

## **The complaint**

Ms S and Mr H complain that Accord Mortgages Limited (“Accord”) withdrew their mortgage offer and because of this, they have lost out financially.

## **What happened**

Ms S and Mr H applied for a buy to let (BTL) mortgage in December 2020. This BTL mortgage was for their current flat that they lived in, as their intentions were to let that out, and purchase another property to live in. Following on from the application, Accord instructed a surveyor to value the property. A valuation was carried out on 16 December 2020 and Accord then issued a mortgage offer to Ms S and Mr H in January 2021 – which was valid for six months.

Ms S and Mr H then applied for a residential mortgage with Accord for a property which was in the same building as where they were currently living. They said they wanted to move to this property as it was bigger and would have been better for them. A valuation was carried out on 20 January 2021. This time the surveyor asked for an EWS1 form to be completed because of a concern that the flat Ms S and Mr H wanted to buy might be affected by combustible cladding.

The building owner had already commissioned a fire safety expert to produce an EWS1. So a copy was available. The EWS1 form rated the building as A3 – meaning that there was external cladding, it was unlikely to be combustible, but there may be remediation costs.

The broker who arranged the mortgage, sent the EWS1 to Accord but because of the rating on the EWS1 form, Accord declined the application for the residential mortgage. Accord then revisited the offer it had made on the BTL property and withdrew it.

Ms S and Mr H didn’t understand why Accord issued a mortgage offer on the BTL property but not the residential one they wanted to purchase so they complained to Accord.

Accord sent their final response on the matter on 18 May 2021. They explained that that they had discussed both valuations and the content of the EWS1 with the surveyor. The surveyor said that when he first visited the property there had been scaffolding in place for some time and work was being done. But at the time of the residential valuation, the scaffolding was being removed. So he assumed that any necessary remediation work had been completed. He said he had also been told by Mr H that the cladding had been removed. He said that on that basis he had not asked to see the EWS1. He said that he now accepted that not asking to see the EWS1 was an oversight but was based on what he understood at the time.

Accord explained this to Ms S and Mr H but they remained unhappy with what Accord said so they brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators.

Our investigator upheld the complaint and said that Ms S and Mr H only applied for a residential mortgage after they received the mortgage offer from Accord for the BTL property. Our investigator said that had the surveyor requested an EWS1 form for the BTL property, that Accord would not have issued a mortgage offer. She said that Ms S and Mr H said they paid certain fees in reliance on the offer and lost out on the chance to use the stamp duty holiday.

The investigator explained that in order to put things right, Ms S and Mr H should provide Accord with evidence of the costs they have incurred which might include solicitor, survey and broker fees and that Accord should refund these along with 8% simple interest. She also thought that Accord should pay Ms S and Mr H £250 for the trouble and upset they have been caused.

Accord disagreed with this outcome. They made the following comments:

- Both valuation reports were conducted by independent, professional third parties on behalf of Accord. Accord didn't carry out the surveys so any concerns should be raised with the surveyor
- Ms S and Mr H were already living in the block before they applied for a BTL mortgage (and later a residential mortgage) so Accord believe Ms S and Mr H should have been reasonably aware of the cladding issue
- They cannot comment on what was discussed between the surveyor and Mr H however it seems that Mr H informed the Financial Ombudsman Service that he was fully aware that the block had an A3 rating before they applied for a BTL mortgage. They believe that Ms S and Mr H chose to take the risk by applying for both mortgages
- Accord relied on the professional expertise of the surveyors so cannot agree they have done anything wrong. They said it appears that Mr H seemed knowledgeable about the work that was undertaken, and the surveyor clearly believed requesting an EWS1 form was unnecessarily

As Accord disagreed, they asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

### **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.

When a lender considers a mortgage application, they need to be confident that the property is worth enough, and otherwise good security with acceptable risk, before they agree to lend money.

In order to satisfy themselves of that, a lender would engage with an independent surveyor which is what Accord did in this case.

Ms S and Mr H applied for a BTL mortgage in December 2020 and it was their intention to let that property out and purchase another property to live in. Accord instructed a professional surveyor to carry out a valuation. I have looked at the valuation report which was carried out on 16 December 2020. There are two reports for this property which have the same date but one of them says it's an amended version – but it's not clear when or why it was amended. However, both reports make it clear that there was cladding on the building and the walls were of a non-standard construction. Once Accord received this valuation, a mortgage offer was issued to Ms S and Mr H.

Ms S and Mr H then applied to purchase another property in the same block that they were currently living in. A valuation was carried out on the new residential property and the valuation also said that the main walls were not made of standard construction. It specifically said that they were reinforced concrete frame with cladding. The surveyor asked for the building owner or its agent to provide an EWS1 form.

The broker dealing with the mortgage application sent Accord the EWS1 form and the EWS1 gave a rating of A3, which meant the external wall materials were unlikely to support combustion and there may be potential costs of remedial works to the attachments. Because

of this, Accord declined the mortgage application and withdrew the offer on the BTL property.

Ms S and Mr H were unhappy about this and couldn't understand why their residential application had been declined when they had already received a mortgage offer for the BTL property which was in the same block.

Accord raised this with the surveyor who in summary said he did recall the property in question and remembers there had been scaffolding outside for quite some time. But on the day of inspection for the valuation for the BTL mortgage, the scaffolding was being removed.

