DRN-4191687

Financial Ombudsman Service

The complaint

Ms T has complained about the service she received when she wanted to arrange a new preferential interest rate on her mortgage she holds with Accord Mortgages Limited. Ms T has said, in summary:

- More competitive interest rates were available to other people who were not mortgage prisoners.
- The original rate she was offered was unfairly withdrawn on affordability grounds.
- Mortgage prisoners are not meant to be assessed on current standard affordability criteria as outlined in the mortgage handbook because they are trapped with that lender.
- Accord was only offering one mortgage that was around the monthly payment she was requesting but that needed an upfront payment of £1,495.
- When she tried to get a better mortgage rate through a broker it was blocked by Accord.

What happened

I won't set out the full background to this complaint as it is extensive and goes back many years, but I can confirm that I have read and understood everything that has been said and provided.

Ms T has held a mortgage with Accord since 2006. She originally borrowed around £185,000 on an interest-only basis over a ten-year term.

Following a previous complaint made to the Financial Ombudsman Service, in 2015 Accord extended the mortgage by four months to allow Ms T to take a new two-year fixed rate of 2.79% to run from March 2015 until 31 May 2017.

In March 2017 Accord agreed to extend the term to run until 2028 and then, from June 2017, a new fixed rate of 2.24% was put in place to run until 31 August 2022.

In June 2022 Ms T contacted Accord to discuss what new rates would be available to her when her current fixed rate ended. In a call on 15 June she was told the best five year fixed rate was 3.08%, which would result in her payments increasing by about £100 a month. Ms T indicated that was too high.

A further call took place on 22 June and Ms T was provided with illustrations for three different interest rate products. Further illustrations were issued on 27 June.

The illustrations that were issued were:

- 22 June - 2.79% fixed until 30 September 2027 with a £1,495 product fee
- 22 June - 2.87% fixed until 30 September 2024 with a £995 product fee

- 22 June – 3.24% fixed until 30 September 2025 with no product fee
- 27 June – 3.08% fixed until 30 September 2027 with no product fee
- 27 June – 3.14% fixed until 30 September 2024 with no product fee

Ms T spoke to the adviser again on 5 July and then on 12 July Ms T said she'd found cheaper deals with Accord through a mortgage broker, and she was told the rates through a broker would be the same as with Accord direct. Ms T said she'd contact her broker to discuss matters.

On 1 September Ms T's mortgage reverted to the standard variable rate ("SVR"), and despite the contractual monthly payment ("CMP") increasing, Ms T has continued to pay £380 a month (which is the amount she'd been paying since the end of 2020).

In the meantime Ms T had raised a complaint with Accord at the end of July. Accord didn't uphold the complaint and so Ms T referred the matter to our service.

Our Investigator said that he felt there was a misunderstanding in the original call as Ms T has said she was trying to negotiate on the rate offered but the call handler took that as Ms T saying she couldn't afford the higher rate. He felt Ms T was saying the higher payment would make things harder, not that it made it unaffordable, although he understood why Accord had taken it that way. He said he couldn't uphold the broker part of the complaint as the broker hadn't replied to his requests for information. Overall he felt £150 compensation was fair for the misunderstanding which led to a delay.

After our Investigator had issued his findings Ms T's broker replied. The broker said he didn't know what the problem was, but he wasn't able to secure any rates for Ms T with Accord. Our Investigator asked Accord about that, and it confirmed that the broker would have needed to contact Accord so it could 'end' the direct advice process that was ongoing due to it providing illustrations to Ms T. Once that was done the broker could have provided his own illustrations. Accord said it didn't receive any query from the broker, or any request for the rates to be made available to him.

Our Investigator explained that to Ms T and asked if she wanted to accept the £150 compensation. Ms T didn't agree with his findings and so the case was passed to me to decide.

Ms T said she wanted to speak to me before I made my decision, and following some correspondence on that I wrote to Ms T explaining why I didn't need a hearing to decide this complaint. I gave her the opportunity to make any verbal submissions and, as the deadline for that has now passed without anything further being received I'm now issuing this decision as the final stage of our process.

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.

I trust Ms T won't take it as a discourtesy that I've condensed her complaint in the way that I have. Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

This service is impartial between, and independent from, consumers and businesses. What this means is that we don’t represent either party, and I don’t act under either’s instructions or take directions on how a complaint will be looked at. For that reason, I won’t be answering Ms T’s questions nor will I be ordering Accord to do so.

