

## **The complaint**

Mr and Mrs L complain that they weren't able to properly consider the mortgage offer made by Accord Mortgages Limited, before agreeing to it. They say that the only fair thing to do was to let them change their mind, some weeks later, when a better deal was available.

## **What happened**

Mr and Mrs L complain with the support of their broker, who secured this new mortgage deal for them, and now acts as their representative in this complaint.

Mr and Mrs L had an existing mortgage with Accord, and received notification in October 2022 that their fixed interest rate would end at the end of December 2022. Mr and Mrs L spoke to the broker about taking out a new mortgage deal in October.

This broker told us there was what he considered to be a serious flaw in Accord's systems, at the time. He said he wasn't able to produce a mortgage offer document, for Mr and Mrs L to read in full and consider, and then return to accept this offer online. He said the only way to produce a mortgage offer online was if he accepted the offer right away. The broker said he was aware of an alternative, manual system which did allow a mortgage offer to be produced, but this was cumbersome, caused unnecessary delays, and risked the rate being lost if the available deals changed.

The broker said if customers like Mr and Mrs L had no realistic chance to read their offer before accepting it, then it would be reasonable to allow them to change their minds afterwards. He said none of the other lenders this brokerage works with, would tie a client into a deal that hasn't already taken effect without giving them chance to read the full formal offer beforehand.

The broker said Mr and Mrs L were tied into the deal that they took, with no proper chance for consideration and reflection, in late October 2022. But they'd seen a better deal with Accord in December 2022. The broker thought Accord should have allowed them to take that deal up, instead. He said the fair thing to do was for Accord either to waive any Early Repayment Charge ("ERC") that might be payable, to allow them to take up this new deal, or for Accord to cover the additional costs of the deal they'd taken out in October, and now couldn't get out of.

Accord wrote in response to Mr and Mrs L's complaint, saying that it thought it was evident there was a flaw in its systems which urgently needed updating. Accord told Mr and Mrs L that it was unfair to require them to accept a product transfer rate before Accord was able to produce an offer for them.

But Accord didn't offer to allow Mr and Mrs L to change their deal now. The letter just said that their rate was a business decision, and all Accord could do was provide feedback on their concerns.

Accord offered Mr and Mrs L £50 in compensation. As Mr and Mrs L have said they think they will pay almost £4,000 more over the next five years, because of the deal they have

been tied into, they didn't want to accept this. They asked our service to look into things.

When this case came to our service, Accord said Mr and Mrs L remortgaged with it in October 2022, a couple of months before their existing deal was due to end. But their broker didn't get in touch with Accord about any problems until December. Accord said its rates didn't change during October.

Accord said all brokers are now able to see and provide mortgage illustrations and offers before applying. Accord said it did have some issues with its systems at the time of this complaint, but it said brokers could still see product transfer details and terms. They just weren't able to produce a copy of the offer for the customer without accepting a product.

Accord said it had provided an alternative solution for brokers, a manual request of a mortgage offer (and Accord stressed it was issuing these in a timely manner).

Our investigator didn't think this complaint should be upheld. She set out the differing responsibilities of the parties involved in a transaction like this, saying the broker is responsible for providing advice, which would include for example, explaining the new mortgage rate and its terms. She said a reflection or cooling-off period, which the broker said wasn't included here, isn't a feature of this mortgage, and isn't something that's required under the regulation covering remortgaging. She said even if Accord did have system problems at the time, it still appeared to have set out the terms of this new product, which were accepted. And our investigator said Accord had told us there was a system in place to request a mortgage offer, but that process wasn't followed.

Our investigator thought Mr and Mrs L had accepted a mortgage offer with no right of withdrawal or reflection period, and which did have an ERC. She didn't think Accord had made a mistake when it said Mr and Mrs L would have to pay an ERC later, when they wanted to change their minds.

The broker replied, on behalf of Mr and Mrs L, to disagree. He wanted to stress that the offer done for Mr and Mrs L was only produced as part of submitting their application, and if the application didn't then proceed right away, he couldn't go back later to secure the same deal. The broker said the relevant regulations require Mr and Mrs L to have a copy of a mortgage illustration or offer document to review and consider, before they agree. He said it just wasn't reasonable to expect a broker to read this all out to a customer over the phone.