The surveyor said *'the need for an EWS1 did not escape me and I spoke to the applicant about the property and what work was being undertaken to the building. The applicant advised that works had been undertaken to remove dangerous cladding'*. The surveyor went on to say that he didn't ask for an EWS1 due to the comments made by the applicant and he could also see that the scaffolding had been removed, which led him to believe that works had been completed. He also said he now accepted not asking to see an EWS1 was "an oversight", based on the conversations and his inspection at the time.

Mr H disputes that he told the surveyor this. He said he told the surveyor that he already had an EWS1 form and that the building had been given an A3 rating, but the surveyor told him it wouldn't be a problem. Accord went back to the surveyor who said he was told by Mr H that the building had its cladding replaced and the presence of only a limited amount of scaffolding to the lower 6-8 storeys appeared to support what he had been told by Mr H. So the surveyor said based on what he had been told he didn't ask for an EWS1.

I accept that Accord were not present when these discussions were taking place. And the surveyor was not a member of Accord's staff, but an independent professional. But it's clear here that the surveyor ought to have asked to see an EWS1, and now accepts that not doing so was "an oversight" because he relied on what he had been told by Mr H and on the removal of scaffolding, rather than following the standard process of requesting an EWS1. I also accept that Accord relied on what the surveyor told them when making the lending decision.

However, Ms S and Mr H applied to Accord for a mortgage and Accord instructed a surveyor to value the property. The purpose of the valuation is to decide the property's value and whether it is acceptable security for a mortgage. And in general, it's reasonable for a lender to rely on the professional opinion of a qualified third party it instructs to make that assessment. However, in this particular case, the surveyor himself now accepts that his initial valuation was incorrect because he didn't follow the correct process for buildings of this type.

In instructing the surveyor, Accord was asking a qualified person to carry out that part of its lending assessment. It delegated that to the surveyor – who was acting as its agent. In cases where there's reasonable disagreement about the surveyor's professional opinion, it's reasonable for Accord to rely on the judgement of its own professional adviser. But that's not the case here. In the particular circumstances of this individual case, the surveyor accepts that a mistake was made in the valuation which led Accord to issue an offer it should not have offered. I'm satisfied it's fair and reasonable to say that Accord is responsible for the mistakes of its agent.

This led Accord to issue an offer that – had the valuation been carried out correctly – it would not have issued. And in turn Ms S and Mr H took steps, and incurred costs, relying on the mortgage offer. Had the mistake never been made, and the valuation carried out correctly, I think the outcome would have been the same as with the later residential application. No mortgage offer would ever have been issued, and Ms S and Mr H would not have incurred costs relying on it. I'm therefore satisfied that it's fair and reasonable for Accord to refund those costs.

I note the arguments that Accord have made in that they believe Mr H was knowledgeable about the work undertaken and that Ms S and Mr H should have been aware of the risks associated with purchasing a property in that particular block. Mr H may have had some knowledge surrounding the block. However, it was not his role to value the property, he does not have the expertise to do so, and he was entitled to rely on Accord only issuing a mortgage offer where it is satisfied its lending criteria are met (criteria Mr H would not have known).

I don't think that Ms S and Mr H would have applied for a residential mortgage had Accord declined the BTL application. We asked Ms S and Mr H for evidence and information on the fees they have paid but they have been unable to provide us with anything. We then asked Accord to send us any evidence of fees that were paid by Ms S and Mr H. Accord sent us a breakdown of fees that were paid and unpaid. The only fee that has been paid is the valuation fee of £530 which was paid in January 2021.

Ms S and Mr H may have paid other fees but after several requests for this information, they have not provided us with any further details of any fees paid.

I also note that Ms S and Mr H have told us that because of this mistake, they have lost out on the chance to utilise the stamp duty holiday. However, I have seen email discussions between Mr H and his broker which confirm that Mr H needs to get the cladding issues sorted out on their property before he can do anything else – and he thinks the work would have been completed around June 2022. I'm therefore not persuaded that Ms S and Mr H would have been able to take advantage of the stamp duty holiday because they wouldn't have been able to sell or remortgage their property until the works were carried out. Had things gone as they should, Ms S and Mr H would not have been offered either mortgage – and still would not have been able to use the stamp duty holiday window.

However, I do think that Accord should reimburse Ms S and Mr H for the second valuation fee they have had to pay for the unnecessary residential application.

I also think that Accord should pay Ms S and Mr H £250 for the trouble and upset this has caused them. I understand from what Ms S and Mr H have told us that this had a significant impact on them, and it caused them a lot of stress and worry.

## **My final decision**

For the reasons given above, I uphold this complaint and direct Accord Mortgages Limited to:

- Refund the valuation fee of £530 that was paid by Ms S and Mr H along with 8% simple interest from the date the valuation fee was paid until date of settlement
- Pay Ms S and Mr H £250 for the trouble and upset caused, if this hasn't already been paid

If Accord Mortgages Limited deducts tax from any interest it pays to Ms S and Mr H as above, they should provide Ms S and Mr H with a tax deduction certificate, so they can reclaim the tax from the tax authorities if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D and Mr G to accept or reject my decision before 28 July 2022.

Maria Drury  
**Ombudsman**