I’ve listened to the calls very carefully and having done so I agree with the findings our Investigator reached.

Ms T has said that in the first call on 15 June she was just trying to negotiate for a lower interest rate product, but I can understand why the Accord call handler had concerns about the affordability of the new rate as Ms T said it would make things really difficult, and when asked if it was unaffordable she said it was really, but she could work more hours. Having considered everything I don’t think the call handler was unreasonable in having concerns about whether the new rate would be affordable and sustainable for Ms T, albeit it could have been handled better.

I understand Ms T’s confusion that Accord said it couldn’t recommend the new rate if it was unaffordable, but that instead her mortgage would move to the SVR which was higher. But under the rules of mortgage regulation Accord shouldn’t put in place a new interest rate product that Ms T couldn’t afford, even if the alternative was even more expensive. Whilst, under the rules, Accord didn’t have to carry out an affordability assessment, here Ms T directly said she would struggle to afford it and Accord couldn’t just ignore that. The SVR formed part of Ms T’s existing contract, so Accord wouldn’t be amending the contract to something unaffordable when the mortgage moved to the SVR, whereas a new interest rate product would be a contract variation and therefore Accord shouldn’t do it if it is unaffordable, especially as it would be locking Ms T in for a number of years as otherwise she would incur an early repayment charge.

All that said, that all falls away as there was a further conversation a week later with a different call handler and at that time exactly the same rate (3.08%) as had been discussed in that first call was still available, so Ms T wasn’t disadvantaged by what happened in the 15 June conversations. In fact, an illustration was issued to Ms T for that 3.08% rate on 27 June.

In the follow up call rates were discussed, and Ms T said she didn’t want to pay a high product fee. The adviser sent Ms T some illustrations and they arranged a further appointment for the following week. The following week some more illustrations were issued (including one for the 3.08% rate). The rates had changed that day, but the call handler decided to honour the rates from the week before.

I’ve looked at the illustrations that were issued along with Accord’s products that were available at the time to existing customers and I’m satisfied they are correct. Whilst Ms T has said that better rates were available through a broker that’s not the case as Accord offered exactly the same rates through brokers as it did for its direct applications.

The screenshots Ms T has provided aren’t for existing customers taking a new interest rate product, they’re instead for people moving home which is a different product range and one that Ms T (or any other existing customer wanting a new rate) wasn’t eligible for.

There’s no record of Ms T’s mortgage broker contacting Accord to ask why he was unable to produce any illustrations, and had he done so I’ve no reason to believe Accord wouldn’t have ended its process which would have allowed him to produce his own illustrations. However, even if that had happened, as I’ve explained, it wouldn’t have made a difference here as he only had access to exactly the same rates that the Accord mortgage advisers had already discussed with Ms T.

Ms T said to our investigator *"The outcome I feel would be most fair, appropriately applying the transitional arrangements and in supporting my best interests is that Accord are requested to put my mortgage on one of their competitive interest rates that were being offered in June 2022 – dated to start from September 2022 onwards."* But that is exactly what Accord was trying to do in June and July 2022. The rates that Accord discussed with Ms T (and sent her illustrations for) were its most competitive interest rates that were being offered to existing customers who wanted a new interest rate product.

Ms T has said *"I am aware that there are UK Mortgage Rules that do say mortgage prisoners are not to be treated unfairly and especially with higher interest rates than those who are not trapped with their existing lender."* By that I believe Ms T is referring to evidential provision 11.8.1 in the Mortgages and Home Finance: Conduct of Business Sourcebook; commonly known as MCOB 11.8.1E.

The full provision says:

"*Where a customer is unable to:*

(1) enter into a new regulated mortgage contract or home purchase plan or vary the terms of an existing regulated mortgage contract or home purchase plan with the existing mortgage lender or home purchase provider; or

(2) enter into a new regulated mortgage contract or home purchase plan with a new mortgage lender or home purchase provider;

the existing mortgage lender or home purchase provider should not (for example, by offering less favourable interest rates or other terms) take advantage of the customer's situation or treat the customer any less favourably than it would treat other customers with similar characteristics. To do so may be relied on as tending to show contravention of Principle 6 (Customers' interests)."

Principle 6 is one of the regulator's overarching principles; it requires firms to pay due regard to their customers' interests and treat them fairly.

