Financial Ombudsman Service

The complaint

Mr and Mrs S complain that Accord Mortgages Limited (trading as Accord Mortgages) won't agree to extend the term of their mortgage that has reached its expiry.

What happened

In 2008 Mr and Mrs S obtained a mortgage with Accord through a broker. They borrowed £163,000 over 15 years on interest only terms. They agreed to a fixed interest rate of 7.70% until 31 January 2010. Their mortgage would revert to Accord's standard variable rate (SVR) thereafter.

Sadly, soon after taking the mortgage Mr S started to experience some health problems. He ended up taking early retirement due to ill health. Mrs S gave up work to become a full-time carer for Mr S and their eldest son who has special needs.

Mr and Mrs S' income was impacted, and their mortgage account fell into arrears. Accord regularly assessed Mr and Mrs S' affordability and several short-term arrangements were agreed to help them get their mortgage back on track. On occasions the set plans were broken and in 2014 Accord was considering taking legal action to seek possession of the property. That didn't go ahead.

Mr and Mrs S' circumstances didn't improve, and they continued to experience difficulties paying their mortgage. In mid-2016 they stopped engaging meaningfully with Accord. In mid-2017 Accord sent field agents to the property as a way of reaching Mr and Mrs S to assess their circumstances.

Matters remained unresolved and the account remained in arrears until 2018. At that time Mr and Mrs S had their mis-sale complaint against the broker that sold the mortgage upheld by the Financial Services Compensation Scheme (FSCS). Soon after, from around April 2018 Mr and Mrs S started to make lump sum payments to clear the arrears on their mortgage and they've managed to reduce their overall balance by around £20,000.

After clearing their arrears, Mr and Mrs S started exploring options to make their mortgage more affordable. This included (i) extending the term of their interest only mortgage (ii) switching their mortgage to repayment and extending the term and (iii) obtaining a new lower interest rate.

Accord didn't agree to extend Mr and Mrs S' interest only mortgage on the basis that they said they had no intention of selling their home and they had no other way to repay the capital due at the end of the term. So it was not in their best interest to agree a term extension on these grounds.

Accord assessed the affordability of a repayment mortgage. To make the payments affordable Mr and Mrs S would need to extend the term of their mortgage to 23 years – taking Mr S to the age of 93 – which is outside its lending criteria. Accord looked at possibly transferring the mortgage into Mrs S' sole name due to her being of a lower age – but she didn't meet the affordability criteria. So accord didn't agree to extend the term of Mr and

Mrs S' mortgage on repayment terms either.

Mr and Mrs S wanted a lower interest rate in 2018. Accord said that it could not agree to a new interest rate because Mr and Mrs S didn't meet the criteria due to recent arrears on the account. They were told to maintain their payments for a total of 24 months to qualify for a new interest rate.

In 2020, Accord did agree to provide Mr and Mrs S with a lower interest rate. Because they had 2 years and 5 months remaining on their mortgage term, the longest they could fix their interest rate for was two years. They switched their mortgage to an interest rate of 1.50%. It was agreed that Mr and Mrs S would continue to overpay an amount they felt comfortable with to help reduce the capital. Accord suggested they receive independent financial advice.

In January 2023 Mr and Mrs S complained to Accord about their inability to extend the term of their mortgage. Accord didn't uphold their complaint, so Mr and Mrs S brought their complaint to the Financial Ombudsman Service. Mr and Mrs S' Mortgage came to an end on 24 February 2023. Accord has agreed to pause legal action pending the outcome of this complaint.

An investigator at our service looked into things and didn't recommend that this complaint should be upheld. She didn't think that Accord had unfairly refused a term extension or that it treated Mr and Mrs S unfairly during their period of financial difficulty. Mr and Mrs S disagreed and asked for their case to be decided by 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.

Having done so, I don't think this complaint should be upheld. I realise this will be disappointing for Mr and Mrs S. But I hope the reasons I have set out below will help them to understand why I have come to this conclusion.

The starting point here is that when Mr and Mrs S borrowed money from Accord, they agreed to repay the outstanding capital at the end of the term. So, it's not unreasonable for Accord to expect the loan to be repaid as agreed.

Accord is under no obligation to automatically agree a term extension. That said, it must give fair and reasonable consideration to a request to extend the term. This includes an assessment of Mr and Mrs S' circumstances and establishing a suitable plan to repay the outstanding capital.

In 2018, after clearing their arrears, Mr and Mrs S started exploring options to make their mortgage more affordable. Over the years Accord has carried out several interviews to assess their circumstances – to explore possible suitable solutions.

For Accord to consider a term extension on interest only terms, it would need evidence of a clear, credible and non-speculative strategy capable of repaying the capital at the end of any agreed term extension. Mr and Mrs S have no guaranteed way of repaying the outstanding capital due on their mortgage.

Mr and Mrs S said they would explore taking an equity release mortgage, but they could only do that when Mrs S turned 55 years old, to qualify for this type of lending. But that was some years away. And because it was difficult to say for certain that Mr and Mrs S would be able to borrow enough to repay the mortgage with Accord, so far ahead of time, I understand why

Accord didn't accept this as a credible and non-speculative strategy to repay the mortgage debt.

So, taking everything into account I can't say that Accord acted unreasonably by not agreeing to extend the term of Mr and Mrs S' mortgage on interest only terms.

The other option was to consider a term extension and a switch to capital repayment as a way of ensuring the capital is repaid at the end of the term. Accord considered this option several times but each time it looked into Mr and Mrs S' circumstances, this wasn't an affordable option for them.