The broker said these weren't intermittent problems with Accord's system, it was a fundamental flaw. He said he understood that Accord had told us about a work-around, a manual process which could produce an offer before it was accepted, but he said that took several days, and was very undesirable in a time of fast-rising interest rates.

Finally, the broker wanted to make us aware that Accord does now allow customers to re-select a lower rate deal if one becomes available between application and the rate switch taking effect.

Accord also responded, to say that Mr and Mrs L had plenty of time to go through the manual process of selecting a new rate, if they had wanted to do that. Accord didn't think it should be penalised for the product Mr and Mrs L had signed up to. 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 did propose to uphold it in part. This is what I said then:

I do think it's undesirable for Accord to have operated a system that didn't, apparently, allow for an offer to be produced online, and the customer then to be given a chance to consider that offer before acceptance. An entire section of the relevant rulebook on mortgages is dedicated to ensuring that customers receive a clear document that enables them to review the features and price of the transaction before they enter into it. So, although Accord says it did have a manual process which allowed for this, the fact that its online process did not, remains undesirable. And I think this is particularly the case, in circumstances of very rapidly changing and rising interest rates, where any delay to allow for a manual process to be completed is likely to be seen as risky by customers.

However, I have to note that our service isn't a regulator. It's not my role to penalise Accord for any system failures, in the abstract. What I have to do, is consider this case. So I'm looking at the impact of what's happened on Mr and Mrs L. And here, I think this problem, whilst certainly undesirable, isn't likely to have made a difference to the eventual outcome here.

Mr and Mrs L entered into their new mortgage deal without a proper chance for informed reflection. I think that doing this is likely to have been stressful for them, so I think Accord should pay them more than £50 in compensation for that. I think it should pay a total of £200 for its part in Mr and Mrs L having agreed a new mortgage deal without being given an offer document to consider first.

But I don't think that Accord has to do more than this, because I just don't think it's likely that the position would have been different, if Mr and Mrs L had been given an offer document.

Mr and Mrs L were seeking to secure a new fixed rate mortgage deal, at a time when their broker told us rates were rising very rapidly. So I think it's likely that, if they had been given a copy of this offer, they would have acted very promptly to accept it. That means they would still have been tied into their new deal from late October 2022. Accord has told us its rates didn't change during October 2022, so there was no better deal available from this lender for Mr and Mrs L during October.

Mr and Mrs L received their mortgage offer, and confirmation of their new deal, in late October. They raised no concerns about this at that time, which again suggests they would still have gone ahead with this deal, if the proper paperwork had been issued in the right order.

The broker working for Mr and Mrs L said his brokerage reviewed deals taken out for clients in November, because a number of lenders will allow customers to change their deal if rates have dropped. And as part of that, he wanted Accord to let Mr and Mrs L change to a more advantageous rate that only became available in early December. But I don't think that, just because some lenders do offer this facility, Accord also has to do that.

The mortgage contract that Mr and Mrs L entered into isn't unusual in setting out that there is no right of withdrawal, once the new offer is accepted. And Mr and Mrs L had accepted that new offer, almost two months earlier. So I don't think that Accord had to let Mr and Mrs L out of a deal they'd accepted a considerable time earlier, just because they could have done better if they'd waited. I also don't think that Accord has to let Mr and Mrs L out of a deal that they accepted in late 2022, just because it has changed its policy since, and may well have allowed that if Mr and Mrs L had applied some months or years later.

I'm sorry to have to tell Mr and Mrs L that I don't think Accord acted unfairly or unreasonably when it told their broker they couldn't change their minds about the deal they'd entered into without paying the ERC involved. So I don't think this part of their complaint should be upheld.

I know Mr and Mrs L will be disappointed, but I don't think that Accord has to pay more than a total of £200 in compensation, which I've proposed above. It doesn't look as if Accord has already paid the £50 it previously offered, but I'll allow Accord to count towards this award, any payment it's already made, in case it has done so.

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.

Mr and Mrs L's representative replied to say that he was disappointed, but had nothing to add. Accord simply said it had nothing to add.

Neither side has offered any further evidence or argument, and I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that Accord Mortgages Limited must pay Mr and Mrs L £200 in compensation. Accord Mortgages Limited may count towards this award, any payment it's already made for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 12 March 2024.

Esther Absalom-Gough

**Ombudsman**