

## **The complaint**

This complaint is about a mortgage Mr M holds with Accord Mortgages Limited (AML). In essence, the complaint comprises two broad points; these are:

1. Mr M thinks that due to AML's administration of the mortgage, the total amount he's paid over the life of the mortgage so far is excessive, considering that he still owes; and
2. He's unhappy that AML hasn't done all it should to help him during an extended period of financial hardship.

## **What happened**

By way of a provisional decision dated 3 December 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat all the details here. Instead I'll give a brief summary and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Our investigator took the view that, due to the time limits in our rules, we could only consider events over limited periods; these were:

- since 2 November 2017 in respect of point one; and
- since 25 August 2016 in respect of point two.

On point one of the complaint, the investigator didn't think there was anything unfair with AML's administration of the mortgage generally. On point two, he thought AML had treated Mr M fairly up to December 2023. But he took the view that by 1 December 2023, Mr M had put together a payment record on the standard variable rate (SVR) that was long enough and stable enough to justify capitalising the arrears and inviting him to apply for a new interest rate product.

To resolve the complaint, the investigator said AML should retrospectively capitalise the arrears effective from 1 December 2023, and then invite Mr M to apply for a fixed rate deal from those that would have been available on the same date, to be applied retrospectively.

Mr M accepted the investigator's recommendation, but AML didn't, saying that the level of arrears on 1 December 2023 would have been too high for Mr M to be eligible for a new rate deal. The case has been referred to me to review.

## **What I've provisionally found – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work

within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First of all, although neither party had contested the time limits the investigator placed on our consideration of the complaint, we do review our jurisdiction to consider a complaint at every stage. Accordingly, albeit largely for completeness, I confirm that I agree with the investigator that our consideration of the complaint points should be confined to events since 2 November 2017 and 25 August 2016 respectively.

Similarly, neither party has disputed the investigator's findings on point one of the complaint. Nonetheless, I've reviewed the issue for my own purposes, and having done so, have reached broadly the same conclusion as the investigator. However, the redress I'm intending to award is slightly different, hence the provisional nature of this decision.

It's normal for the total amount paid over the life of a long-term debt such as a mortgage to exceed the amount borrowed by a considerable margin. Additionally, in Mr M's case, the ongoing arrears will have resulted in more interest being charged than would otherwise have been charged, along with fees and charges to offset the additional administrative cost of managing the arrears. The term has also been extended, which has a similar effect, as the underlying capital is repaid more slowly than originally anticipated.

As far as point two of the complaint is concerned, I agree that for the most part, AML has treated Mr M fairly during an extended period of financial hardship. Although long-standing, the arrears have never got out of control; albeit it's fair to say that for much of the time, Mr M was never quite on top of the situation. But he's hung in there, and by December 2023, had succeeded in putting together a payment record that warranted AML agreeing to capitalise the arrears.

AML hasn't disputed that in its request of the case to be reviewed by an ombudsman; I infer from that silence that AML agrees the arrears should have been capitalised on 1 December 2023. But if that's the case, it makes no sense for AML then to refuse to provide a new interest rate product on the grounds that the arrears exceeded the equivalent of one month's payment. Capitalising the arrears would have removed that barrier to eligibility."

I gave the parties two weeks to add anything further before I finalised my decision; both have done so. Mr M agreed with my proposed resolution, but AML did not. It provided duplicates of the contact history with Mr M and said, in summary that he had not met the requirements for capitalisation in December 2023. Although he had maintained the contractual monthly payment (CMP) in full for twelve months, he hadn't paid any extra to reduce the arrears. Capitalisation would increase the CMP and Mr M would need to demonstrate he is able to pay that.

## **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'm not persuaded to depart from my provisional decision. I accept that capitalisation, in isolation, will increase a borrower's CMP. But following it up with the application of a lower interest rate is likely to offset that increase and may even open up an opportunity for Mr M to have a monthly payment that is lower than that which he has already demonstrated he can afford.

## **My final decision**

My final decision is that I uphold this complaint, and in full and final settlement, direct Accord Mortgages Limited to do the following:

- re-work Mr M's mortgage account from 1 December 2023 to the eventual date of settlement, to reflect how it would look if the arrears had been capitalised in full on 1 December 2023; and
- allow Mr M to select an interest rate product from those that would have been available on 1 December 2023 and have it applied to the mortgage for the above re-work, and then pay redress comprising A+B where:
  - A. equals the differential interest Mr M has each month from 1 December 2023 up to the date of settlement by being on SVR instead of the new interest rate product; and
  - B. equals interest on each monthly differential amount identified in A, at 8% simple per annum\* from the date each amount was paid by Mr M to the eventual date of settlement.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 February 2025.

Jeff Parrington

**Ombudsman**