit file due to the number of searches carried out – without at least looking at what the problem might be. It was also important for the adviser to provide a suitable mortgage application so again it wouldn't be fair for her to have just applied to the "smaller lenders" that Mr G and Miss W put forward as suggestions without analysing whether they were the most suitable available from the panel of lenders she had recourse to.

I can't confirm that the adviser gave Mr G and Miss W a false sense of certainty during her discussions with them, but even if Mr G and Miss W were left with that impression I can't reasonably say it was wrong because the adviser wasn't given the opportunity to revisit the situation and complete the process of obtaining a loan for Mr G and Miss W.

My final decision

For the reasons that I've given I don't uphold Mr G and Miss W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Miss W to accept or reject my decision before 24 October 2024.

Keith Lawrence
Ombudsman