

The complaint

Mr and Mrs D complain that Accord Mortgages Limited told them they could have extra mortgage lending after six months, but then refused to grant this. And when they applied again, it assessed Mr D's income after making deductions for a tax that he doesn't pay.

What happened

Whilst this complaint is brought by both Mr and Mrs D, as the mortgage is in both their names, our dealings have been with Mr D. So I'll mainly refer to him in this decision.

After Mr and Mrs D bought their home with a mortgage from Accord, they started a programme of renovations to the property. They wanted to secure extra borrowing for this.

Mr D said Accord told him in August 2021 that he could access further lending, six months after the mortgage started. But then it later said that advice was wrong, he couldn't get further borrowing at that stage.

Mr D also said he'd applied for further lending since, and Accord had turned him down, saying the lending wasn't affordable. But Mr D said Accord reached this conclusion after deducting tax from his income. And he says, in his particular situation, he doesn't pay tax. So he felt that Accord was greatly underestimating his net income, which was unfair.

Mr D wanted Accord to offer him extra lending, so he could build the renovation costs into his mortgage.

Accord said it hadn't promised Mr D it would give him extra lending in future. In August 2021, it just told him he'd have to wait a while before he could apply – not that any application would then be approved.

Accord said Mr D applied for extra lending in February 2022, but that was turned down, as Mr and Mrs D weren't using the property as their main residence. They'd never lived there.

Accord said that in July 2022 Mr and Mrs D applied through a broker for extra lending, for home improvements and for debt consolidation. Accord said it was sorry that Mr and Mrs D hadn't met its criteria for additional lending. It had considered their application, and it didn't think this extra lending was affordable for them. It said it could review this in future, particularly if Mr D's income increased. But Accord said what Mr D wanted – for it to assess his income without tax - was outside of its lending policy.

When our investigator asked Accord about this, it said Mr D worked under a series of short term contracts. Not all of these previous contracts had been without deductions for tax. So it couldn't assume that all of his future contracts would not be taxed. It looked to Accord as if this depended on the contract he took up. Accord also said it was concerned about Mr and Mrs D's level of personal debt, that would also have been a factor in any possible lending.

Mr D said he thought Accord wasn't using the right tax code for him. He said if it used the code that he'd been assigned, then it would see that his true income was much higher. Mr D said he was currently stuck paying a very considerable amount of additional interest each month, on unsecured debt which he said Accord was supposed to secure for them.

Our investigator didn't think this complaint should be upheld. He didn't think Mr and Mrs D were told that they would be given further lending after they'd held their mortgage for six months. He thought Accord only ever said they would be eligible to apply after this time. So he didn't think Accord was responsible for Mr D's decision to take out unsecured borrowing, or to carry out work on the property before Accord had agreed to lend more.

Our investigator also thought Accord didn't act unfairly when it assessed the July lending application. He noted that Accord could see Mr D had paid some tax previously, and so our investigator said he didn't think it was unreasonable for Accord to have based its decision on the potential risk of this happening again in future.

Our investigator said he appreciated that this left Mr and Mrs D in a difficult position, but he didn't think Accord had acted unfairly, and he wouldn't ask it to lend to them now.

Mr D then supplied some evidence that the previous tax payment was a mistake, that money had since been reclaimed. But our investigator said the evidence Mr D sent us now was dated well after the decision Accord had made. So he couldn't see that Accord could have known this at the time. Accord also then confirmed that Mr D hadn't shared evidence of this with it, at the point when it made its decision.

Mr D said that our service was ignoring the core issue, which was that Accord wasn't respecting the tax code he'd been assigned by HMRC. And it had no intention of changing this policy. Mr D said that was just not fair. Because no agreement was reached, this case was then 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.

Mr D said he was given to understand that Accord would offer him extra mortgage lending, after he and Mrs D had held this mortgage for six months. But, like our investigator, I think it's most unlikely that Mr D was told that he would be approved for additional ending at this time. The contemporaneous notes that Accord has sent us do show that Mr D asked about additional lending the month after his mortgage was complete, in August 2021. Those notes suggest he was told that Accord wouldn't consider additional lending until some time later – not that such lending would then be granted. And I think that is most likely to be what was said to Mr D at the time. So I don't think it's likely that Accord had given Mr D reason to believe that he would be approved for extra mortgage lending in February 2022.

