

The complaint

Mr and Mrs M's complaint is about a mortgage they have with Accord Mortgages Limited. They are unhappy that they were offered a mortgage with a fixed interest rate product attached to its entire balance until 2026, but Accord then told them in 2023 that part of the mortgage had a product attached to it that was due to expire at the end of July 2023.

In settlement of the complaint Mr and Mrs M want to be put in the position the mortgage offer they accepted stated they would be in – with a fixed interest rate product of 2.34% attached to their mortgage until 2026.

What happened

In 2018 Mr and Mrs M took out a mortgage with Accord. Attached to the mortgage was an interest rate product that provided a fixed rate of 2.23% until the end of July 2023. If the mortgage was repaid before that date, an early repayment charge (ERC) would be payable. However, the product was portable, and so if Mr and Mrs M were accepted for a new mortgage with Accord, the product could be ported to that mortgage thereby avoiding the ERC needing to be paid.

In early 2021 Mr and Mrs M decided to move home. They sought assistance from an independent mortgage broker to arrange a new mortgage. An application for a new mortgage was made to Accord in March 2021. The application confirmed the existing interest rate product was to be ported and a new product of 1.85% fixed for five years was to apply to the increased borrowing. Mr and Mrs M repaid the existing mortgage in March 2021 and had to pay an ERC of slightly over £12,000.

Subsequently, Mr and Mrs M decided to increase the amount they wanted to borrow on the new mortgage and as time had passed since the original application, they had to select a new product for the additional borrowing. A new application form was submitted. This was meant to alter the interest rate product for the additional borrowing to 2.34% fixed for five years, and so should have documented the product that was being ported and the new one, but the form only detailed the new product.

Accord didn't pick up on the mistake and a mortgage offer was issued to Mr and Mrs M on 2 June 2021 for a mortgage of just over £650,000, all of which would be charged at an interest rate of 2.34% until 31 October 2026. Mr and Mrs M accepted the offer, and the mortgage was advanced in August 2021.

Mr and Mrs M's broker provided evidence during our investigation that the existing product was meant to have been ported and the 2.34% product was only to be applied to the increased borrowing amount. In addition, the broker evidenced that Mr and Mrs M were aware that was the case and before the mortgage offer was issued, there were discussions about the two products having different end dates and how this would affect the mortgage. Plans were made for syncing the rate on the two parts of the mortgage when the ported rate ended in July 2023.

Following the mortgage completing, Mr M contacted Accord to chase the refund of the ERC three times. In each of these conversations Mr M confirmed that they had ported from their old mortgage, and so the ERC was due to be refunded. In the last of these conversations, Mr M was told that the product attached to the new mortgage meant they were not eligible for a refund of the ERC. Mr M reiterated that he believed they were entitled to a refund of the ERC as they'd ported their existing mortgage. Accord recommended that he speak to his broker.

Mr and Mrs M's mortgage broker called Accord, confirming the existing product should have been ported. Accord looked into the matter and determined an error had occurred in the application process and that Mr and Mrs M had meant to port the existing interest rate product to the new mortgage. Accord made the necessary alterations to the new mortgage to reflect the existing product having been ported over to it and refunded the ERC. Mr and Mrs M's broker confirmed to them at that time that the old and new accounts had been linked and the ERC was being repaid.

On 17 September 2021 Accord wrote to Mr and Mrs M to confirm that the previous mortgage was showing as having been ported and so the ERC had been refunded.

Mr and Mrs M have been sent mortgage statements each January from 2022. These detailed that the mortgage consisted of two parts and documented the different interest rates that applied to each part. Separately the statements also documented the details of the products, including when they ended and when the ERC on each would cease to apply.

On 10 May 2023 Accord wrote to Mr and Mrs M to remind them the interest rate product they'd ported from the previous mortgage was due to end in July. It confirmed that on 1 August 2023 the interest rate would revert to its standard variable rate (SVR) of interest. Accord also told Mr and Mrs M what to do if they wanted to switch to a new interest rate product.

Mr and Mrs M questioned this as they believed the whole mortgage was covered by a product that ended in 2026. Accord explained that the mortgage had been altered and why, and confirmed the information they had been given about the rate expiring was correct. Mr and Mrs M remained unhappy and complained.

Accord responded to the complaint in a letter of 7 September 2023. It set out the mistake that had occurred and that the mortgage arrangement was corrected in September 2021 and the ERC was refunded. As such, Accord was satisfied it had done nothing wrong in this regard. However, it concluded that Mr and Mrs M had been given incorrect information at times in 2023 and the service they'd received was not what it should have been. Accord paid Mr and Mrs M £100 compensation for the upset and inconvenience they were caused.

