

The complaint

Mr T complains that a payment deferral was applied, during the pandemic, to a mortgage with Accord Mortgages Limited that he holds jointly with another person. Mr T said this was done against his clearly expressed wishes, and he thought that was wrong.

What happened

Mr T is named on a joint mortgage with his former partner. Mr T separated from this person some time ago, he no longer lives in the property, and says he has no interest in it. Mr T would like to come off this mortgage, but tells us he hasn't yet been able to achieve this.

Mr T said that in March 2020 his former partner got in touch with him to ask if he would agree to a payment deferral on the mortgage, under the special arrangements put in place during the pandemic. Mr T said that would put him further into debt on the property, so he refused, in writing, and also contacted Accord to put on record that he didn't want a payment deferral to be granted. But Mr T said Accord then granted the deferral anyway.

Mr T feels strongly that Accord should not have sanctioned a payment deferral on the mortgage, when he had specifically requested that this not happen. He felt his rights as a joint mortgage holder were being ignored.

Accord said it could see Mr T had called it towards the end of March 2020 (not April, as it had said in its letter to Mr T) to say he didn't want a payment deferral on this mortgage account and he didn't want Accord to allow such a payment deferral without his consent. But it said it did then agree a deferral in mid-May. Accord said it did this in accordance with the relevant guidelines in 2020, which suggested that either account holder could request a payment deferral.

Accord said it had done what was best to avoid the mortgage falling into arrears. It didn't think it had made a mistake. It said it would now ensure that Mr T was notified before any product transfer or payment deferral.

Our investigator didn't think this complaint should be upheld. He said both parties remained jointly and severally liable for the debt; and that remains the position until the mortgage is redeemed, or a transfer is made into a sole name. Our investigator thought that, whilst it was appropriate for Accord to consider the joint borrowers' individual circumstances in this difficult situation, it also needed to consider what is in the best interest of the mortgage account to ensure the monthly payments were made on time.

Our investigator said the Coronavirus pandemic was an unprecedented event that required government and regulator intervention to support borrowers who may be in financial difficulties with their lending. He said the action Accord took had kept the mortgage out of arrears, and based on the circumstances that Mr T's former partner was then in (which he couldn't share) our investigator didn't think Accord had made a mistake by granting this payment deferral.

Mr T said he completely disagreed. He said that on a joint mortgage, it was fundamentally wrong that the wishes of one party should override the clearly expressed wishes of the other party. He wanted to know why the needs and wishes of his former partner should be prioritised over his. Mr T said this payment deferral had placed him further into debt with someone that he no longer had any relationship with. Mr T said this was impacting on his ability to buy a house, which he wasn't able to do while he remained on this mortgage.

Mr T then sent us a previous decision of our service. He said that was almost exactly the same as his, and there we'd awarded £300. Mr T said that set a precedent that he thought should be mirrored in his case.

Our investigator didn't think the case was the same, and said he hadn't changed his mind. He still thought Accord had acted in the best interests of the mortgage account. Mr T replied to outline what he understood to be his former partner's current circumstances, and to stress the unfairness of the overall situation. Mr T wanted his complaint to be considered by an ombudsman, so it was passed to me for a final 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.

I've reached the same overall conclusion on this complaint as our investigator.

Our investigator has already explained to Mr T that the action our service can take on this complaint is limited. We have Mr T's permission to consider this complaint, but not the permission of his former partner. So we're not able to take action which could disadvantage her. We're also not able to share with Mr T, any details of his former partner's position, or the details of the conversations she has had with the mortgage provider.

I must decide whether, within these constraints, I'm able to fairly decide this decision. If not, our service would have to think about whether to dismiss Mr T's complaint without considering it. However, I do think I am able to do so. That's because, in this case, I don't think that Accord has done anything wrong.

Mr T has pointed to a previous decision of our service, in which multiple changes were made to a joint mortgage, against the wishes of one party. Mr T says that provides a precedent, that must be followed here. I should note firstly that our service doesn't operate a system of binding precedent. Rather, we determine complaints by reference to what we consider to be fair and reasonable in the particular circumstances of each individual complaint. And secondly, the case behind that decision doesn't appear to me to be quite as similar as Mr T suggested, to the complaint Mr T has asked us to consider now.

Here, Mr T was aware that his former partner wanted a payment deferral, under the special rules put in place during the pandemic. He had registered his objection to this with Accord. So it isn't the case that either Mr T didn't know about his former partner's request, or that Accord wasn't aware of the position of both parties to the mortgage. I should also note that it doesn't appear Mr T had ever suggested he would pay the mortgage himself.

So, in circumstances where Mr T's former partner had requested a deferral (for reasons I won't set out here) and Mr T had already lodged an objection to that but made no offer to pay the mortgage instead, Accord had to weigh up what to do.

I don't think Accord has simply chosen to action the preference of one party over the other here. Rather, it decided the best thing to do overall was to apply the payment deferral. And I understand it notified Mr T that this had been done (so he could, if he had wished to, have made payments himself). I don't think it was either unfair or unreasonable for Accord to have reached that decision.

Mr T says this wasn't in his interest, as it's just extended a debt that he no longer wants to be party to. However, if Accord hadn't taken this step, and the monthly payments were not made, then the debt wouldn't be any smaller, and Mr T would also have mortgage arrears on his credit file.

I know Mr T told us he cannot get mortgage lending at the moment, because his name is still on this mortgage. But mortgage arrears on his credit file would also affect any other application for credit Mr T might make, and it can affect the chances of renting a new home. I also note Mr T has told Accord that he's considering legal action to enforce a consent order, which he says requires his former partner to take him off the mortgage. If Mr T is successful in that action, his subsequent position for any future mortgage application will also be greatly improved because this mortgage did not record arrears at this time.

I know that Mr T will be very disappointed by my decision, but I don't think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 May 2024.

Esther Absalom-Gough

Ombudsman