

The complaint

Mr B and Miss J complain that Accord Mortgages Limited (Accord) would not allow them to cancel their product transfer or redeem their current mortgage without incurring an early repayment charge (ERC) in order to allow them to re-mortgage to a different lender.

What happened

Mr B and Miss J took out a mortgage with Accord in January 2021. The product expired on 31 July 2023, meaning the mortgage would move to the standard variable rate (SVR) on 1 August 2023. Mr B and Miss J applied for a mortgage product transfer with Accord through a broker on 23 June 2023, with the new product due to start on 1 August 2023. Following the application, they say that a cheaper product was released by an alternative lender, which Accord was unable to match. As the product transfer had not been completed, the broker asked if the agreement for the new mortgage could be cancelled or, alternatively, for the existing mortgage to revert to the SVR when it expired.

Accord wouldn't allow Mr B and Miss J to cancel the agreed product transfer and they were advised that they would have to pay the ERC of £8,220 on the new mortgage if they wished to do this. Mr B and Miss J do not think that this cost was fair, bearing in mind that the product transfer had not yet completed.

Mr B and Miss J say that Accord gave them the option to redeem their existing mortgage at a reduced cost of £4,110 (albeit the actual ERC they ended up paying was £2,829.14) for the ERC, which would prevent the product transfer from starting. They say that they had no choice but to pay this in order to allow them to proceed with the alternative lender. However, they say that they still made a significant financial loss for opting out of a product which had not even started.

Mr B and Miss J feel that Accord should have allowed them to opt out of the product transfer as their request was made with plenty of time before their existing deal came to an end and due to the financial detriment they would face. They have also raised the responsibility of lenders to treat customers fairly and in line with the consumer duty.

Accord says that, as the mortgage was arranged through a broker, it was the broker's responsibility to provide Mr B and Miss J with financial advice, including the terms and conditions set by Accord.

Accord says that, although the product transfer mortgage had not yet started, it still costs the lender to release a customer once the contract has been signed. It says that once the product has been accepted, there is no right of withdrawal and that these terms were clearly set out in the paperwork; the ERC was therefore applied in line with the terms of the product.

Our investigator looked into Mr B and Miss J's complaint and did not uphold the complaint. He found that Accord provided information to Mr B and Miss J in a clear, fair and not misleading manner in the product transfer offer, and that the ERC was applied in line with the terms of the offer. The investigator therefore concluded that Accord had not acted unfairly.

Mr B and Miss J disagreed with this so the case has come to me to make a decision.

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 looked at the evidence I agree with the investigator's view for broadly the same reasons and I've explained my reasons further below.

I've looked at the product transfer offer dated 23 June 2023. This sets out that the offer is subject to the terms and conditions and that Mr B and Miss J would not be bound by the terms of the product transfer offer until they had accepted the offer. The offer set out that Mr B and Miss J had the right to repay the loan early, either fully or partially, and provided a table setting out the ERC applicable over various periods of time. The ERC for both part 1 and part 2 of the loan was 3% of the outstanding balance until 31 October 2024, with the maximum ERC at that time being £8,220.96.

Section 10 of the product transfer offer is titled "*Your other rights as a borrower*" and states "*Once you have accepted this product transfer you will not have the right to withdraw. However you will have the right to repay the entire loan in accordance with the terms and conditions of your mortgage. For example, this would mean that any early repayment charges referred to in this Product Transfer Offer would need to be paid as part of the repayment of the loan*".

The offer was accepted electronically by the broker on behalf of Mr B and Miss J on 23 June 2023 and a letter confirming that the product transfer had been completed was sent to Mr B and Miss J on 26 June 2023.

The broker contacted Accord to try and cancel the product transfer on 30 June 2023. He was advised that the product transfer was pending and due to start on 1 August 2023 and that there was no cancellation period with product transfers. Having listened to the call, I note that the broker said "*Just a bit of feedback, I should have... it is my fault but the thing is at the moment rates are changing so much you're trying to do things quickly and you just make the odd mistake which might end up costing the customer eight grand but we'll have to sort that out, but so if you give feedback and stuff to criteria that's a bad bit of policy really just in case you accidentally...*" Accord advised the broker to contact his Business Development Manager (BDM) to see what could be done.

Having looked at the offer, I am satisfied that the term regarding withdrawal made it clear that, once the offer had been accepted, Mr B and Miss J could not withdraw and that an ERC would be payable in line with the percentages set out in the document if they wanted to withdraw from the product transfer once accepted. The Broker agreed to the offer on Mr B and Miss J's behalf and ought to have been aware of these terms. Likewise, the broker ought to have made Mr B and Miss J aware of the terms before accepting the product transfer on their behalf.

In light of the above, I can't say that Accord has treated Mr B and Miss J unfairly in applying an ERC in line with the terms of the new product.

Ultimately, in order to avoid the ERC on the new product, Mr B and Miss J redeemed the existing mortgage, which had a lower ERC payable of £2,829.14. This was in line with the mortgage offer for the existing product, dated 16 November 2020, which set out that the ERC on part 1 would be 1.5% from 1 August 2022 until 31 July 2023 and that there would be no ERC on part 2 from 1 March 2023 onwards.

Mr B and Miss J have questioned why the product transfer could be voided by the redemption of the existing product but couldn't be voided altogether. The answer to this is that – as set out above – the product transfer was not cancellable once it had been agreed. However, if the existing mortgage was redeemed then there would simply be no product remaining to transfer onto the new product. So by paying the ERC payable under the terms

of the existing mortgage (and prior to the new mortgage commencing), Mr B and Miss J were able to avoid paying the higher ERC they had agreed to for the new mortgage.

Again, I don't consider that Accord has acted unfairly by applying an ERC in line with the terms of the existing mortgage, as this was clearly set out in the offer from November 2020.

Mr B and Miss J have raised the Mortgage Charter, which sets out that a customer "will also be able to manage their new deal and request a better like for like deal with their lender right up until their new term starts if one is available". I have considered this, however I am satisfied that this relates to them changing products with the existing lender, as opposed to cancelling the agreed product in order to re-mortgage to another lender.

Mr B and Miss J have also raised the consumer duty. However, this only came into force on 31 July 2023 and does not apply retrospectively. Therefore, as it was not in place at the time of the matters complained about, its principles do not apply to Mr B and Miss J's complaint.

I know my decision will come as a disappointment to Mr B and Miss J, but I can't say that Accord has acted unreasonably or treated them unfairly in the circumstances of this case and I don't uphold this complaint.

My final decision

For the reasons I've explained above, I don't uphold this complaint and don't require Accord Mortgages Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss J to accept or reject my decision before 11 April 2024.

Rachel Ellis
Ombudsman