Mr and Mrs M were not happy with Accord's response and the redress offered, so they referred their complaint to this Service. When they did, Accord reviewed the award it had made and informed us that it wanted to offer Mr and Mrs M a further £150, thereby increasing the amount of compensation to £250. We forwarded the revised offer to Mr and Mrs M, but they didn't accept it. They told us they were not aware changes had been made to the mortgage in September 2021.

The Investigator went on to consider the merits of the complaint. She concluded the mortgage was as it should have been, with the ported product ending in 2023. As for the poor communication and service in 2023, the Investigator was satisfied the compensation of £250 Accord had offered was sufficient in the circumstances.

Mr and Mrs M didn't accept the Investigator's conclusions and asked that the complaint be referred to an Ombudsman. They maintained the mortgage offer of June 2021 was a binding contract that they had accepted and so Accord should be made to retrospectively apply the 2.34% product to their entire mortgage from the point it was advanced until 2026.

The Investigator considered Mr and Mrs M's further submissions, but she was not persuaded to change her conclusions. She remained satisfied that Mr and Mrs M were in the position in 2023 they should always have been in, but for the 2021 application form error and Accord's mistake in not identifying that error immediately.

Mr and Mrs M continued to disagree with the Investigator and maintained that they had a contract with Accord that meant the 2.34% product should be attached to their entire mortgage until 2026. They said they did not ask for the mortgage to be corrected to the existing product being ported over to the new mortgage; they just asked for the ERC back. Mr and Mrs M said they would repay the ERC to Accord (less any additional interest they've paid since July 2023) in order for the 2.34% product to be attached to their mortgage until 2026. As agreement couldn't be reached, Mr and Mrs M again asked that the complaint be referred to an Ombudsman.

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.

Before I consider the merits of Mr and Mrs M's complaint, I would explain that our enabling legislation, the Financial Services and Markets Act 2000, provides at section 225 that we are required to resolve complaints "*quickly and with minimum formality*". We're impartial, and we don't take either side's instructions on how we investigate a complaint.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometimes mean reaching a different outcome from what might prevail in court. So while Mr and Mrs M consider this complaint should be looked at from a contractual law point of view, that is not the remit of the Financial Ombudsman Service. If they wish the complaint to be reviewed in this way, they may wish to take legal advice.

While Mr and Mrs M have complained about what happened to their mortgage in 2023, at the core of the complaint is the application they made in 2021, the resultant mortgage offer that was issued, and what happened after they contacted Accord about the ERC refund.

It is clear from the calls Mr M made to Accord in August and September 2021 that they knew the existing product was meant to have been ported to the new mortgage. I am also satisfied that at that time, that is what Mr and Mrs M wanted to have happened. Mr and Mrs M's broker then confirmed this is what should have happened. Accord looked into the matter and accepted that an error had been made by both the broker and it. It, therefore, altered the mortgage to put Mr and Mrs M in the position they would have been in had the error not occurred – the existing product ported and the new product being applied for only the additional lending.

When an error has been made by a financial business, we consider what position a consumer would have been in had the error not occurred. We will then award redress that would place the complainant in as close a financial position as possible to where they would otherwise have been in. I am satisfied that this is what Accord did for Mr and Mrs M in 2021 and I can't find it was wrong to do so. As such, Mr and Mrs M's mortgage rightly had two interest rate products attached to it, one of which expired in 2023.

Accord did nothing wrong in 2023 when it reminded Mr and Mrs M about the impending end of their product, or when that part of the mortgage reverted to SVR. I can't, based on the evidence, uphold this part of Mr and Mrs M's complaint.

However, Accord has accepted it made mistakes in what it told Mr and Mrs M when they raised concerns. It has also accepted they didn't receive an appropriate level of service in 2023. I have considered the events and I must agree with Accord that the service it provided Mr and Mrs M was lacking. I am satisfied Mr and Mrs M's expectations would have been raised and they would have experienced frustration and inconvenience because of these issues. Accord has offered Mr and Mrs M £250 compensation in this regard. Given what happened and the timescales involved, I am satisfied this is an appropriate and proportionate sum.

My final decision

Accord Mortgages Limited has already offered Mr and Mrs M a total of £250 compensation to settle the complaint and I am satisfied this offer is fair in all the circumstances. As such, my final decision is that Accord Mortgages Limited should pay Mr and Mrs M £150 (having already paid £100) in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 17 May 2024.

Derry Baxter
Ombudsman