What this means, then, is that it may be unfair (though in some circumstances it may not) for a lender to treat a customer less favourably – including by offering less favourable interest rates – than it would treat other customers with similar characteristics. Though this only applies if the customer is either 1) unable to vary or replace their mortgage with their existing lender, or 2) unable to move to another lender.

From this we can see this provision isn't applicable here because Ms T wasn't *"unable to* […] *vary the terms of an existing regulated mortgage contract* […] *with the existing mortgage lender*…" as the new interest rates Accord offered would be considered a variation of that existing contract. The fact Ms T didn't like the rates on offer isn't the same as her being unable to get a new rate with Accord.

It may be Ms T is referring to MCOB 11.7.4G:

"In accordance with its obligation under Principle 6 to treat its customers fairly, a firm should not treat a customer with whom it enters into or varies a regulated mortgage contract or home purchase plan pursuant to this section 11.7 less favourably than it would treat other customers with similar characteristics, for example by offering less favourable interest rates or other terms."

In common with most active mortgage lenders Accord makes new fixed and variable interest rate products available to some customers who would otherwise move onto the SVR. Not all products will be available to all customers – lenders will set criteria to determine who is eligible for which products. These may include factors like the loan to value, the length of the remaining term of the mortgage, and whether the application is a remortgage, house purchase or rate switch.

Accord offers different products to different groups of customers. It wants to attract new customers, so it reserves its most attractive rates for them. It is a commercial organisation, ultimately dependent for its survival on its ability to attract and retain customers. In common with any other business, it sets the prices it charges based on various factors – including its costs, but also including the emphasis it wants to place on attracting and retaining different types of customers.

The rules of mortgage regulation require lenders to treat their customers fairly. But within that there's a broad commercial discretion available in how they run their businesses – and set their prices. There's nothing in the rules that state Accord must offer the same rates to new customers as it does to existing customers.

As I've set out above MCOB says that a lender shouldn't treat a customer differently from other customers with similar characteristics. But Ms T hasn't been treated differently to other customers with similar characteristics. She's been offered the same rate that's available to all other customers with similar characteristics – including loan to value, and including the fact that she's not new to Accord and not applying to move to another property now.

Accord is required to treat its customers fairly. But treating each customer fairly doesn't mean it must treat all customers the same. It is, in my view, fair and reasonable for it to set different preferential interest rate products to attract and retain particular groups of customers. I don't think it has treated Ms T unfairly.

I do understand why Ms T wanted a lower rate than Accord was offering. But Accord wasn't obliged to offer Ms T a bespoke rate outside of its normal existing customer range. Whilst the available rates were higher than the headline best buy rates in the market for customers moving house, they were within a reasonable range of rates on offer generally for existing customers.

Ms T's mortgage was already held on an interest only basis, and Accord went through the various rates it had available. There wasn't an option for a payment in the region of £380 a month, with the lowest coming in at around £450 a month, but that had a £1,495 product fee. To obtain a rate without a product fee the monthly payment would have been around £500. There is nothing Accord could do about that as those were the rates it had available, and if Ms T didn't want any of those then her mortgage would revert to the SVR.

Finally, Ms T has said:

> *"I haven't been able to keep up with payments of £761 - £1196 because I really can't afford those amounts as detailed above. I could as has been said repeatedly afford £480. However I believe those 'arrears' are wrong and unfair. Therefore should be cancelled. I expected and request specifically that the financial Ombudsman advise Accord to revert to a fair and reasonable rate from August 2022 which will remove those arrears and make the monthly payments affordable for me."*

Unfortunately, that isn't something I'm able to order Accord to do. I can only order Accord to do something to put things right if I'm first satisfied it did something wrong. Accord offered Ms T the correct rates in June/July 2022 and she chose not to accept them despite Accord telling her they were the correct rates for existing customers, and exactly the same rates would be available through a mortgage broker.

Having considered all the evidence very carefully I'm satisfied that the rates that were discussed with Ms T in the phone calls were the best rates that Accord was able to offer her, and the rates would have been the same whether she applied directly or through a mortgage broker.

All that said, I do agree with our Investigator that some compensation is fair due to the confusion in the 15 June conversations as I think Accord could have done more at that time to truly get to the heart of Ms T's concerns. And for that I also agree with our Investigator that £150 is fair compensation.

My final decision

I uphold this complaint in part, but only insofar as I order Accord Mortgages Limited to pay £150 compensation to Ms T.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 18 December 2023.
Julia Meadows
Ombudsman