

The complaint

Mr and Mrs H complain that Accord Mortgages Limited unfairly demanded that a mortgage protection clause needed to be added to the lease of the mortgaged property, which delayed their mortgage drawdown. This put them in a difficult position that could have been avoided had Accord included this as a condition of the mortgage offer. Mr and Mrs H also complain about how their complaint was handled by Accord.

What happened

Mr and Mrs H applied through their broker for a buy to let mortgage with Accord on or around 11 January 2024. This was to repay an existing buy to let mortgage and provide them with additional funds, which would assist in the purchase of another property. Accord sent a mortgage offer to Mr and Mrs H on 30 January 2024. This was for an unregulated buy to let mortgage with borrowing of £336,995 (inclusive of a product fee) on an interest only basis, with a 15 year term.

A copy of this mortgage offer was sent to the appointed solicitors, who I'll refer to as "L". And, in the cover letter sent to Mr and Mrs H along with their offer it said:

"We'll be able to release the money to them [the solicitors] when:

- They've confirmed the above property has a clean legal bill of health/will be okay for us [Accord] to lend on..."

L wrote to Accord on 2 February 2024 to advise that the property lease didn't contain any mortgage protection clause. It went on to say, in summary, that this would mean the landlord wasn't obliged to give Accord prior notice if it wished to commence forfeiture proceedings. L also explained that Accord would receive notice of forfeiture proceedings in accordance with the Civil Procedure Rules – it said that this applies where the landlord is aware of Accord's interest in the property. And that Accord should consider the period of time it might take for the property title register to be updated with registration of its legal charge. Without the legal charge, the landlord would not be expected to be aware of Accord's interest. L asked Accord to confirm that it was willing to proceed.

Accord responded to L on 8 February 2024. It said that a mortgage protection clause is required and so a deed of variation (DOV) would be needed. A few days later Mr and Mrs H's broker asked Accord if an indemnity policy would be acceptable for now if L confirmed they were in pursuit of the DOV. However, Accord confirmed to the broker that it couldn't proceed with an indemnity policy and would need the DOV before completion. It said this is a legal issue and can be found in Accord's "CML handbook" for solicitors. It said it takes this stance to protect itself and its customers against risk.

The lease was later amended following a DOV to include the mortgage protection clause. This was at a cost of around £1,000 which Mr and Mrs H incurred. The mortgage completed on 8 July 2024.

Following this Mr and Mrs H complained to Accord about it demanding a change to the lease

of the mortgaged property and the cost they incurred as a result. They were also concerned that this requirement wasn't included as a condition of the mortgage offer. Accord responded to their complaint on 31 July 2024. It said, in summary, that after L confirmed the property lease didn't contain a mortgage protection clause it referred the matter to its legal team. Following this Accord confirmed that a DOV would be needed to amend the lease and that it takes this stance to protect itself and its customers against risk. Finally, Accord said this is a legal requirement and it was unable to proceed with the application without it. It didn't uphold the complaint.

Following this, correspondence continued between Mr H and Accord, during which Mr H also raised concerns about Accord's complaint handling process. Accord responded again to Mr and Mrs H's previous complaint and to their concerns about complaint handling, on 29 August 2024. Accord said its underwriting team wouldn't identify the terms of the property lease, and that it's a matter for legal representatives to confirm that the terms of any lease meet its policy. The lease needed to be amended and its decision around this remained unchanged. In terms of complaint handling, Accord agreed that some parts of the complaint handling journey hadn't been to the standard it strives for. It apologised for this and offered to pay Mr and Mrs H £75 to recognise any distress and inconvenience caused.

Mr and Mrs H remained disappointed with the outcome of their complaint and how Accord had handled it. So they asked the Financial Ombudsman Service to look into their complaint.

Our Investigator didn't recommend Mr and Mrs H's complaint should be upheld. He said that Mr and Mrs H's buy to let mortgage isn't regulated and this is set out in their mortgage offer. He concluded that Accord's requirement for a mortgage protection clause, or when it requested it, wasn't unfair or unreasonable. He also found that Accord's offer to compensate Mr and Mrs H for some issues during its handling of the complaint was a fair way to recognise the distress and inconvenience caused. Mr and Mrs H didn't accept that and asked for an Ombudsman to decide their complaint. So the case 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.

I'm sorry to hear about how these matters have made Mr and Mrs H feel and how they've impacted Mr H's mental health. However, having carefully considered their complaint, I find that I agree with the Investigator and for broadly the same reasons. I can see Mr and Mrs H feel strongly about their complaint and I appreciate this will likely come as a disappointment to them. I've set out the reasons for my decision below.

I note that Mr and Mrs H have referred to a number of rules and regulations when making their complaint. However, as the Investigator has explained, the mortgage they have is unregulated and this is set out within their mortgage offer. Mr and Mrs H, in their capacity as buy to let landlords, are also not consumers because they are running a business. So, their mortgage is not subject to the rules and regulations in place to protect consumers, such as mortgage regulation (known as MCOB) or the regulator's consumer duty principle. And that means I can't require Accord to follow those rules and regulations. I have, however, considered what is fair and reasonable in all the circumstances to decide if Accord has acted fairly or not.

The first question I've asked myself is: was it fair and reasonable for Accord to require a mortgage protection clause to be added to the lease? And I am satisfied it was. The acting solicitor, L, notified Accord that the lease on the mortgaged property didn't contain such a

clause and it pointed out the potential risks of that. Those risks are that if ground rent and/or service charges become due – or there is some other breach of the lease – the freeholder can forfeit the lease. What this means in practice is that the freeholder can go to court to take possession of the property. If the lease is forfeited, the property reverts to being owned by the freeholder and the lender would lose its interest in the property.