Mr D first applied for additional lending in February 2022, and Accord turned him down then, because he and Mrs D weren't living in the property at the time. I do think it's clear from the mortgage offer that Mr and Mrs D got in 2021, that the mortgage was granted on the basis that he and Mrs D would "*Live in the property, use it as your home.*" That is included as one of the conditions of Mr and Mrs D's mortgage offer, which I would have expected Mr and Mrs D to have seen, and agreed to, as part of taking out this mortgage in 2021. But by February

2022, Mr and Mrs D still weren't sleeping in the property, they were continuing to live in a rental property while they carried out extensive renovations on the mortgaged property.

I think that refusing extra lending to Mr and Mrs D in February 2022, on the basis that they were then in breach of a condition of their existing lending, was a reasonable decision for Accord to take at the time.

Mr D then reapplied for further lending through his broker in July 2022. Accord also turned this down. It didn't think this was affordable.

Accord first refused the additional lending that Mr and Mrs D wanted, because it said that they had a very considerable amount of additional unsecured debt, in the form of personal loans and credit cards. And this wasn't declared on their application form. Mr and Mrs D's broker then shared information on other lending, but Accord said this remained incomplete. And when Mr and Mrs D's credit files were passed through to them, Accord said that this additional information just supported its earlier conclusions.

Accord also said Mr and Mrs D were seeking to borrow an extra £90,000, and as part of that, they would repay £60,000 of unsecured lending. Accord said the maximum it would lend for debt consolidation was £50,000. Mr and Mrs D then changed their request, and said they would use £50,000 of the additional mortgage borrowing to pay off unsecured lending.

Accord refused. It didn't think this lending was affordable for Mr and Mrs D. But I note it also had additional concerns.

Mr D's argument has been that when Accord works out what his income is, it isn't taking account of his tax code. He says the code he's been assigned means that he just doesn't pay tax. But I'm not clear that this is always what this code means. It appears to be used in a wide range of circumstances, where individuals don't pay tax at source. That's not the same as saying that no tax whatsoever is owed by anyone who has this code – which is what Mr D says Accord should infer from this code.

I understand Mr D feels it's very unfair for his income to be assessed after deductions for tax payments he says he doesn't have to make, in his circumstances, and has no intention of making in the future. However, I do think Accord made its own assessment for the lending decision it made in August 2022, based on the evidence Mr D provided at the time.

Accord has set out its reasoning for us. It said it could see Mr D had paid some tax, and it has shown us payslips which support this. It also said it appears Mr D works under a series of short term contracts. So it thought that it should assume Mr D could be taxed, as it looked like he had been taxed previously on at least some of these contracts. Accord based its lending assessment on that assumption.

I know Mr D has told us this tax payment was a mistake, and he's since shown us that he received a refund for it. But he's not been able to show us that he said this to Accord at the time, and Accord says it wasn't made aware of this. So I don't think that Accord's decision, based on what it apparently knew at the time, was clearly unfair or unreasonable.

I note that Accord said if Mr D reapplied, that it would continue to deduct tax from his income. Although that's a statement of future intent, not something I can see Accord has already done, I do think it would be appropriate to comment briefly on that statement here.

I am not persuaded, on the evidence and arguments I've seen to date, that it would clearly be fair for Accord to simply say now that it will always apply deductions from tax to Mr D's

income. If, as part of any future application, Mr D can show that he hasn't owed any tax, because of his employment type, for many years, and he reasonably expects that situation to continue, then I would expect Accord to consider what he says about this.

However, I haven't been able to see this is the decision that Accord made here. And this doesn't necessarily mean Accord's ultimate lending decision would be different in future.

I think it's also important to say that our service wouldn't routinely interfere with the decision a lender makes, about whether to offer a customer extra lending. And here, although Accord stopped considering this application, when it decided Mr and Mrs D's income didn't support the borrowing they wanted, that doesn't mean that if this issue had been resolved in the way Mr D would like, that Accord would then have lent him the money he wanted.

Accord is aware that Mr and Mrs D were in breach of the mortgage conditions, for the first six months of their mortgage. And it is aware that they now have a very considerable amount of additional unsecured lending, which it says wasn't declared in full as part of their additional lending request. Their unsecured lending exceeds the amount that Accord is prepared to provide debt consolidation lending for. It has expressed concerns both about the level of unsecured debt that Mr and Mrs D have, and that they would use all the lending they are asking for, to repay their existing debts. So it is possible that this lending will remain outside of Accord's risk appetite in future.

I don't think it would be appropriate for me to go beyond this, and comment further on any future lending decision Accord may make. And looking at the lending decisions it has made to date, in February and August 2022, I don't think that these have produced an unfair or unreasonable outcome in Mr and Mrs D's case. I know that Mr and Mrs D will be very disappointed, 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 Mrs D and Mr D to accept or reject my decision before 30 January 2024.

Esther Absalom-Gough

Ombudsman