Mrs and Mrs S were clear that a mortgage payment of around £850 a month was affordable for them moving forward. Their circumstances remained broadly the same over the period concerned – from 2018 onwards. Mr S' income consisted of a private and state pension and his Disability Living Allowance totalling around £1,628 per month. Mrs S' income was from carers' allowance of around £312 per month and working tax credits £400.

It was also noted that Mr and Mrs S' eldest son receives around £1,298 from Personal Independence Payment and Universal Credit. Accord has explained that it can't consider this income from Mr and Mrs S' son as he isn't a joint party to the mortgage. Accord also explained why it couldn't consider child benefit and tax credit payments as these payments stop on their youngest son's 18th birthday. I don't think Accord acted unfairly in the circumstances as it could only reasonably be expected to use income that was considered sustainable for the lifetime of the mortgage.

Accord's policy is that it doesn't lend beyond the age of 80. Mr S was soon approaching that age. So, a repayment mortgage in joint names was not affordable in the circumstances as Mr and Mrs S would not be able to maintain the payments to repay the capital amount of around £142,500 in so little time.

Accord considered whether it would be affordable to put the mortgage solely in Mrs S' name and extend the term over the maximum period until she turned the age of 80. But again, that was not affordable based on her income alone. I appreciate that as a household they receive more income, but as the mortgage would only be in Mrs S' name it's only her income that can be taken into account when assessing affordability for her mortgage. That said, Accord has confirmed that even after taking into account additional benefit income for their eldest son, the mortgage remains unaffordable in Mrs S' sole name.

So, when considering everything, I'm satisfied that Accord has treated Mr and Mrs S fairly. Accord has considered Mr and Mrs S' circumstances on several occasions as a way of helping to find a way of repaying their mortgage, but unfortunately none of the options proved affordable for them in the circumstances. I've not seen anything to suggest that Accord didn't properly consider the affordability of the mortgage. So overall, I don't think it unfairly rejected Mr and Mrs S' proposals.

Mr and Mrs S have also questioned why they weren't given a lower interest rate before 2020.

Until 2018 Mr and Mrs S' account was in arrears. They were largely paying Accord's SVR until then. In the circumstances I don't think it would have been appropriate for Accord to offer Mr and Mrs S a preferential rate that would likely tie them in with an early repayment charge (ERC). I say this because where there is a risk of legal action on the account and possible possession, having a mortgage product with an ERC attached could end up costing the customer more when repaying the mortgage.

In September 2018, after clearing the arrears, Mr and Mrs S asked for a new interest rate. Accord's policy for a credit repair mortgage of this kind says that *"customers can access a product transfer if they've had no missed payments/late payments on their account within the last 24 months and no more than £100 in arrears at offer and transfer"*. Accord didn't agree to offer Mr and Mrs S a new interest rate in 2018 because they didn't meet the criteria. Their account had seven missed payments in the last 24 months. So, I can't reasonably say that Accord acted unfairly in the circumstances by applying its policy at the time.

Mr and Mrs S were told that if they maintained their payments, they could apply for a new interest rate in 2020. Which they went on to do. In 2020, Accord did agree a new interest rate fixed at 1.50% for two-years until 31 January 2023. This reduced Mr and Mrs S' mortgage payments from around £700 to around £195. Mr and Mrs S were advised to continue making overpayments if they could afford it, as a way of reducing the capital during that time.

Since the expiry of this product Mr and Mrs S' mortgage has remained on the SVR. Because the term of their mortgage has ended, Accord is not obliged to offer a new interest rate.

So, to conclude I think Accord has treated Mr and Mrs S fairly during their period of financial difficulty. Accord has given fair and reasonable consideration to Mr and Mrs S' request for a term extension. It has explored all possible options but unfortunately none of the options prove affordable and so I can't reasonably expect it to extend the term of the mortgage – as its under no obligation to do so in these circumstances. And I'm satisfied that Mr and Mrs S were given a new interest rate at the appropriate time. I don't think Accord unfairly refused them a new interest rate before 2020 or that it is subsequently obliged to offer a new rate without a term extension being agreed.

That said, things have moved on a bit since Mr and Mrs S were last exploring their options for a term extension. Mrs S is now only less than a year away from turning 55, so there could be potential prospect of them obtaining an equity release loan soon.

Accord has said that if Mr and Mrs S are able to provide evidence from an equity release provider that shows they can obtain a future loan for the total amount needed to repay Accord, then it may consider a temporary extension to allow them time to apply and obtain the mortgage. If this is something Mr and Mrs S want to explore further, I suggest that they speak to an independent financial advisor again to explore possible options – as soon as reasonably possible.

I think that's fair and reasonable in the circumstances. Accord is willing to give any suitable proposal fair and reasonable consideration. But I must make it clear to Mr and Mrs S that there's no guarantee that Accord will accept the proposal, it really does depend on the nature of the proposal put forward and the outcome of Accord's review. Accord is also under no obligation to hold legal action in the meantime.

The outcome of any future review is not something that I'm able to consider now, as part of this decision. While I do fully empathise with Mr and Mrs S' circumstances, to date I don't find that Accord has done anything wrong and so I don't uphold this complaint.

Finally, Mr and Mrs S say that they are "mortgage prisoners". The Financial Conduct Authority (FCA) defines mortgage prisoners as borrowers who have mortgages in closed books with inactive firms. Mr and Mrs S are not in this category, because Accord is an active lender.

My final decision

My final decision is that I don’t uphold Mr and Mrs S’ complaint against Accord Mortgages Limited (trading as Accord Mortgages).

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S and Mrs S to accept or reject my decision before 12 March 2024.

Arazu Eid
Ombudsman