Usually where there's a mortgage on a property, the freeholder will approach the mortgage lender before it moves to forfeit the lease. Where the lease contains a mortgage protection clause, it requires the freeholder to give the mortgage lender advance notice of their intentions. In this case, it's clear the lease for the mortgaged property did not contain a mortgage protection clause and so it posed an additional risk to Accord. This is because if Mr and Mrs H failed to comply with the terms of the lease, the freeholder could move to forfeit the lease without giving advance notice to Accord. And that could limit the actions Accord would be able to take to protect its interests before the matter is heard in court.

Mr and Mrs H may feel that this is unlikely to happen and that may turn out to be the case. But it doesn't cancel out the risk that it could happen and it's understandable this is a possibility Accord would want to consider. I note that, as mentioned by Mr and Mrs H and by L in its letter to Accord, there are existing laws and procedures which require a freeholder to notify a mortgage lender of a forfeiture claim. But these don't require the freeholder to provide advance notice of their intentions – something that does have to be provided under the mortgage protection clause. That advance notice, as I've referred to above, would give Accord time to act, prior to the freeholder initiating a claim for forfeiture of the lease, to protect its interests. I'm therefore satisfied it wasn't unfair or unreasonable that Accord required the lease to be amended.

Mr and Mrs H have suggested that an indemnity policy would have been a sufficient alternative to amending the lease. They've said it would also have been cheaper and quicker to put in place. They question why Accord didn't consider this option when it was asked about it.

Accord has referred to its CML Handbook for solicitors (now known as the "UK Finance Mortgage Lenders' Handbook for Conveyancers"). I can see this requires a DOV to be obtained where the terms of a lease are unsatisfactory, as was the case here. I also note it shows that Accord may accept indemnity insurance where the acting solicitors are satisfied it is a solution to the issue identified. In other words, it's for Accord to decide if it accepts indemnity insurance or not.

It's clear that the terms of the lease were unsatisfactory to Accord. It has explained that a DOV to remedy the defect (no mortgage protection clause) would always be the preferred option where it's possible. And so, in my view, unless L told Accord that a DOV wouldn't be possible for Mr and Mrs H's lease, which it didn't, there would be no clear reason for it to agree to an indemnity policy instead. I don't consider that's unfair or unreasonable as amending the lease will ensure the freeholder is required to give advance notice to Accord should it intend to forfeit the lease.

The indemnity policy, while it would provide a level of protection, would not fix the issue at hand and is therefore still more risky as an option than amending the lease. I accept that indemnity policies can be used to solve several matters during the legal processes connected with properties and mortgages. But, for the reasons I've explained, I'm not persuaded Accord ought to have agreed to an indemnity policy here as it was possible to amend the lease. An indemnity policy is a form of insurance, which would compensate Accord after the fact if something went wrong. But – unlike a DOV – it wouldn't ensure Accord could act to prevent things going wrong in advance.

This brings me on to Mr and Mrs H's concerns that Accord ought to have made them aware of the requirement for a mortgage protection clause within their mortgage offer. And that if it had done that, it would have avoided the difficulties they faced. I know they feel strongly about this point, but I am unable to agree Accord should have made the requirement for a mortgage protection clause a condition of the mortgage offer. It wouldn't be feasible for a lender to set out all possible legal matters that might occur by making them a condition of the mortgage offer. Nor would I expect a lender to do so. It is the role of the appointed solicitor to investigate legal matters relating to the property once a mortgage offer has been made, to ensure it's suitable for a lender to lend on. And that's what's happened here.

A lender has no way of knowing about any potential lease defects before it issues a mortgage offer, unless information is presented to it before that point which suggests there might be a problem. I've seen no such evidence in this case and so I'm unable to agree that Accord ought to have made Mr and Mrs H aware of the lease requirement before it issued a mortgage offer to them. In any case, even if Mr and Mrs H had been made aware of this requirement sooner, they would still have had to have incurred the cost of obtaining a DOV to be able to proceed with the mortgage.

I'm sorry to hear that the lease amendment delayed the progression of Mr and Mrs H's mortgage application, and I appreciate this wouldn't have been ideal in the circumstances. I note they've said they didn't want to, or couldn't, explore taking a mortgage with another lender instead due to a number of factors. But it was ultimately their decision to amend the lease in order to continue with this mortgage application, instead of seeking other options. They were not bound or obliged to continue with their mortgage application with Accord if they didn't agree to its request to amend the lease. Because of this and for the reasons I've explained above, I do not require Accord to reimburse Mr and Mrs H for the cost of the lease amendment.

Finally, I note Mr and Mrs H have raised concerns about how Accord dealt with their complaint. While I can see Accord has accepted there are some things it could have done better as part of that process regarding communication, I'm mindful that the crux of Mr and Mrs H's concerns is that they don't agree with the outcome – and I've already found above that Accord hasn't acted unfairly regarding the lease amendment. Accord has offered to pay Mr and Mrs H £75 to recognise the distress and inconvenience caused by issues when it was dealing with their complaint. And I think that's a fair way to recognise what's happened. I do not require Accord to do anything further.

My final decision

My final decision is that Accord Mortgages Limited should pay to Mr and Mrs H the £75 compensation it has offered, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 15 August 2025.

Keith Barnes
Ombudsman